

Restricted Freedom of Association and Freedom of Expression for LGBT Groups in Indonesia

Rationale

Since Indonesia felled its 32-year dictatorship in 1998, it has struggled along the fast-paced road to democracy. A feudalist mentality still plays a large role in the minds and actions of many Indonesians; regional and tribal affiliations are still considered one's primary identity; and ethnic tribes still exist in their traditional forms, respecting their traditional values, on every major island that makes up Indonesia. Nationalism exists, but over the past three decades the idea of 'Indonesian' has become almost synonymous with the embracement of Islam.

As such, the morals that guide Islam, once institutionalised by Suharto, have solidified themselves in the understanding of Indonesian laws and governance. While many of the more extreme laws are 'soft', either in their wording or in their implementation, a trend has developed since 2001 that has led the national and many regional governments to adopt more hard-line laws concerning sex, sexual appropriateness, and indecent behaviour. Many of these laws are specifically focused on the societal position of women, ethnic minorities, and sexual minorities.

At the national level, the Anti-Pornography Law was passed in 2008 as a "gift" to Muslims by the PKS (*Partai Keadilan Sejahtera*, Justice and Prosperity Party) during Ramadan after three years of opposition to discriminatory articles included in the draft. The Anti-Pornography and "-Porno Action" Bill sought to limit the exposure of neck, shoulders, midriff and thighs on women, and provided vague definitions of "erotic" and "sexual" art and behaviour that threatened many traditional practices, particularly in eastern Indonesia.

While many of the most discriminatory articles associated with "Porno Action" have been modified or deleted from the Anti-Pornography Law, homo-erotic references through art, culture and behavior remain prohibited in the law, and vague definitions of what these can encompass are included in the definitions, allowing for law enforcement authorities to apply the law based on their own interpretation.

Due to the attention received by the Anti-Pornography Bill, hardline Islamic politicians sought to insert more conservative elements of the law in the colonial Criminal Code (KUHP). The revision process for the KUHP has been underway for over 40 years, but remains deadlocked. The likelihood that discriminatory articles will remain in the final draft to push through its passage is higher, and opposition more difficult. However, at time of writing, deliberations of the KUHP have stalled. Instead, House of Representatives has decided to prioritize the revision of the KUHP (Criminal Procedures Code) first, which is not likely to pass due to its obvious reliance on the content of the KUHP.

At the provincial, district and municipal levels, discriminatory regional laws (*Perda*) have increased in number over the past five years. Originating in Padang, these regional laws have spread throughout Sumatra, Java and Sulawesi.

¹ Presented in Hotel Akmani, Jakarta, on 16 December 2010

Many of these *Perda* are in violation of national laws and should therefore be annulled. The power lies in the hands of the Ministry of Home Affairs; however the political will to annul *Perda* based on discrimination is lacking. Instead, thus far it has focused on canceling local regulations that have economic ramifications on the central government or the public, such as illegitimate increases to local taxes.

These laws have set legal precedents for increased discrimination toward LGBT in Indonesia. In 2010, attacks on LGBT events and activists increased markedly, beginning with the FPI/FUI attack on the ILGA Asia conference in Surabaya (March 2010) and the human rights training for waria in Depok (May 2010), fundamentalist Islamic group protests at Q! Film Festival venues in Jakarta and Yogyakarta (October 2010), and numerous cases of human rights violations against LGBT in conjunction with criminal cases.

The Yogyakarta Principles, the guidelines for the implementation of international law for sexual orientation and gender identities, clearly that the protection of freedom of association and freedom of expression, both guaranteed under the ratified ICCPR, should also apply to LGBT groups. However, at time of writing, they have come under threat due to increased aggression from intolerant groups and the ambivalence of the law enforcement and the government to extend those rights to LGBT.

Development of the LGBT Rights Struggle

After more than a decade of HIV/AIDS programs catering to gay men, transgender and MSM (men who have sex with men), LGBT groups have started to openly focus on a broader range of issues affecting the LGBT community, including the fight for LGBT rights as human rights. Arus Pelangi is one of the first organizations to advocate LGBT rights to the general public, policy makers and law enforcers. Aside from taking up individual cases in which LGBT persons have become victims of violence and human rights abuses, Arus Pelangi also focuses on policy changes which give equal rights to LGBT people. So far, the activities have been limited to reacting to national laws and local bylaws that have been explicitly discriminatory against LGBT.

Discriminatory Local Bylaws

Since 2001, a wave of ultra-conservative *Perda* has emerged across the country, most predominantly in Java, Sumatra, and Sulawesi. While the content of these laws differ between regions, they fundamentally support ill-interpreted *syariah* principles that in most cases outlaw homosexuality (as an identity and an act), place curfews on women and impose punishment solely on women for public displays of affection, and require “proper” Islamic dress to be worn by civil servants.

In addition to the restrictions on women’s freedoms, these *Perda* have defined all acts of homosexuality as prostitution. In Palembang, the *Perda* on Prostitution cites “Homosexuality, Lesbianism, Sodomy and Oral Sex” as forms of prostitution punishable by law. As such, simply being homosexual is reason enough to be detained by police without any charges or evidence of illegal acts, and prosecuted as a prostitute. LGBT defenders and women activists have launched a campaign to have this *Perda* revised, but lack a strong base to sustain the campaign. Arus Pelangi, in coalition with other women’s rights and legal aid organizations based in Jakarta, held a series of trainings on the contentious *Perda*, attended by local academics and NGO representatives in Palembang, South Sumatra; Jakarta; and Makassar, South Sulawesi in March 2008. The conclusion of this examination was that, by not having

consulted legal experts beforehand, the regional law makers committed serious errors in drafting the bylaws. Until these issues are addressed at the national level, LGBT defenders can do little more than continue to name and shame the law makers in regions issuing these discriminatory laws.

The worst local bylaw produced thus far in Indonesia is in Nanggroe Aceh Darussalam. In late 2009, the outgoing Aceh legislative council (DPR-A) passed the *qanun jinayat*, better known as the Adultery Bylaw. It proscribes caning as a punishment for many offenses, and even stoning to death for adulterers. Homosexual acts, i.e. gay and lesbian sex, are punishable by a maximum of 100 lashes². Only after a coalition of national and provincial CSOs – including LGBT groups – condemned the *qanun jinayat*, was the governor of Aceh persuaded to reject the bylaw: he refused to sign the law, thus making it a dead law. However, this did not deter the *Wilayatul Hisbah*, or Shariah Police, from arresting, lecturing and sometimes caning or humiliating people for minor offenses such as gamblers, women not wearing head scarves or wearing tight jeans, unmarried couples dating in public places.

Pornography law

In the fight against the Pornography Bill, Arus Pelangi joined the *Aliansi Masyarakat Sipil Menolak Pengesahan RUUP* (Civilian Coalition against the Pornography Bill). Signature campaign was launched by Arus Pelangi. The coalition held a public Fit and Proper Test on 19 September 2008 at the Jakarta Media Centre. It was attended by hundreds of human rights activists, artists and cultural minorities, and press statements and interviews were made. Surprisingly, the LGBT issue got much attention and coverage in the newspapers and TV.

Meanwhile, Arus Pelangi worked intensively with a few allies in House of Representatives, coordinating with each other, and encouraging each other in the face of significant lambasting and insults from those who eagerly wanted the bill passed. Indeed, the psychological war was at its highest during the weeks leading to the approval of the bill. Though the battle was lost, LGBT scored a small victory when the PDI-P openly declared its opposition to the bill because of the discriminatory articles against LGBT; the first time a political party had openly supported LGBT rights.

After the law was passed, Arus Pelangi held a discussion with its constituency to measure people's readiness to go on fighting the bill.³ An audience of 40 people unanimously decided to support the move to bring a Judicial Review of the law to the Constitutional Court. Again, a civilian coalition was formed to prepare the arguments and other materials led by YLBHI, with Arus Pelangi as one of its most active and constructive members.

The Judicial Review petitioned in March 2009 by several CSOs was ultimately rejected by the Constitutional Court in March 2010, stating that there were no discriminatory passages in the law⁴. Only one judge, Justice Maria Farida, had a dissenting opinion claiming that the law was discriminatory. With this verdict, the door is now wide open for misuse of the law resulting in discrimination against minority groups in Indonesia, based on ethnic traditions, sexuality and gender.

² <http://www.thejakartapost.com/news/2009/09/15/aceh-council-passes-bylaw-stoning-adulterers-death.html>

³ <http://www.thejakartaglobe.com/life-times/article/2368.html>

⁴ <http://www.thejakartaglobe.com/home/anti-porn-statute-to-remain-law-of-the-land-in-indonesia/365771>

Civil administration law

In 2006 the Indonesian House of Representatives passed a new law on Civil Administration which failed to acknowledge transgender/transsexuals (*waria*) as one of the vulnerable groups requiring special attention⁵. It has always been very difficult for *waria* to get an ID card (KTP) due to discrimination by civil servants. Often transgender/transsexuals feel the need to escape their rural hometowns, in many cases hastily, and move to big cities without their required documents to register. This makes applying for new ID cards almost impossible, leaving many trans persons without ID cards.

Because *waria* don't have families and generally don't have *Kartu Keluarga* (family cards), they cannot be insured under *Jamkesmas* (health insurance for the poor). Many other problems with *waria* exist thus making them one of the most vulnerable groups in the Indonesian society.

Recent backlashes

Those laws and local bylaws have become ammunition for intolerant groups to be more emboldened to act against minorities (religious, political, sexual and gender); to go even one more step further and take the law in own hands. In the course of 2010, LGBT defenders have been seriously threatened by religious extremist groups, especially the United Islamic Defenders Front (FPUI).

Lesbian, gay, bisexual, transgender/transsexual, intersex and queer people in Asia agreed to hold the 4th ILGA-ASIA Conference in Surabaya on 26 – 28 March 2010, with the motto "LGBTIQ Moving Forward". This meeting was meant to discuss strategies how to promote and advance LGBT rights to the general public, and was originally scheduled at the Mercure Hotel in Surabaya. A few days before the opening of the conference, FPUI vehemently rejected the conference and threatened to ensure it was not able to be held. They were encouraged by similar statements by Minister of Religious Affairs, the Speaker of the House of Representatives, the Deputy Mayor of Surabaya and the Indonesian Council of Ulemas.

The Police Force who were supposed to provide protection, did not act to counter such threats; instead they responded that there was nothing they could do if FPUI attacked the conference in the expected numbers. A handful of people who claimed to represent the police (though formal affiliations are not proven) took advantage of the imminent situation by seeking to seek payment to 'secure the safety' of the participants.

To protect the participants from harm the organizing committee moved almost all of the participants, who had already started to arrive, to the Oval Hotel in Surabaya. However, the new location was uncovered, and on Friday 26 March at 1.00 pm, FPUI invaded the premises of the Oval Hotel⁶. The verbal threats and abuses from members of FPUI caused much distress among the participants and the organizing committee, and even other hotel guests. Under this kind of (threat of) violence, the ILGA organizing committee saw no other option than to evacuate the participants from Oval Hotel.

This attack is not an isolated incident, but rather part of a growing, systemic trend in Indonesia. On Friday 30 April 2010, a group of the local Islamic Defenders Front (FPI) attacked a close-door human rights training for transgender persons⁷. It happened on the second day of the training and, again, the police was not able to protect the participants from

⁵ The Jakarta Post, Tuesday, December 5, 2006: "PDI-P calls for civil registration law to be delayed"

⁶ <http://www.thejakartaglobe.com/home/indonesian-radicals-raid-gay-conference/366141>

⁷ <http://www.thejakartaglobe.com/home/raided-transsexuals-vent-anger-over-satpols-unfair-treatment/372732>

harm, despite the fact that this training was held under the auspices of the National Commission on Human Rights (*Komnas HAM*).

The series of attacks against LGBT activities have deeply hurt the LGBT people, not only as a group but also as individuals. These events have affected not only those who attended the conference but also those who received the news via the media. The shock, sadness, anguish and anger resulting from these attacks have led to increased distrust toward the police and fear of attending public activities. Many have decided to go back in the 'closet' and hide.

In the aftermath of this, around 18 LGBT groups from across Indonesia gathered in May 2010 to discuss a common strategy to overcome these threats. This LGBTIQ Forum came out with a statement condemning the label "enemies of the national morality" imposed by those intolerant groups and lamenting the frequent inaction by the police. The complaint was submitted to Komnas HAM, which promised to follow up on the issue of discrimination and violence against LGBT groups. However, at time of writing no concrete action has been taken to respond to this complaint.

The coalition also met with the then National Chief of Police, Bambang Danuri Hendarso, just before Ramadan to discuss action the police could take in response to FPI's violent attacks on LGBT and other civil society groups in Indonesia. Bambang Hendarso promised to limit FPI's "monitoring" activities during Ramadan and demand the dissolution of the organization if FPI was unable to abide by the law in carrying out its activities. Both of these statements were submitted to the DPR for consideration, and released to the media during Ramadan. Unfortunately, Bambang Hendarso was replaced as the National Chief of Police by Timur Pradopo in October 2010, and the former has promised to work closer with FPI in enforcing laws relating to national morality and moral conduct in future, a role it has already taken on as the censorship board for films in Indonesia.

From 24 September – 20 October 2010, the Q-munity held the ninth annual Q! Film Festival. There have been threats on the festival in the past, but in 2010 the threats were followed by real attacks. On the fourth day of the festival, all the venues screening Q! Film Festival films in Jakarta were descended upon by demonstrators from FPI and a few Muslim-based student organizations. They made formal threats to the festival organizers and the venue managers⁸. The smaller venues decided to stop the screenings, while the French, German and Dutch cultural centers continued their screenings, and received sufficient police protection. The cooperation with the police was quite good, but the organizers and spectators of the film festival endured threats and disturbances from demonstrations for the remaining screening days; many films could not be shown. Throughout these demonstrations, the government showed little consistency; the spokesperson of the Ministry of Communication and Information first said he did not mind having the festival take place, but later denied having given any permission and then referred the matter to the Board of Censorship.

Subsequent screenings in other cities encountered problems securing police protection. A strong recommendation letter from *Komnas HAM* (National Commission on Human Rights) was sent to all the relevant district police stations, but not all were willing to honor the recommendation letter; especially the Yogyakarta and Denpasar District Police Stations. In Yogyakarta, the police clearly colluded with the local Council of Ulemas (MUI), whereas the objections of the regional police of Bali were not clearly motivated. As a result, the screening of films was severely restricted in those two regions. However, the screenings in Surabaya and Makassar went smoothly and received adequate cooperation from the police.

⁸ <http://www.thejakartapost.com/news/2010/09/28/fpi-raids-cultural-centers-demands-end-gay-film-festival.html>

The most recent attack happened in Makassar⁹ on 1 December 2010, when the FPI raided a drag-queen contest to mark World AIDS Day. Ten minutes before 50 transgender competitors were expected to begin the contest in a function hall owned by the Indonesian Military (TNI) in Makassar, South Sulawesi, dozens of members of the Islamic Defenders Front (FPI) and Majelis Darul Mustafa Makassar raided the premises and demanded the event be halted.

Stakeholders

National administration

In its pledge to embrace democracy and the universal Human Rights that go with it, the Indonesian government ratified two International Human Rights Covenants on 31 September 2005 (The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights). However, it has yet to create a plan for the effective execution of these covenants. This is evidenced in the continuing existence and creation of new laws that continue to discredit the rights of minorities and the absence of any new laws meant to protect them.

In Indonesian Law 10, 2004 the legal method and regulations concerning the construction and passing of laws is outlined. In this law it is clearly stated that all laws, at the federal, provincial, regional, or local levels, must respect the 1945 Constitution (*Pancasila*) and must uphold “justice,... equality, harmony, and conformity”¹⁰ “openness,”¹¹ and “Human Rights.”¹² The 1945 Constitution upholds the rights of *all* Indonesian citizens.

Because of the bureaucratic red tape inherent in the Indonesian civil systems, opposition to any laws or public policies, even if they contradict the fundamentals of the constitution or other ratified laws and agreements (such as the International Covenants listed above). There are three main channels which can be used to lobby and advocate for the dissolution of ratified laws. One is by successfully submitting a Judicial Review to the Constitutional Court to prove the illegality of the law in question. However, the Constitutional Court has yet to approve any judicial review concerning LGBT rights, either governmental or non-governmental.

The second legal option to challenge these discriminatory laws is to receive a recommendation from the Minister of Home Affairs to the President, and in turn get a Presidential decree to overturn the laws. This channel is also very unlikely, as the current President, Susilo Bambang Yudhoyono, is in his second of a maximum of two terms, and is neither not strong enough nor has he exhibited the political interest to oppose any policy supporting Islam.

Despite the unlikelihood of succeeding through this channel, it still remains one of the strongest options for the NGOs currently advocating to oppose discriminatory laws.

The third option is by means of political influence and must be conducted simultaneously with both legal channels if there is to be any success in overturning discriminatory laws. This political route involves political pressure from the regions, including advocacy, lobbying, diplomatic negotiations and demonstrations.

⁹ <http://www.thejakartaglobe.com/home/panicked-transvestite-beauty-queen-hopefuls-flee-fpi-raid/409671>

¹⁰ Undang-Undang Republik Indonesia Nomor 10 Tahun 2004, Article VI, Sections g and j.

¹¹ Undang-Undang Republik Indonesia Nomor 10 Tahun 2004, Article IV, Section g.

¹² Undang-Undang Republik Indonesia Nomor 10 Tahun 2004, Article VIII, Section a.

As these channels have proven unfruitful, what is needed at the moment is an educated public and network of Human Rights defenders able to support victims of discrimination and Human Rights abuses or violations in regions that often slip past the attention of national representatives. As long as these unconstitutional regional laws exist, minorities, especially sexual minorities, will be victims of infringements on their basic rights and freedoms.

Local administrations

Since the decentralization ('local autonomy' in Indonesian parlance) was implemented in 2001, numerous local regulations that discriminate against or criminalize women in general, and LGBT in particular, have been passed; many of them are in violation with the national laws and should therefore be cancelled. Proposed laws were put forward by the local governments (either at provincial or regional levels, *DPR-D*), and these Sharia-based *Perda* are largely the product of political positioning by PKS, who have clearly stated that they feel the insertion of Islamic laws will win them popular support amongst Muslim voters, and allow them to refer to such *Perda* as the verifiable results of their term in office.

The power to cancel those discriminatory bylaws lies in the hands of the Ministry of Home Affairs; but it lacks the political will to do so. They have to come up with a procedure how to correct local bylaws that contradict national laws and the constitution, even when they have been duly passed. Instead it has so far only busied itself with canceling local regulations with economic motives, like when local governments want to raise improper local taxes etc.

House of Representatives

The low productivity of the Indonesian House of Representatives (DPR) in the current administration is acknowledged even by MPs themselves. Not only is there a general lack of professionalism, but laws are most often measured based on their adherence to morality standards, not human rights standards. This is particularly the case with Muslim parties, whose concerns are primarily focused on the implementation on Shariah-inspired laws such as anti-pornography, prostitution and other vices. Secular parties defend or oppose those bills largely based on their impact on political party affiliations, rather than on the principles addressed in the laws. PDI-P is a stark exception to this.

Intolerant groups

FPI has received the majority of press recently for its attacks on a range of minority groups, including LGBT groups. However, other fundamentalist groups often join them in their actions. In their statements they find "immoral" or "threats to Islam" has been conducted by a number of right-wing organizations, including KAMMI (*Kesatuan Aksi Mahasiswa Muslim Indonesia*, Indonesian Muslim Students' Unified Action), MMI (*Majelis Mujahidin Indonesia*, Indonesian Islamic Warriors Council), FBR (*Forum Betawi Rempug*, Betawi Brotherhood Forum) and HTI (*Hizbut Tahrir Indonesia*, Indonesian Liberation Party). Despite their differences, they tend to unite when they have a common enemy in sight. Like many radical groups, these organizations recruit their followers from lower class communities, and target poor, unemployed and disenfranchised youth, who are easily attracted to this type of intolerant activism.

In public statements these groups claim that activities organized by LGBT groups are contrary to the moral values of the nation (*moral bangsa*). Many, more subtle, tactics aim at

intimidating LGBT and other minority groups into less public positions in society at best, and complete abolition and exile (as in the case of the Ahmadiyah) at its most extreme.

Human Rights Movement

In the past years we have seen many mainstream civil society groups actively supporting the LGBT rights campaigns. The most enthusiastic groups can be found among the women's and human rights organizations, and to a lesser degree also among the environmental groups and labor unions. In the growth of alliance building among those groups they have become more inclusive to (new) LGBT groups which still have to learn the trade of activism.

LGBT Network

There has been a boom of local LGBT organizations/groups. Roughly speaking, they can be distinguished between: (1) social networks/friendships, (2) culture like Q! Film Festivals and performing arts, (3) HIV/AIDS mitigation and (4) rights advocacy and policy reform. Each of them has contributed to a higher visibility of LGBT in society. Yet, the overall majority of LGBT persons do not actively participate in any of these fields, because they still live in the 'closet' and are afraid to come out.

It is difficult to give an overview since many organizations operate on more than one field. Given this diversity of interests, there is no cohesive LGBT movement yet. Having said that, collaboration among LGBT organizations on specific themes, like IDAHO (International Day against Homophobia and transphobia; 17 May), has been growing. In more and more cities across Indonesia LGBT groups and organizations are coming together to commemorate this day. Another point of common interest is the socialization and promotion efforts of the Yogyakarta Principles: a guide for the application of international human rights law in relation to sexual orientation and gender identity that was created in the heartland of Indonesia. It has become a big source of inspiration for the LGBT communities; it has been translated into Indonesian and a comic book was produced to popularize the principles in vernacular language. Coordination with *Komnas HAM* is ongoing to further promote the Yogyakarta Principles among policy makers and law enforcers.

Achievements

For the first time in Indonesian history, a case of homicide of a *waria*, Vera a.k.a. Zainudin, in Purwokerto, Central Java, was solved by the police and brought before the courts.

Coordination with police has improved; during the disturbances of the Q! Film Fest they were in constant coordination with Arus Pelangi concerning the security situation. The then Chief of National Police Force, Bambang Danuri Hendarso, has shown considerable understanding of LGBT issues.

After many dialogs with the Ministry of Labor and Transmigration (Depnaker), Ministry of Justice and Human Rights (Depkumham), Ministry of Foreign Affairs (Deplu), they all understand better the importance of LGBT rights and equal opportunity.

LGBT groups in general have achieved a higher visibility in society; which is a precondition for further advancement of LGBT rights. Mass media has played an important role in this process, albeit not always in a positive way.

Challenges

Violence at the field level has increased due to the higher visibility of LGBT groups and organizations. It has become a recurrent mode of conduct for the FPI and other intolerant groups to threaten, harass and assault LGBT gatherings whenever they come to know of their existence in their communities.

The entire Police Force has yet to understand and protect the rights of LGBT groups in their exercise of their freedom of association and freedom of expression. They should be more proactive in curbing the illegal actions of intolerant groups when threatening, harassing and assaulting LGBT gatherings and activities.

Depnaker (Ministry of Manpower), Depkumham (Ministry of Justice and Human Rights) and Deplu (Ministry of Foreign Affairs) all understand the importance of LGBT rights and equal opportunity. However, implementation is not yet evident.

Conclusions

As various government levels are still ambivalent in guaranteeing the freedom of association and to freedom of expression for LGBT groups, it has become important for the international community to remind the Indonesian government of its obligation, in particular that to the spirit and intent of the International Convention on Civil and Political Rights (ICCPR) also extend to citizens with a divergent sexual orientation and gender identity. In short, LGBT groups should have the same rights to peaceful assembly and freedom of expression.

There is a need for a systematic and sustained public campaign to raise awareness among the public and policy makers that LGBT people cannot longer be shunned as undesirables and unworthy persons. The current state of cooperation and alliance building among LGBT groups, mainstream CSOs and some sectors of the state institutions form a good basis for developing such a campaign.

Jakarta, 16 December 2010

Arus Pelangi