

**BRIEF ASSESSMENT OF THE IMPLEMENTATION OF THE 2<sup>ND</sup> CYCLE UPR RECOMMENDATIONS**

During the UPR Cycle 2 in 2012, Indonesia received 2 recommendations concerning Sexual Orientation and Gender Identity (SOGI) issues from Spain and Switzerland. In the recommendation, Spain urged Indonesia to “Eliminate the legislation which criminalizes sexual relations among persons of the same sex, as well as all legislation which discriminates on the bases of sexual orientation, particularly in the Aceh province”. The government noted the recommendation and said that it did not reflect the factual situation in the said province. Meanwhile, recommendation from Switzerland encouraged Indonesia to “Review laws and decrees currently in force restricting the freedoms of religion, opinion, and of expression, in order to prevent any risk of discrimination”. Although the recommendation was accepted, it did not specifically mentioned about discrimination based on Sexual Orientation and Gender Identity (SOGI). Furthermore, the implementation of the recommendation is proven to be weak.

**RIGHTS MOST FREQUENTLY VIOLATED**

Based on our assessment after UPR Cycle 2, Indonesia has not shown any improvement on the fulfilment of the rights of LGBTIQ people. In contrary, Indonesia has violated the fundamental rights of LGBTIQ in Indonesia, in particularly right to freedom of expression, right to freedom of peaceful assembly and right to life, liberty and security of a person.

**OVERVIEW ON SITUATION RELATED TO LGBTIQ PERSONS AFTER THE UPR CYCLE 2 IN 2012**

According to a research conducted by Arus Pelangi in 2013<sup>i</sup>, 89.3% of LGBTIQ in Indonesia have experienced violence, where 79.1% of it was in form of psychological violence, 46.3% in form of physical violence, 26.3% in form of economic violence, 45.1% in form of sexual violence, and 63.3% in form of cultural violence.

**ESCALATION OF THREATS**

*We have seen the increment of threats received by LGBTIQ community in Indonesia, in which the State acted as the perpetrators. The following cases serve as proofs of violation on the right to freedom of expression, freedom of peaceful assembly, and right to life, liberty of LGBTIQ people.*

**Case 1. Police disbanded the training on access to justice for LGBT (Feb 3<sup>rd</sup>, 2016)**

Training on access to justice conducted by local LGBT group was forcedly dismissed by the district police of Menteng, Central Jakarta, based on the complaint made by Islamic Defender Front. The disbandment, according to the police officer, was necessary to “preserve the area’s ordinance”. The committee negotiated with the police but to no avail. The committee evacuated the participants next morning and move to other location.

**Case 2. Police shut down Transgender/Waria-led Islamic Boarding School in Yogyakarta (Feb 19<sup>th</sup>, 2016)**

Islamic boarding school Al Fatah, the Indonesia’s only Islamic boarding school that provides Moslem trans women a safe space for pray and stay was forced to close by the Islamic Jihadist Front<sup>ii</sup>. The police, instead of providing protection for the boarding house caretaker and residents, suggested the caretaker to conduct a dialogue by herself with the jihadist group to settle the matter. Five days later, the Islamic Jihadist Front together with the police and local government officers forcefully asked the boarding school to disband themselves and not to do any activity again.<sup>iii</sup>

**Case 3. Repression of pro LGBT rally followed by threats to LGBTIQ human rights defenders (Feb 23<sup>rd</sup>, 2016)**

150 of fully-armed police repressed pro LGBTIQ rally held by the Solidarity for Struggle of Democracy. 12 people injured due to physical violence conducted by the police, while other participants reported sexual and verbal harassment. Instead of providing redress to the victims, the government of Yogyakarta and the police invited LGBTIQ people on Feb 25<sup>th</sup>, 2016 and told them not to organize another pro LGBTIQ rally. In the following weeks, defenders who had participated in the demonstration received calls from both unknown sources and police, demanding to know who the organizers were.<sup>iv</sup> The treatment was in contrary with those given to the Youth Forum of Ukhuwah Islamiyah that conducted the rally on ‘Joint Action of LGBT Rejection”, attended by approximately 500 people, at the same time with the pro-LGBTIQ rally. In its statement, AM-FUI stated “we will enact what has been prescribed though Islam by penalties of burning, stoning, or the imposition of the highest punishment [death] to the perpetrators of LGBT.”

**Case 4. Police ban transgender cultural event in South Sulawesi (Jan 19<sup>th</sup>, 2017)**

Police and military personnel disbanded the 23<sup>rd</sup> transgender women parade, which was an annual event organized by a transgender group at Soppeng municipality, South Sulawesi. The event was meant to pay respect to *Bissu* (transgender women) as part of their local culture. The police did not issue a permit and complicated the procedure despite of approval spoken by the head of district toward the activity.

## CRIMINALIZATION AGAINST LGBTIQ PEOPLE

*In Indonesia, LGBTIQ community face risks to be criminalized using the law/bylaw/regulations that directly or indirectly attacking the community.*

- i. In Indonesia, only *Shariah* Law of Aceh Province that directly criminalize the same-sex relationship and has been used to arrest people based on their gender expression. In September 2015, *Shariah* police detained two women due to their gender expression. The police verbally harassed and forced them to admit that they were lesbians. The victims suffered from psychological distress as the aftermath.
- ii. Apart from the *Shariah* Law, there are also 47 discriminatory laws and regulations used against the LGBTIQ?? community in national, provincial and district level<sup>v</sup>.
- iii. In July 2016, a petition was filed by *Aliansi Cinta Keluarga* (Family Love Alliance) to the Constitutional Court seeking for judicial review of several articles of the Criminal Code, which, if accepted by the court, would make consensual same-sex behavior and any sexual activities outside of legal marriages punishable. 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 criminalize adult consensual same-sex relations<sup>vi</sup>.

## NEGATIVE PORTRAYAL OF LGBTIQ PERSONS BY THE MAINSTREAM MEDIA IN INDONESIA

- i. In early 2016, various high officials made statements stigmatizing and discriminating LGBT community in Indonesia. These statements had encouraged violence and discriminatory treatments from the police, intolerant groups and the media.
- ii. Findings gathered by Arus Pelangi reveals that there have been 142 cases of violence and discrimination against LGBTIQ community in various regions during the period of January to March 2016<sup>vii</sup>, as the aftermath.
- iii. There is an on-going discussion about a draft bill of broadcasting that stipulates prohibition about broadcasting content related to homosexual, bisexual and transgender persons in article 6. The draft, if enacted, will restrict the freedom of expression and perpetuating stigma against the LGBTIQ community.

## PATHOLOGIZATION OF LGBTIQ PEOPLE

- i. Transgender women are seen as people with social welfare problems under the Regulation of Social Ministry 8/2012. This regulation perpetuates structural discrimination against the community because it creates social pathology.
- ii. This regulation is used as the baseline to establish local regulations related to public ordinance (such as local regulation about public ordinance in Jakarta) that discriminate transgender women based on their gender expression.

## **RECOMMENDATIONS**

1. Include the terms "sexual orientation" and "gender identity" in the existing constitutional clauses on equality and non-discrimination, as well as in the hate crimes legislation;
2. Take all administrative measures, both on the national and local levels, to prohibit and prevent discrimination on the basis of sexual orientation and gender identity, in order to provide effective protection of LGBT people in Indonesia;
3. Reject any attempt to amend the criminal code that will lead to criminalization of people based on sexual orientation and gender identity;
4. Call to legislate a comprehensive anti-discrimination law that includes the prohibition and prevention of discrimination on the basis of sexual orientation and gender identity, to provide effective protection of LGBT people in Indonesia;
5. Conduct full and independent investigation into all allegations of harassment, violence, or abuse of LGBT individuals, and prosecute perpetrators;
6. Conduct comprehensive human rights education towards all civil servants, including law enforcement officers, with an aim to promote gender sensitivity, inclusion and non-discrimination on the basis of sexual orientation, gender identity and expression;
7. Repeal any laws and regulations that categorize gay, lesbian, bisexual and transgender people as deviance and illness, such as those that are written in the social ministry's regulation no. 8/2012 about people with social welfare problem;

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Link for the full report: <https://aseansogiecaucus.org/images/resources/upr-reports/Indonesia/Indonesia-UPR-JointSubmission-3rdCycle.pdf>

<sup>i</sup> Arus Pelangi, KSM, PLUSH 2013/ Unveiling Stigma, Violence, and Discrimination toward LGBT in Indonesi

<sup>ii</sup> Muryanto B. (February 24, 2016). Yogyakarta transgender Islamic boarding school shut down. The Jakarta Post. Can be accessed through: <http://www.thejakartapost.com/news/2016/02/26/yogyakarta-transgender-islamic-boarding-school-shut-down.html>

<sup>iii</sup> Waria is the abbreviation of Wanita (Women) and Pria (Men); it is a local term used to address transgender women.

<sup>iv</sup> Human Right Watch (2016). **These Political Games Ruin Our Lives: Indonesia's LGBT Community Under Threat**. Can be accessed through: <https://www.hrw.org/report/2016/08/10/these-political-games-ruin-our-lives/indonesias-lgbt-community-under-threat>

<sup>v</sup> Arus Pelangi. 2016. Temuan Fakta Terkait Perlindungan, Penghormatan, dan Pemenuhan Hak-Hak LGBTIQ di Indonesia. Unpublished

<sup>vi</sup> Katjasungkana, N and Wiering, S. 2016. Creeping Criminalization: Mapping of Indonesia's National Laws and Regional Regulations That Violate Human Rights of Women and LGBTIQ People. Outright Action International.

<sup>vii</sup> Arus Pelangi, 2015 (unpublished), Op.cit, pg: 36.

<sup>viii</sup> Arus Pelangi is a local LGBT group in Indonesia. ASEAN SOGIE Caucus is a network of LGBT groups in Southeast Asia.