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Indonesia: Situation of sexual minorities, including legislation, treatment by society and authorities, state protection and support services available (2013-June 2015)

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1. Legislation

Sources indicate that same-sex relations are legal under the Indonesian criminal code (Reuters 28 Dec. 2014; The Independent 16 Mar. 2015).

However, sources report that in September 2014, the Aceh provincial government passed a law that criminalizes same-sex sexual acts in the province (Reuters 28 Dec. 2014; Pink News 29 Sept. 2014; Human Rights Watch 1 Oct. 2014). The law prescribes a punishment of 100 lashes and/or up to approximately eight years in prison (ibid.; Pink News 29 Sept. 2014; IGLHRC 25 Mar. 2015). Sources indicate that the law applies to both Muslims and non-Muslims (Human Rights Watch 1 Oct. 2014; Pink News 29 Sept. 2014). Sources note that Aceh is the only province that can adopt bylaws from Islamic Sharia law (ibid.; Human Rights Watch 1 Oct. 2014). Sources indicate that in 2005, the province of Aceh was granted special regional autonomy as part of a peace agreement after a three-decade dispute with a separatist movement (UNDP and USAID 2014, 44; Reuters 28 Dec. 2014). According to Reuters, no one had been arrested under the law as of December 2014, and Aceh officials said the law would start being enforced at the end of 2015 (28 Dec. 2014). Further information about the implementation of the law could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The US Department of State's Country Reports on Human Rights Practices for 2014

indicates that there are local ordinances in some areas of Indonesia that criminal same-sex activity together with prostitution, including in the province of South Sumatra and in the municipality of Palembang (US 25 June 2015, 35). Similarly, a joint report by the United Nations Development Programme (UNDP) and United States Agency for International Development (USAID) that documents presentations and discussion from the Indonesia National LGBT Community Dialogue held in June 2013 (UNDP and USAID 2014, 3) [1], reports the following exceptions in which homosexuality is criminalized in local ordinances:

Provincial Ordinance on the Eradication of Immoral Behavior (No. 13/2002) in South Sumatra. This classifies homosexual acts and anal sex performed by men (without specification whether insertive or receptive) as immoral behaviour, along with acts such as prostitution, adultery, gambling and the consumption of alcoholic drinks.

City Ordinance on the Eradication of Prostitution (No. 2/2004) in Palembang, capital of South Sumatra Province. It is similar to the Provincial Ordinance, but uses the term "prostitution" instead of "immoral behavior."

District Ordinance on Social Order (No. 10/2007) in Banjar, South Kalimantan Province. It mentions "abnormal" homosexual and heterosexual acts (in addition to "normal" ones) in its definition of "prostitute." No explanation is given for "normal" or "abnormal" acts. It also prohibits the formation of organizations "leading to immoral acts" that are "unacceptable to the culture of [local] society." These are later explained by giving examples of lesbian and gay organizations "and the like."

City Ordinance on the Development of a Value System in Social Life Based on the Teachings of Islam and Local Social Norms (No. 12/2009) in Tasikmalaya, West Java. It prohibits adultery and prostitution, both heterosexual and homosexual.

City Ordinance on the Prevention, Eradication and Prosecution of Social Ills (No. 9/2010) in Padang Panjang, West Sumatra. The section with definition of terms explicitly mentions "homosexual and lesbian" relationships and later prohibits such relationships and prohibits persons from "offering themselves for homosexual and lesbian relationships either with or without payment." (UNDP and USAID 2014, 22)

The same source notes that the first four ordinances are "vague" regarding punishment, while the fifth ordinance specifies a punishment of a maximum of three months imprisonment or a fine of approximately US\$835 (ibid., 23). Information about the implementation of these ordinances could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the UNDP and USAID report, Government Regulation No. 54/2007 on adoption states that homosexual couples are not allowed to adopt children and Marriage Law No.1/1974 defines marriage as a union between a man and woman (UNDP and USAID 2014, 24). UK daily newspaper the Independent similarly indicates that same-sex marriage is not permitted (16 Mar. 2015).

Country Reports 2014 indicates that Indonesia's anti-discrimination law does not apply to LGBT persons (US 25 June 2015, 36).

2. Treatment

2.1 Societal Attitudes

The UNDP and USAID report states that Indonesia's population is mostly Muslim and Christian and that those religions are interpreted in a "conservative way that disapproves of homosexuality and influences the whole of society in a negative way" (UNDP and USAID 2014, 9). The same source indicates that some Christian and Muslim clerics are vocal in their homophobic and transphobic views and that most LGBT people in communities led by these clerics "internalize this homophobia and transphobia and find it hard to fully accept their own sexual orientation and gender identities" (ibid., 26).

Moreover, the report indicates that acceptance of LGBT people by their families "is limited by strong cultural pressures to enter a heterosexual marriage and form a family" (ibid.). Similarly, Country Reports 2014 indicates that NGOs state that "religious groups, family members, and the public sometimes ostracized LGBT individuals" (US 25 June 2015, 36).

Sources indicate that in March 2015, the Majelis Ulama Council (MUI), Indonesia's main Islamic clerical body, issued a fatwa (a religious edict), that calls for same-sex acts to be punished by either caning or the death penalty (Human Rights Watch 17 Mar. 2015; IGLHRC 25 Mar. 2015; The Independent 16 Mar. 2015). According to Human Rights Watch, the MUI declared LGBT people to be "'deviant' and an affront to the 'dignity of Indonesia'" (17 Mar. 2015). Sources indicate that the MUI labelled homosexuality as a sin (The Conversation 2 Apr. 2015; The Independent 16 Mar. 2015), and a "disease that needs to be cured" (ibid.). An associate professor of anthropology at the University of Indonesia, in an article published in the US-based media source the Conversation, explained that the MUI is a non-governmental body and that their fatwas are not legally binding (The Conversation 2 Apr. 2015). Additionally, the article notes that Indonesia's Minister of Religious Affairs said he disagreed with the fatwa and that "homosexuality is an individual's choice" (ibid.). However, the article said that the MUI's fatwas are influential in drafting laws and policies and that many Muslim Indonesians follow the MUI ideology, believe homosexuality has no place in Islam, and that "criticising its [the MUI's] view of Islam can be perceived as opposition to Islamic law" (ibid.).

The Conversation indicates that LGBT rights groups protested to the Indonesian Broadcasting Commission against the film "Realization of a Transgendered Woman" (Insyafnya Seorang Waria) which is a story of "repentance of a transgendered person" that "'realizes' her mistake and 'transforms' herself to be a 'normal' heterosexual man" (The Conversation 15 Aug. 2014). According to the source, transgender people are portrayed in a "scornful manner" in the media by depicting transgender characters that are mocked and bullied (ibid.). The UNDP and USAID report similarly indicates that LGBT issues are sometimes negatively or wrongly portrayed by Indonesian newspapers, radio and television shows (UNDP and USAID 2014, 40). The same source notes that media and websites associated with conservative Islam express the view that "homosexuality and transgenderism are abominations" (ibid.).

2.2. Violence and Discrimination

English-language newspaper the Jakarta Post indicates that in 2013, Forum LGBT Indonesia, an LGBT coalition, collected 47 cases of violence and discrimination against LGBT individuals across the country from 21 local NGOs promoting LGBT rights (The Jakarta Post 30 May 2013). The cases of violence reportedly include "bullying, physical attacks, verbal abuse and murder" and the cases of discrimination include "exclusion in the workplace and criminalization" (ibid.). Out of the 47 cases reported, 29 cases were against transgender people, 12 against lesbians, and six cases against gay men (ibid.). The cases were reportedly perpetrated by state and non-state actors, including police officers, public order personnel, families, neighbours, vigilantes and religious organizations such as the Islamic Defenders Front (FPI) (ibid.). The cases of abuse include the murder of three transgender individuals in 2012 - one in Yogyakarta and two in Jakarta (ibid.). Reuters reports that in 2011 a transgender woman was stabbed to death in Banda Aceh after holding up a stick in response to a man's taunts (28 Dec. 2014). Further and corroborating information about these murders could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the Jakarta Post, researchers state that the "public's lack of knowledge on how human rights principles apply to all sexual and gender identities had prevented people from reporting cases of abuse" (30 May 2013).

Reuters reports that the LGBT community in Aceh province is "a target of regular harassment from sharia police and residents" and that transgender individuals are "particularly vulnerable" due to being more visible (28 Dec. 2014).

Sources report that in January 2013 a lesbian couple who were married in Indonesia by disguising themselves as a heterosexual couple were forced to flee their home when their neighbours discovered that they were both women (Pink News 15 Jan. 2013; The Courier-Mail 18 Jan. 2013). Sources report that their neighbours raided the couple's home after they became "suspicious" of the couple for keeping to themselves (ibid.; Pink News 15 Jan. 2013). Australian daily newspaper the Courier-Mail cites the couple's neighbours as saying that they "'reject homosexuals'" (ibid.). According to British gay news service Pink News, the incident occurred in Riau Islands province (15 Jan. 2013), while the Courier-Mail notes that it occurred on Batam island (18 Jan. 2013).

Sources indicate that transgender persons face discrimination in obtaining identity cards (UNDP and USAID 2014, 9; US 25 June 2015, 36). According to the UNDP and USAID report, many transgender women do not have identity cards because they are not close to their families and the issuance of identity cards are based on a family card known as the "Kartu Keluarga" - which has information about the family structure, such as the heads of family, family size, and relationships (UNDP and USAID 2014, 30). Moreover, the report states that in cases in which a transgender woman has an identity card, "the discrepancy between their stated gender on the cards (male) and their expressed gender (transgender male or female) is often used by employers to discriminate against them" (ibid., 31). The same source indicates that transgender people "face challenges with stable employment, prejudice [and] housing" (ibid., 9). Country Reports 2014 indicates that transgender people face discrimination in accessing employment, public services and health care (US 25 June 2015, 36).

The UNDP and USAID report provides several examples of instances of discrimination against LGBT persons, including a case of employment discrimination against a transgender person in a hair salon in Jakarta, a case of an openly gay LGBT rights advocate who faced a threat of eviction in Surabaya, and a case in which an individual was "bullied" by a lecturer at an Islamic teachers' college in East Java (ibid., 31-35). Country Reports 2014 indicates that "bullying of children perceived to be LGBT" is common (US 25 June 2015, 36).

3. State Protection

3.1 Government Efforts

According to a report produced by the National Human Rights Commission (KOMNAS HAM) [2], an independent state organization with a mandate to promote and protect human rights through research, education and public dissemination, monitoring and mediation (Indonesia 2013, 3), between 2010 and 2012, the Commission received 24 cases related to sexual orientation and gender identity, and 14 of those complaints dealt with the right to justice, and were "specifically related to police abuse during examination in the police station" (ibid., 7). The same source indicates that in 2011, the Human Rights Commission conducted human rights training for government officials concerning LGBT issues that included a focus group discussion involving stakeholders from "NGOs, government officials and law enforcement personnel" (ibid., 6). Further information about the training could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The UNDP and USAID report indicates that the government "does not actively repress LGBT organizations" (UNDP and USAID 2014, 51). The same source indicates that some semi-government and independent commissions support LGBT issues, such as the National Aids Commission, which actively supported the formation of the HIV national network Indonesian Network of Gay Men, Transgender Women and other MSM [Men who have sex with men] (GWL-INA) (ibid.), as well as the National Commission on Violence Against Women and the National Human Rights Commission of Indonesia, which have "facilitated activities and campaigns on LGBT rights by community organizations" (ibid.). In terms of funding, the UNDP and USAID report indicates that "financial aid from local governments is sometimes allocated for health issues, especially for the response to HIV" (ibid., 53). Sources indicate that Family Health International (FHI) 360, a non-profit organization that addresses health and education (FHI 360

n.d.), collaborates with the Indonesian Ministry of Health in the Aksi Stop AIDS Program (UNDP and USAID, 2014, 53; AidStar One n.d.), a program designed to respond to the HIV epidemic by establishing a nationwide mass media prevention campaign and a network of 27 Sexually Transmitted Infections (STI) clinics that target MSM (ibid.) and transgender people (UNDP and USAID 2014, 53).

However, Country Reports 2014 states that the "government took almost no action to prevent discrimination against LGBT persons," and in some cases it "failed to protect LGBT individuals from societal abuse" (US 25 June 2015, 35-36).

3.2 Treatment by Police

Country Reports 2014 indicates that in cases of domestic violence involving LGBT minors, particularly lesbians, advocates report that police usually side with the parents by blaming the minor for "deviant behaviour," and that the minors are often put into therapy, confined to their homes or pressured to marry by family members (US 25 June 2015, 36). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

According to the UNDP and USAID report, LGBT activities such as conferences, training workshops, beauty pageants and film festivals are viewed by Indonesian police as "'sensitive activities' that may 'cause restlessness in society'" so the police recommend cancelling the activities rather than providing protection (UNDP and USAID 2014, 50). The same source states that threats to these activities come from "hardline Islamist groups and organizations," such as the vigilante group Front for the Defense of Islam (FPI) (ibid.). Country Reports 2013 similarly notes that police were unwilling to provide support during an LGBT film festival in 2012, resulting in three of eight venues cancelling the events (US 27 Feb. 2014, 32).

Country Reports 2014 states that the police investigate criminal cases involving LGBT victims "reasonably well," except if the allegations involve police abuse, in which case they are "unresponsive" even when pressured by KOMNAS HAM (US 25 June 2015, 36). The same source further states that LGBT people avoid contact with the police due to "[p]olice corruption, bias and violence" (ibid., 35). The UNDP and USAID report indicates that Indonesians generally view law enforcement as "largely corrupt" and that LGBT people who are out at night may be subject to a police round up of "'undesirable people'," which could lead to detention, extortion, physical abuse and/or sexual abuse (2014, 27).

4. Support Services

In correspondence with the Research Directorate, the General Secretary of Arus Pelangi, one of the main LGBT human rights organizations in Indonesia, indicated that there are approximately 120 NGOs that work with the LGBT community and that most of them work in the HIV and AIDS sector (Arus Pelangi 19 Apr. 2015). The UNDP and USAID report similarly states that there are 119 LGBT organizations, located in 28 out of 34 provinces (UNDP and USAID 2014, 47). According to Arus Pelangi's Strategic Plan 2013-2018, their organization, which has 6 organizational members and approximately 400 individual members, has assisted in the establishment and growth of LGBT rights organizations, provided legal aid support and advocacy for various cases of violence and crimes against LGBT people, and represented the LGBT community through "dialogues, lobbying, and presence during UN assembly" (Arus Pelangi July 2013, 7).

According to the UNDP and USAID report, GAYa Nusantara, an LGBT organization, implemented the "Enhancing the Capacity of LGBT Human Rights Defenders" program which "trained 21 LGBT activists and their local human rights defender partners in human rights principles"(UNDP and USAID 2014, 42). The same source notes that the program revealed that most LGBT organizations generally do not monitor and document cases of human rights violations (ibid.).

The UNDP and USAID report indicates that there are two national networks of LGBT

organizations in Indonesia: the Indonesian Network of Gay, Transgender Women, and Other MSM Organizations (GWL-INA) and Forum LGBTIQ Indonesia (ibid., 47). GWL-INA was created in 2007 and helps advance work on HIV and STI amongst the LGBT population, but the UNDP and USAID report states that the "focus of the network is limited" (ibid.). The same source explains that due in part to GWL-INA's limitations, the Forum LGBTIQ Indonesia was created in 2008 to "advance more general sexual rights programs and to include organizations of lesbians, bisexual women and transgender men," but notes that this forum is not as organized as GWL-INA (ibid).

The UNDP and USAID report lists some challenges that LGBT organizations in Indonesia can face in establishing themselves due to legislation and government regulation:

[s]ince the enforcement of the Foundations Law (No. 28/2004) with the implementing Government Regulation (No. 63/2008), foundations need to be registered with the Ministry of Human Rights and Law. Ministry officials have consistently stated that the words gay, waria (transgender woman), seksual (sexual) and seksualitas (sexuality) may not be used in the name of organizations nor in the text of the by-laws. Their suggested alternative is to change gay into gaya (style) and waria into warna (colour). Seksual and seksualitas may not occur at all. They practically force notaries public to make the language of by-laws as bland and vague as possible. No organizations have challenged this apparently unofficial policy. The danger here is if LGBT organizations might be disbanded for carrying out activities that are not formally stipulated in their by-laws. (ibid., 50)

Country Reports 2014 indicates that LGBT NGOs operate openly and hold "low-key events" in public spaces (US 25 June 2015, 36). However, according to Reuters, an LGBT rights group in Aceh province burnt their records and publications following the introduction of the law criminalizing same-sex acts due to fear that their organization would be raided by the sharia police (28 Dec. 2014).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Notes

[1] The report was "technically reviewed by UNDP and USAID as part of the 'Being LGBT in Asia' initiative" and is "based on the observations of the author(s) of the Indonesia National LGBT Community Dialogue held in Bali in June 2013" (UNDP and USAID 2014, [ii]).

[2] The report was prepared for the Regional National Human Rights Institutions Project on Inclusion, the Right to Health, and Sexual Orientation and Gender Identity (SOGI) (Indonesia 2013, 2). The project was implemented by the International Development Law Organization (IDLO) and the UNDP, in partnership with the Asia Pacific Forum, and was "designed to build an understanding of the response of National Human Rights Institutions (NHRIs) in South Asia and Southeast Asia to sexual orientation and gender identity related human rights issues" (ibid.).

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Additional Sources Consulted

Oral sources: The following were unable to provide information for this Response: professor of anthropology, Department of Anthropology, University of California.

The following were unable to provide information within the time constraints of this Response: senior campaigner, Walk Free, Southeast Asia.

Attempts to contact the following were unsuccessful within the time constraints of this

Response: GAYa Nusantara; Indonesia - Ministry of Health, National Police; Our Voice LGBT, Indonesia; Suara Kita LGBT, Indonesia.

Internet sites, including: The Advocate; America blog; Amnesty International; Antara News; The Bail Times; BBC; Daily Indonesia; ecoi.net; Fédération internationale des ligues des droits de l'homme; Freedom House; Gay and Lesbian Advocates and Defenders; Gay and Lesbian Alliance Against Defamation; International Crisis Group; International Lesbian Gay Bisexual Trans and Intersex Association; IRIN; Rappler; Talking About Reproductive and Sexual Health Issues; Transgender Asia; United Nations - Refworld, ReliefWeb; Utopia Asia.

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