

LGBT Human Rights in Indonesian Policies¹

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Abstract

Human rights as convened through international law and the United Nations should be universal. However, in implementation, in the interest of the state, state sovereignty, religion and culture, the universality of human rights has been restricted by the state or certain parties. Subsequently, the implementation of human rights has become relative in Indonesia. Lesbian, gay, bisexual, and transgender/transsexual (LGBT) issues have been protested at the local and national levels. It remains that the state has the responsibility to recognise, protect and fulfil the human rights of LGBT Indonesians. This paper will explore how LGBT human rights are implemented in Indonesian policy.

Keywords: human rights, LGBT, internal politics.

Introduction: Realism versus Liberalism in Ethical Arguments

Theories in international relations have different perspectives on the position of human rights. From the realist approach, ethical values, such as human rights, are considered a low priority. Realism has the view that in the international community which prefers anarchy, order can only be attained by protecting and fostering a balance of power. In order to strengthen national power within a country, national interests are generally interpreted as the maintenance of power and safety, which become key concepts in overseas policies. From such a realist perspective, moral arguments are minimal and play a minor role. The state is the main actor in international politics for the purpose of maintaining order and peace. State sovereignty must be maintained without intervening in the issues and affairs of other countries. Consequently, it is difficult for realist groups to promote human rights in international politics.²

Meanwhile, liberalism or neo-liberalism, as referred to by David Forsythe (2013), emphasises the importance of morality in international relations in order to achieve peace and stability by forming

cooperative relationships between countries. One of the important instruments here is the use and acknowledgement of international law which generally holds that individual welfare is more important than state sovereignty. As such, policies that promote human rights are important for this group.

Based on this perspective, this paper examines the politics and law in Indonesia in relation to human rights issues for LGBT groups. Does Indonesia tend to follow the principles of realism or liberalism in the formulation of policies related to GLBT issues and rights? Furthermore, this paper will use Neta C. Crawford's analysis concerning ethical arguments. Crawford's work is useful since constructivism theory in international relations emphasises the presence of non-state actors such as international organisations, experts, businesses and NGO activists, as well as state actors (government, diplomats, attachés and the military). These actors directly carry out their roles with the aim of achieving state interests. Research in international relations has generally shown that: first, there is an agent or actor in the form of rationalism and power; and second, that state structure is hierarchical.

Crawford sees this as insufficient. There are other matters which must be considered, namely 'beliefs and culture' as the foundation of 'ethical arguments.' Each country will formulate a policy with the consideration of 'beliefs and culture' in their arguments. As a result, these two interests will be used to understand the changes in the world of politics and to think about the ethical arguments in the process of restructuring the world for the better and which are not solely oriented towards internal state interests or appeasement of conservative groups.³

The State and the Protection of LGBT Human Rights

Sexual rights are an integral facet of human rights. One of the reasons for this is that sexual rights are the inherent rights of every human being and therefore, every human being is entitled to their fulfilment. The state has the obligation to provide and protect the human rights of its citizens without discrimination. According to Musdah Mulia, various international human rights instruments state that the fulfilment of sexual human rights is based on six main principles. These are;

1. The principle of protection for the sake of the development of children.
2. The principle of non-discrimination.
3. The principle of pleasure and comfort.
4. The principle of responsible freedom.
5. The principle of respect and human freedom.
6. The principle of the fulfilment of rights.⁴

Furthermore, in the International Conference on Population and Development (ICPD, 1994), the principles of sexual rights can be categorised as follows:

- a. The right to sexual pleasure without the concern of infectious diseases, undesired pregnancy or bodily harm;
- b. The right to sexual expression and the right to make sexual decisions consistent with personal, ethical and social values;
- c. The right to treatment, information, education and sexual health care;
- d. The right to bodily integrity and the right to choose when, how and with whom to become sexually active with and be involved in a sexual relationship with full consciousness;
- e. The right to enter into a relationship, including

marital relationships with free and complete consciousness as adults and without coercion;

- f. The right to privacy and confidentiality in obtaining reproductive and sexual health care;
- g. The right to express sexuality without discrimination and freedom in reproduction.

Former Commissioner of the National Human Rights Commission, Yoseph Adi Prasetyo, states that it is the state's business to guarantee the rights of LGBT groups, starting from the right to equality before the law and the right to be protected. Furthermore, he argues that the state cannot prioritise the moral and power interests of the few and then ignore the larger interests of different groups of society. LGBT individuals and communities are marginalised groups that are particularly vulnerable and prone to violations of their human rights.⁵ The existence of LGBT groups cannot be denied by the nation state. At the international level, leaders have paid serious attention to LGBT issues. Hillary Clinton at a United Nations World Summit stated that LGBT is not a Western invention, but a human reality.⁶ In addition, the Secretary-General of the UN, Ban Ki Moon (2010) said that:

"As men and women of conscience, we reject discrimination in general, and in particular discrimination based on sexual orientation and gender identity. When individuals are attacked, abused or imprisoned because of their sexual orientation, we must speak out. We cannot stand by. We cannot be silent [...]. Today, many nations have modern constitutions that guarantee essential rights and liberties. And yet, homosexuality is considered a crime in more than 70 countries. This is not right. Yes, we recognize that social attitudes run deep. Yes, social change often comes only with time. Yet, let there be no confusion: where there is tension between cultural attitudes and universal human rights, universal human rights must carry the day. Personal disapproval, even society's disapproval, is no excuse to arrest, detain, imprison, harass or torture anyone – ever."⁷

On another occasion, the UN High Commissioner, Navanetham Pillay, stated that the laws that criminalise homosexuality represent a serious threat to the fundamental rights of every lesbian, gay, bisexual and transgender individual, as they expose them to threats of arrest, detainment, and in some

cases, persecution and execution (February 1st 2011). Pillay considers that national laws which criminalise same-sex behaviour as 'inappropriate' should not be recognized and must be abolished, because these laws are outdated and are inconsistent with international law which upholds dignity, inclusion and respect for all people.

Similar to the perspectives of leaders at the international level, Musdah Mulia (a Muslim scholar) holds the view that, LGBT is not a group of people who engage in deviant sexual activities. From the Islamic perspective, homosexuality is different to *liwath* (sodomy) or *khusna* (someone who identifies with two genders).⁸

Mulia has also reinterpreted verses of the Qur'an which can be a reference to the determination of the law against LGBT. Mulia is of the opinion that humans do not have the right to convict someone because of their sexual orientation. Every person is only required to *fastabiqul al-khairat* (compete in doing good deeds). Mulia also asserts that homosexuality is natural, as God's creation, such that marriage for lesbian and gay couples is lawful.⁹ Following a similar interpretation of Islamic texts, the former President of the Indonesian Women's Coalition (KPI) and Vice President of the National Commission on Women's Human Rights from 2010 to 2014, Masrucha, argues that LGBT individuals have equal rights as Indonesian citizens to be protected and should not be discriminated against.¹⁰

These perspectives are based in part on state fulfilment of human rights as written in the Preamble to the 1945 Constitution of the Republic of Indonesia, in which it is stated that the aim is, '...to protect all Indonesian citizens and the entire country of Indonesia'. Indeed, special protection for LGBT is specified in the 1945 Constitution of Republic of Indonesia, which promises the right to be free from discriminatory treatment (Article 28 1 (2)), and to realise fulfilment of the constructional right to safety (Article 28 G paragraph (2)).

The fulfilment of these rights is the responsibility of the state, particularly since Indonesia's commitment as signatory to a number of international laws. In Article Four of the Convention on the Elimination of all Forms of Violence Against Women (CEDAW, 1979) for example, it states that signatory countries must condemn discriminatory actions, eradicate them and take strategic steps to create a more

conducive situation. These steps must become the focus of all parties. In fact, protection for minority and vulnerable groups-defined as the tendency of individuals or groups to experience assault, harassment, discrimination or other adverse actions from other groups-must also be followed and carried out by all parties including legal apparatus, political, social and religious groups, and the media.

Saskia E. Wieringa (2011) has emphasized that the human rights discourse assumes universality of human and sexual rights for all people, without exception. There remains however, discursive contestation among biomedical experts, religious leaders and conservative politicians on the one side, and feminist, gay and lesbian activists and defenders of human rights on the other, with the latter focusing on reinterpreting what is meant by 'normal' gender, a human body of 'normal' sex, and the act of 'normal' sex itself. To ensure that there is no stigmatisation of a particular party, or if there is a party that insists on rejecting the normative model of the sex-gender binary, the discourse of human rights must be supported by a cultural discourse that is pluralist in relation to gender, sex, and sexuality.¹¹

What LGBT groups and human rights activists in general are fighting for is not only the right to a self-determined (gender and sexual) identity which is recognized by the state, and not to be positioned as a *second sex* or a second-class group, but also to advocate for the most marginalized individuals in society, and contribute to the formulation of the bill on the protection of the fundamental needs and rights of Indonesian citizens which are not yet granted by the state.

If LGBT groups are a part of the minority groups' protection scheme their rights will be protected. If not, their rights will continue to be ignored. The challenge that Indonesia is currently facing is that the majority of the Indonesian population still considers LGBT individuals to be deviants who must be punished through state policies.

The History of LGBT and LGBT Organizations in Indonesia

The implementation of human rights without consideration of an individual's sexual orientation and gender identity is not an essay matter. However, Non-Government Organizations (NGOs), human rights and LGBT activists have consistently fought

for LGBT recognition and rights, both at the national and international levels. Their tireless efforts have resulted in new developments on LGBT issues in Indonesia.

The political reformation (*reformasi*) and democratization that have occurred in Indonesia have brought LGBT issues into the spotlight, leading to a proliferation in LGBT organisations. Yet, the acronym LGBT is still relatively unknown. Around the year 1968, the term *Wadam* (Female Adam)¹² emerged as more positive term to replace the words for transvestite or feminine male homosexual. In 1969, the first *Wadam* organisation, The Djakarta *Wadam* Association (HIWAD) was established, facilitated by the Governor of Jakarta, Ali Sadikin. The term *Wadam* changed to *Waria* (female man)¹³ in 1980 because of the objections from an Islamic leader that the term *Wadam* (irreverently) contains the name of the prophet Adam AS.

On the 1st of March 1982, the first openly gay organisation in Indonesia and Asia, Lambda Indonesia, was established, with its secretariat in Solo. Branches soon appeared in Yogyakarta, Surabaya, Jakarta and elsewhere, and were complemented by the publication of the *G: Cheerful Lifestyle* bulletin.

In 1985, a gay group in Yogyakarta established the Persaudaraan Gay Yogyakarta (PGY) (Yogyakarta Gay Fraternity) (PGY) which put out the *Jaka* publication. On the 1st of August 1987, the Nusantara Lesbian and Gay Working Group (KKLGN), Kelompok Kerja Lesbian dan Gay Nusantara (KKLGN) whose name was later shortened to GAYa NUSANTARA (GN) was established in Pasuruan, Surabaya, as the successor of Lambda Indonesia, and publishing magazines and book series' including GAYa NUSANTARA from 1988. The Yogyakarta Gay Community expanded to become the Indonesia Gay Society (IGS).

In December 1993, the first Indonesian Lesbian & Gay Congress (KLGI) Kongres Lesbian & Gay Indonesia (KLGI)¹⁴ was held in Kaliurang, in the northern area of Yogyakarta, with approximately 40 participants from as far as from Jakarta and Ujungpandang. The congress resulted in 6 ideological points for the future direction of the gay and lesbian movement in Indonesian and GAYa NUSANTARA received the mandate to coordinate the Indonesian Lesbian & Gay Network (JLGI) Jaringan Lesbian & Gay Indonesia (JLGI).¹⁵

In December 1995, the KLGI II was held in

Lembang, West Java, with many more participants than the first. On the 22nd of July 1996, The People's Democratic Party (PRD) became the first party in Indonesian history to include "homosexual and transsexual rights" in their manifesto. In November 1997, the KLGI III was held in Denpasar and for the first time journalists could cover the events outside the sessions. It was decided to temporarily hold a national meeting because it was questionable whether the Congress was effective. In June 1999 Gay Pride was celebrated in Surabaya, working together with GN, Transgender United Surabaya (PERWAKOS) and the French Cultural Centre (CCCL). In September 1999, there were threats from the Surakarta Islamic Defenders Front (FPIS) to attack a JLGI National Working Meeting in Solo, to the extent that the meeting was cancelled. In October 1999, at the fifth International AIDS Congress in Asia and the Pacific (ICAAP) in Kuala Lumpur, Malaysia, formed the lesbian, gay, bisexual, *waria*, intersex, and queer network of the Asia/Pacific region named Asia Pacific Rainbow (APR) of which GN was the founder.

In March 2000, IGS declared March 1st National Lesbian & Gay Solidarity Day (Hari Solidaritas Lesbian & Gay Nasional). The next development was in November 2000 with the Flickers of Royal Court Colours event in Kaliurang. Although the event was a campaign about HIV/AIDS education through entertainment, it was attacked by a group of men from a specific fundamentalist Islamic group.¹⁶ There was a move among the event participants to form a front with various organisations against violence of this type, but due to intimidation from the attackers, this front gradually shrunk and dispersed.¹⁷

In the period since the establishment of Lambda in 1982, there have been two LGBT national organisational networks and 119 organisations established in 28 provinces in Indonesia.¹⁸ The increased number of LGBT organisations indicates an increase in the amount of people who identify as LGBT. Until now, there are a number of organisations that have become vehicles for the crystallization of the struggle of LGBT groups in Indonesia.

GAYa Nusantara

The main leader from this organisation is Dede Oetomo, a principle male leader of the LGBT campaign in Indonesia and pioneer of the introduction of open debate on LGBT issues. He stated that, 'I've

opened the door to approach the state as openly gay. Now other LGBTI's need to utilize this opening and take it further.'¹⁹ Other than advocating on LGBT issues openly and establishing the GAYa Nusantara organisation, Oetomo has been active as a lecturer in Surabaya. In 2012, Oetomo registered himself as a candidate for Commissioner on the Human Rights Commission, however, he was eliminated at the test stage at the House of Representatives level due to strong public pressure.

As an organization, GAYa Nusantara has the vision to bring about a social order that accepts and values human rights, sexual and gender diversity, and welfare, on the bases of voluntarism, democracy, non-violence, independence and transparency. Their mission is education and public awareness; to prepare and develop a medium through which to communicate, discuss and network; to provide services for optimal sexual wellbeing, self-actualization and freedom of expression; and to build networks, strengthen organisations and work together with organisations that have a similar purpose.

The uniqueness of GAYa Nusantara is as the pioneer of gay organisations in Indonesia that are open and proud of their identity and not threatened by diversity of sex, gender and sexuality and other backgrounds. The organisational culture of GAYa Nusantara is one that values responsibility, honesty, time and democracy in an informal atmosphere that continues to encourage and create intimacy, friendship and romance.

Arus Pelangi

Arus Pelangi was formed in Jakarta on the 15th of January 2006 on the basis of the pressing need among LGBT individuals and groups to form a mass organisation to promote and defend the fundamental rights of LGBT people. Arus Pelangi began as an organisation that encourages the establishment of a social order that emphasizes the values of equality and respect for LGBT as human rights.

Arus Pelangi is one of the organisations that functions as a group of LGBT rights advocates who have the mission of: awareness, empowerment and strengthening of oppressed LGBT people; playing an active role in the process of policy changes that protect LGBT rights; and, playing an active role in

increasing public awareness and acceptance of LGBT people in the community.

The four main programs of Arus Pelangi are campaigning, education, organisation and advocacy. Arus Pelangi campaigns on LGBT issues, such as fundamental LGBT rights and violations of those rights. Through these programs, it is hoped that the community will become more aware in recognising the fundamental rights of LGBT citizens and accept them in society. The state also plays an important role in recognising, fulfilling and protecting the fundamental rights of LGBT people through government policies. The Arus Pelangi educational programs are conducted within the framework of awareness of the importance of fighting for the fundamental rights of LGBT people. These educational programs also aim to raise awareness amongst the community. Advocacy programs are conducted with the aims of imposing advocacy which relates to the legal handling of both litigation and non-litigation cases affecting LGBT people, and public policy advocacy, involving legal action by Arus Pelangi against government policies that discriminate against LGBT people. Arus Pelangi is also active in facilitating the formation of LGBT organisations at the local level. These local level LGBT organisations can then unite at the national level in a federal union, such as Arus Pelangi. This matter is in accordance with the Arus Pelangi AD/ART (Anggaran Dasar/Anggaran Rumah Tangga: Organization Basic Law) mandate where the formation of an organisation is an association of members of LGBT organisations or defenders of LGBT rights organisations at the local level.²⁰

Ourvoice

The main figure of this movement in Hartoyo,²¹ who experienced both violence and abuse at the hands of local residents, as well as inhumane detention by police in Aceh. These injustices prompted him to advocate in relation to the cases he experienced through Ourvoice, a social organisation he established with his friends that defends the right to diversity of sexual and gender identity in Indonesia. The organisation is closed, and includes members from LGBT groups and other groups which support the movement and that share a similar vision and mission. The organisation has a membership that is 75% LGBT and 25% heterosexual.

Ourvoice was originally initiated by a group of gay people on September 5th 2007, and was formalized in March 2009. The initial purpose of Ourvoice was as a medium to strengthen the self-belief of fellow homosexuals. Ourvoice works as an alternative medium of discussion and community forum among LGBT friends throughout Indonesia and aims to build an ideology of "similarity" which is the preferred capital of social movements.

Hartoyo's personal experiences of discriminatory treatment made him aware that society does not have sufficient knowledge of LGBT. For this reason, Ourvoice chooses to advocate on public education through the media.²²

Yudi, the Ourvoice Secretary explains that, 'the media represents a common need. Through the media, we can express opinions. In addition to public education, the media is also a part of the campaign not just in the written form, but also via videos. Moreover, we consider campaigns through Youtube to be one the safest campaign strategies'.²³ Through Facebook and websites, Ourvoice provides information about LGBT matters so that LGBT individuals who experience violence in their families can seek support. It also carries out public campaigns through training, discussions and IDAHO (International Day against Homophobia) celebrations in many regions. Through providing support to LGBT individuals experiencing homophobic violence and discrimination, in tandem with advocacy, education and training programs, assisting with access to services, and the creation of another valuable link in the chain of the LGBT community network, Ourvoice is helping to break down the barriers to acceptance of LGBT in the community and at the policy level.

Youth Interfaith Forum on Sexuality (YIFoS)

The Youth Interfaith Forum on Sexuality (YIFoS) was formed from a working meeting of the Syailendra High School of Buddhism (STAB), in Kopeng, Salatiga, on the 7th of March 2010, to create a discourse and action among interfaith youth regarding faith and sexuality. This discourse and action involves critical dialogue, reflection and review of religious texts with regard to faith and sexuality, and includes coordinated shared participation with other caring communities in response to these issues. It is important to create dialogue about this issue because conversations about sexuality are often

considered taboo in relation to norms and religious institutions, while at the same time religion has controlled human sexuality. The implication of this is that religion becomes the means to through which to legitimise where sexuality is 'right' and 'wrong' with reference to the sacred texts, which is arguably a human interpretation of the word of God.²⁴

Conversely, conversations about sexuality are no longer simply conversations about biological sex and sexual behaviour, since sexuality is not solely hetero-normative and is also perceived in terms of orientation and identity. The YIFoS forum came about to create a common understanding that faith and sexuality are a part of the diverse actualisation of humanity and cannot be grouped into existing categories. The six religions recognised by the state are unable to accommodate the existing diversity of faith, and the sexual norms in contemporary Indonesia have been unable to accommodate the diversity of sexualities. Consequently, diversity of faith and sexualities does not become a source of hate, conflict or violence, but rather becomes the means through which to intensify the dialogue and foster mutual understandings between groups through the spirit of diversity.

YIFoS' vision is the realisation of peace in the diversity of faith and sexuality. Its mission is: to review the current state of diversity and spread an understanding of diversity of both faith and sexuality to society; to promote the establishment of rules that do not discriminate on the basis of sexuality or religion in both the community and in faith-based institutions; to encourage policies that accommodate economic, social, civil and political rights regardless of faith or sexual identity; and to build networks with individuals or organisations working with youth, and focused on diversity of faith and/or sexuality, at the local, national and international levels.

According to Edith, the YIFoS secretary, the organisation has conducted a series of activities aimed at providing a space in which young people can be open about their sexual orientation. For example, international youth camps in which young people exchange ideas and experiences.²⁵

Ardhanary Institute

Ardhanary Institute is an organisation for lesbian, bisexual, transgender and intersex females which evolved out of Sector 15 of the Indonesian Women's

Coalition for Justice and Democracy (*Koalisi Perempuan Indonesia*, KPI). Females of alternative sexualities have worked beside gay and transgendered males at the forefront of the LGBT movement in Indonesia since prior to the formation of GN. It is important, however, that they operate independently from males. In the view of female activists, gay male groups are less able to understand the 'femaleness' and the 'feminist' element in their struggle.²⁶ For this reason, other organisations that specifically focus on lesbian issues have come into existence, such as the Pelangi Perempuan Institute, also known as Kamilia Manaf, and more recently, the Ardhanary Institute developed by a female, RR. Sri Agustine.

The Ardhanary Institute was established on November 14th 2005 in Jakarta and has become a centre for research, publishing and advocacy for the rights of lesbians, bisexuals, transgender and transsexual females (LBT). It bases its work on the 1954 Constitution of the Universal Declaration of Human Rights (UDHR) in 1948, the Yogyakarta Principles and the law No. 7 of 1984 on the CEDAW. The vision of this institution is to bring to fruition their ideal of a society that respects and protects LBT rights and LBT sexuality choices. Their mission is to strengthen individuals by creating a group; to create new perspectives about sexuality in society; to encourage policies that do not discriminate against LBT females' sexuality choices; and to create a LBT crisis center.²⁷

This crisis center was imperative because lesbians are more vulnerable to sexual violence if they are known to be lesbians than are gay males. These victims need support because after these incidents victims experience long term trauma. Thus, since 2008 the Ardhanary Institute incorporated a crisis center for LBT individuals and groups who have experienced various forms of violence, either in the community due to their sexual orientation, in their relationships with other LBT, or when they experience domestic violence as a consequence of their sexual orientation or gender identity. Initially, the Ardhanary Institute did not have counsellors, so when a report came in, they would work with other crisis centers or with Legal Aid (*Lembaga Bantuan Hukum/LBH*). The Institute has had counsellors since 2012.²⁸

In carrying out their activities, there are four approaches that the Ardhanary Institute employs.

First, counselling and psychological consultation via telephone, facebook, email, visits to victims' homes, or clients visiting the office. Three forms of counselling are employed including, online counselling, hotline counselling (every Wednesday, Thursday & Friday), and face-to-face counselling. Second, they provide support and legal assistance for clients who wish to legally pursue their case. Here the Institute will cooperate with legal aid agencies and other victim psychological recovery agencies. Thirdly, mediation is undertaken when clients wish to mediate with family or other parties in relation to their sexual orientation. Fourth, a shelter or safe house is provided for clients who need refuge temporarily while they are going through a case. The Ardhanary Institute also contributes to capacity building for people outside of the institution through various training, mentoring and assistance for research, study, LBT monitoring and evaluation.

The enormous and enduring contributions of these organisations enables LGBT individuals to have self-belief and to rise above the problems they face. In addition to organising themselves to establish LGBT organisations, there have been other successes within local communities. Below are some examples of personal success among transgendered males.

Maryani (53) was the leader of *Pesantren Waria Senin – Kamis Al-Fatah* in Notoyudan, Yogyakarta²⁹ was initiated by the late KH. Hamrolie Harun in 2008, and on Monday and Thursday nights she would learn to read the Qur'an, pray, chant in praise of God and conduct other religious activities.³⁰ Maryani, who was born with the name Maryono, became the first *waria* in Indonesia to undertake the pilgrimage to Mecca with the identity of a woman. The Islamic boarding school (*pesantren*) she led become a model for the acceptance and practice of Islam among transgendered males. On the 6th of July 2012, 40 delegates from 18 countries, including Egypt, South Sudan, Kyrgyzstan, Afghanistan, Uganda, Poland, Congo, Kazakhstan, USA, and countries from Europe and Africa visited the *pesantren*. Sadly, Maryani passed away on the 22nd of March 2014.³¹

Chenny Han is a successful entrepreneur in the field of beauty and salons. Chenny was awarded for her outstanding achievements from Taman Lawanin 1980, won the title of Miss Waria in 1992, and has now become the makeup artist for the well-known celebrities including Indi Barends, Agnes Monica

and Melly Goeslaw.³² Jen Kattleya has also been successful in building a bridal makeup business and salon.³³ She also ran as a candidate for the Human Rights Commissioner from 2012 to 2017, but was unsuccessful. Shuniyya Ruhama, a transgender youth who graduated from University with cum laude, is a successful batik entrepreneur. She wrote an autobiography entitled, 'Don't Remove my Headscarf'.³⁴

These four figures began their careers from their own businesses, and eventually opened up salons and made their way into the fashion industry. Although most were successful in building their careers beyond the LGBT movement, the diversity of views on LGBT in the general population in Indonesia has increased. Despite this, discrimination, harassment and/or violence by people in the name of religion, culture, the law or the state targeting LGBT individuals and groups occurs with increasing frequency.

Manifold Perspectives on LGBT Issues

Generally, the existence of LGBT, the right to be LGBT and LGBT issues more broadly in Indonesia are still hotly debated. Anwar Abbas from Muhammadiyah, one of the two largest the Islamic organisations in Indonesia, explained that LGBT is a disease that must be cured, and further is an aberration to religious norms and natural law. According to Abbas, LGBT has nothing to do with the issue of human rights, and therefore, the state must help cure them, not tolerate them or even legalise their wishes.³⁵ LGBT issues have also been firmly rejected by the *Majelis Ulama Indonesia* (Counsel of Islamic Scholars/MUI). According to Makruf Amin, the government and society should not provide opportunities for the legalisation of same sex marriage because it would endanger future generations. Moreover, Amin, stresses that Indonesia has a majority Muslim population,³⁶ implying that to be LGBT is incongruous with being a Muslim. The Chairman of the MUI Fatwa Commission, AF Hasanuddin, was more explicit in his view suggesting that LGBT is an illegal act, a heinous crime and grave sin, and can be punished with the death penalty. The Chairman of the Indonesian Child Protection Commission (KPAI), Asrorun Niam, also states that sodomy is worse than both adultery and sex outside of marriage, and is punished with harsh penalties

in Islam. For these conservative Islamic scholars, homosexuality is a disease that must be treated.³⁷

On the LGBT issue, the MUI also issued Fatwa No. 57 on December 31, 2014, stating that being lesbian or gay, engaging in sodomy, rape, and homosexual relationships and those between heterosexuals not legitimated through religious marriage are considered unlawful acts and are punishable. This is not the first time the MUI has held this view. On October 11, 1997, the MUI issued a fatwa on the 'Status of Waria' that was very homophobic. This fatwa depicted *waria* as something which is forbidden and suggested they must be 'restored' to men who are considered 'normal' and through various ways. In addition to the MUI, Aisyiyah, an autonomous Muhammadiyah organisation, in a classified discussion, also expressed opposition to LGBT issues because being LGBT is considered as deviating from the teachings of Islam.³⁸

Similar to the above opinion, Said Aqil Siradj from Nahdatul Ulama, stated that the consensus among Islamic legal experts is that LGBT sexuality is forbidden. Citing an explanation from Fakhruddin al-Razi, an expert Islamic commentator, Siradj, states that homosexual behaviour is a heinous act, referred to as *al-fakhisyah* (great sin) that is disgusting and contrary to human nature.³⁹ Meanwhile, the same opinion has also been raised by Catholics and Protestants. On the issue of same-sex marriage, Pastor Benny Susetyo from the Bishops Conference of Indonesia (KWI) states that same-sex marriage is contrary to the first principle of the Pancasila, belief in one Almighty God. All religions in Indonesia oppose same-sex marriage. However, according to Susetyo, the church still respects and embraces LGBT as human beings.⁴⁰

In addition, the same opposition has been put forward by the Council of Churches in Indonesia (PGI). The General Secretary of the PGI, Reverend Gomar Gultom, said that the church will not approve same-sex marriage because the church only recognises marriage between men and women.⁴¹

Furthermore, the DPR stated a very similar view. Saleh Pataonan Daulay, Chairman of the VIII DPR Commission, stated that LGBT have no opportunity at all to get legitimisation in Indonesia. Firstly, there is no constitution that allows support of the legalisation of same-sex marriage. Second, LGBT does not conform to the customs and culture of the

nation. Third, Indonesia is a country that is based on divinity, religious values and religion. Similarly, same-sex marriage is prohibited in almost all religious traditions. Fourth, human rights in Indonesia are different to human rights in the United States and are limited by the constitution and religious values.⁴²

There is, however, also strong support for LGBT practices. Among the most vocal supporters is Musdah Mulia. According to Mulia, no strong *syar'i* basis can be found that states that Islam condemns LGBT behaviour. The Qur'an does not instruct to discriminate or kill homosexuals. What is condemned and forbidden by Islam is the act of sodomy, whether it is done by heterosexuals or homosexuals.⁴³ Muhammad Guntur Romli has explicitly stated that blasphemy against LGBT from the Muslim community has no basic argument or strong theology. According to Romli, the amount of hadiths that oppose LGBT is extremely weak.⁴⁴ Pastor Ester Mariana Ga also questions the validity of Christian teachings that prohibit LGBT because, according to Ga there are no teachings in the Bible that forbid loving relationships and responsibility between female partners. Jesus also never said anything about LGBT.⁴⁵

However, the Religious Affairs Minister, Lukman Hakim Syaifuddin explained that it is difficult to legalise same-sex marriage and it is hard to accept in Indonesia where the majority of society is very religious.⁴⁶ From this explanation, it seems that the existence of LGBT tends to be rejected by society on the basis of either religious norms or the relativity of human rights in Indonesia.

LGBT in the National Legal Framework

Good ideas have yet to reach a good level of implementation. Ideally, Indonesia has aspirations for the universal implementation of human rights, these aspirations have not been applied consistently in the hierarchy of legislation. Indonesia, for example, has a National Medium Term Development Plan (RPJMN) as contained in the Presidential Decree No. 5 of 2010 that includes "...increasing Indonesia's role in the promotion of democracy, human rights, the environment and protection of cultural wealth." The RPJMN then became the foundational program for local and national implementation of government activities.

If you briefly read the points of this regulation there seems to be no detail on human rights as the foundational position. However, the Human Rights National Action Plan (RAN HAM) 2011-2014 has decreased the formulation of more concrete guidelines and public plans to improve: the respect, fulfilment and protection of human rights; the politics of human rights for the country to realise the human rights of every person; and to provide directions for the organisers of state power in their guidance of the community.

In fact, RAN HAM is based on the Presidential Decree No. 23 of 2011, in which there are seven programs namely: the establishment and strengthening of the implementation institutions of RAN HAM; preparations for the ratification of international human rights instruments; harmonisation of the design and evaluation of legislation; human rights education; application of norms and standards of human rights; handling community communication (Yankomas); and monitoring, evaluation and reporting. RAN HAM starts from the center to the regions through the formation of the RAN HAM committee, the running of programs/activities, and then by reporting the results from the seven main programs. From these seven programs, every Ministry/Institution is required to introduce these programs into policy and through internal working programs as a form of implementation and support of national interests.

However, in Indonesia, LGBT groups are the most vulnerable to discrimination. Many regulations and laws still do not acknowledge the existence of human rights for LGBT individuals and groups. Government policies that have been institutionalised in legal policy are still dominated by homophobic views which discredit LGBT groups.

According to monitoring conducted by the National Commission on Violence against Women by Komnas Perempuan (National Committee on Women), 342 discriminatory policies were found in the period 2009-2014.⁴⁷ Of these, I found at least, 12 Acts in national and local directly targeted LGBT groups, while the others more indirectly targeted them. According to the monitoring reports of a number of civil society organisations there were 26 cases and incidents experienced by LGBT between the years 2005-2012, 49 cases experienced by LGBT in 2013, and 37 cases of violence and discrimination against LGBT groups in 2014.

Therefore, it is not surprising that human rights violations against LGBT individuals in Indonesia are subject to the scrutiny of the international community. Manfred Nowak (2009) has noted the Hartoyo case, as did the UN Human Rights Commission Report on the 17th of November 2011. Komnas Perempuan and other civil society groups⁴⁸ have also reported the cases of the dissolution of the ILGA Conference, of human rights training sessions, the Q! Film Festival, the Miss Waria competition, of raids and violence against *waria* by the National police in several sites in Indonesia, as well as the issue of sexual identity on identity cards, driver's licenses and other official documents in the Universal Periodic Review (UPR) UPR Indonesia session in 2012.

Furthermore, the Act No.1 of the 1974 Marriage Law states in Article 1 that marriage is the emotional and physical bond between a man and a woman as husband and wife with the intention of forming a happy and everlasting family (household) based on the divinity of God. In Article 3, paragraph one (1), it is stated that the principle of marriage is based on a heteronormative union between a man and a woman. Furthermore, in article 31 paragraph three (3), the proposed role of men is as husbands and women as wives. It is stated that the husband is the head of the family and the wife is the homemaker. Thus, a marriage that is not formed on the basis of a man with a woman or vice versa, is not recognised. These laws explicitly do not accommodate same-sex marriage of gays or lesbians.

In addition to the Laws on Marriage, LGBT existence is also not recognised in Law No. 23 of 2006 concerning Population Administration (Adminduk). Under these laws, the gender column on the National Identity Card (KTP) only accommodates gender or sex status as women and men (*perempuan* or *laki-laki*). These laws do not acknowledge genders other than those of male and female. Therefore, there is no opportunity for *waria* or transgendered persons to identify, neither is there the option to leave the section on gender blank. Although Government Regulation No. 37 of 2007 on the implementation of the Adminduk Law provided an avenue for changing transsexual identity on the KTP, unfortunately, it did not acknowledge transgender. In terms of numbers, there are more transgender identified people than transsexuals who require acknowledgment of their identity. Therefore, transgender people still face

difficulties in having their identity acknowledged.⁴⁹

Another policy that is less supportive of LGBT people is the Indonesian Government Regulation No. 54 of 2007 on Child Adoption. Article 13 of the regulation (PP) regulates the requirements for foster parents. Point (f) of the Article explicitly states that prospective adopting parents must not be a same-sex couple: they must be heterosexual. The government also mentions homosexuality as a deviant form of sexual intercourse, for example, in Law Number 44 of 2008 on Pornography, Article 4.

In fact, where there is autonomy and decentralisation, there are many rules and policies at the local level which are more nuanced towards homophobia. Some legislation equates homosexuals, lesbians and sodomy as immoral, sinful and adulterous. Legislation in Jakarta, Banjar, Tasikmalaya and Padang Panjang even uses the term 'prostitution' and not 'immoral' to categorise homosexuals, and considers homosexuals as disturbing public order or violating religious norms and customs.

The sheer amount of discriminatory policies presents a tough challenge for LGBT groups. The government, both at national and local levels, still categorises LGBT groups similarly to prostitution. This example can be seen in the Padang Pariaman District Regulation No. 02 of 2004 on Prevention, Repression and Eradication of Immorality. In Chapter 1 of the General Provisions, Article 1 states that prostitutes are women or men who have sexual relations with persons of the opposite or the same sex with the intent of sexual and or material gratification.

It is same in Padang Panjang in West Sumatra. Local Regulation No. 9 of 2010 on the Prevention, Elimination and Repression of Social Diseases explicitly refers to 'homosexual and lesbian' relationships and furthermore prohibits these relationships and those people who 'offer themselves' to engage in homosexual or lesbian relations with or without remuneration. Article 5 states that individuals are prohibited from: (f) engaging in homosexual and or lesbian relations; and (g) offering themselves to engage in homosexual or lesbian relations either with or without payment.

This provision also includes sanctions for those who violate the rules. Article 18 paragraph one (1) states that, 'Every person who violates the provisions of point (f) in engaging in homosexual and or lesbian

relations as referred to in Article 5 (f); or offering themselves to other people to engage in homosexual or lesbian relations either with or without payment as referred to in Article 5 (g); shall be sentenced to three months imprisonment or a fine of up to ten million rupiah (AUD\$1000).

Similar laws can be found in South Sumatra. For example, the South Sumatra Regulation No. 13 of 2002 on Combating Immorality in the Province of South Sumatra. Article 2 of Chapter II on Naming and Form of Immorality says: "Including immoral acts, all acts that can damage the foundations of life in community other than those stipulated in norms as referred to in paragraph (1) such as: prostitution; adultery; homosexuals; lesbian; sodomy; rape; sexual harassment; pornography; gambling; consuming alcohol; and drug use." The same conditions can be found in Palembang's Regulation No.2 of 2004 on

the Eradication of Prostitution. In Article 8 paragraph (2) it is stated that, "Acts of prostitution include: homosexuals; lesbian; sodomy, sexual harassment and pornographic acts."

There are also laws that forbid homosexuality in Tasikmalaya, West Java, known for its Islamic student population. The Tasikmalaya Regulations of West Java No. 12 of 2009 on the Development of Community Life Values Based on the Teachings of Islam and Societal Social Norms explicitly prohibit homosexual behaviour. Article 5 paragraph (4) refers to despicable acts and paragraph (3) among others, states: "adultery and prostitution either conducted by a person of the opposite sex or by a person of the same sex (homosexual/lesbian)."

Table 1 below lists public policies characterised as homophobic and discriminatory against LGBT groups:

Table 1. Discriminatory policies against LGBT groups

Policy Name	Contents
Law No.1, 1974 on Marriage	<p>Article 1 Marriage is the emotional and physical bond between a man and a woman as husband and wife with the intention of forming a happy and everlasting family (household) based on the divinity of God.</p> <p>Article 3 (1) it is stated that marriage is in principle where a man has a wife. A woman can only have a husband (From this article, it can be concluded that Indonesia only recognises the principle of marriage as between a man and a woman).</p> <p>Article 31 (3) the husband is the head of the family and the wife is the homemaker.</p>
Law No. 23, 2006 Population Administration	<p>Population Data</p> <p>Article 58 (2) Individual data includes: ...; d. gender; ...; h. religion/beliefs; ... i. marital status; ...; k, physical and/or mental disabilities; ...</p>
Law No. 44, 2008 on Pornography	<p>Article 4 (1) Every person is prohibited from manufacturing, producing, reproducing, copy, distributing, broadcasting, importing, exporting, offering, reselling, renting or providing pornography that explicitly includes; a. sexual intercourse, including deviant sexual intercourse; b. sexual violence; c. masturbation or onanism; d. nudity or the appearance of nudity e. genitals; or, f. child pornography</p> <p>Explanation (a). What is meant by "deviant sexual intercourse" - sexual intercourse or other sexual activities with the deceased, bestiality, oral sex, anal sex, and lesbian and homosexual sex.</p>

Indonesian Government Regulation No. 54, 2007 on Child Adoption	Article 13 Prospective adopting parents must meet the following requirements: e. be married for a minimum of five years; f. not be a same-sex couple.
South Sumatra Regulation No. 13, 2002 on Combating the Immoral in the Province of South Sumatra	Chapter 1 General Provisions Article 1 22. Homosexual is an activity of sexuality among two or more women with same sex in South Sumatera (ini bener ga ya terjemahannya) relationship between one of more men of the same gender in the Province of South Sumatra. 23. Lesbian is a sexual relationship between one or more women of the same sex gender in the Province of South Sumatra. 24. Sodomy is sexual intercourse through the anus by one or more men to another person. Chapter 2 Naming and Form of Immorality Article 2 (2) Including immoral acts, all acts that can damage the foundations of life in the community other than those stipulated in norms as referred to in paragraph (1) such as: prostitution; adultery; homosexuality; lesbianism; sodomy; rape; sexual harassment; pornography; gambling; alcohol consumption; and drug use."
Palembang Local Regulation No.2, 2004 on the Eradication of Prostitution	Chapter 1 General Provisions Article 1 (10) Homosexuality is sexual intercourse among men. (11) Lesbianism is sexual intercourse among women. (12) Sodomy is sexual intercourse through the anus by a male. Article 8 (2) Acts of prostitution include: homosexuality; lesbianism; sodomy, sexual harassment and pornographic acts.
Padang Pariaman District Regulation No. 02, 2004 on Prevention, Repression and Eradication of Immorality	Chapter 1 General Provisions Article 1 m. prostitutes are women or men who have sexual relations with the opposite sex or the same sex with the intent of sexual and or material gratification; n. prostitution as a form of work for sexual intercourse outside of marriage or other sexual activities to get sexual and or material gratification;
Banjar, South Kalimantan, Local Regulation No. 10, 2007 on Public Order	In this regulation "whore" refers to homosexual and heterosexual acts that are "not normal" (in addition to acts that are "normal"). There is no explanation of what constitutes a "normal" act or a "not normal" act. The law also prohibits the establishment of organisations "that may lead to 'immoral' behaviour which 'cannot be accepted by society [local]'. This is then explained by referring to examples of lesbian and gay organisations "and the like." ⁵⁰
Tasikmalaya, West Java Regulation No. 12, 2009 on the Development of Community Life Values Based on the Teachings of Islam and Societal Social Norms	This regulation prohibits adultery and prostitution, both heterosexual and homosexual. Article 5 Paragraph (4) (4) Despicable acts in paragraph (3) among others, as follows: b. Adultery and prostitution either conducted by a person of the opposite sex or by a person of the same sex (homosexual/lesbian). c....
Padang Panjang, West Sumatra, Local Regulation No. 9, 2010 on the Prevention, Elimination and Repression of Social Diseases	Part of the definition explicitly refers to "homosexual and lesbian" relationships and prohibits these relationships and those who "offer themselves to engage in homosexual or lesbian relations with or without payment." ⁵¹ Article 5 Every person is prohibited from: (f) engaging in homosexual and or lesbian relations; and (g) offering themselves to other people

For these reasons, LGBT organisations have advocated, lobbied, educated the public and fought for decades to create a shift in public attitude towards LGBT and minimise the stigma and discrimination they face. These organisations also hold strategic meetings with government Ministries and departments. On the 29th of May 2015, for example, Ourvoice held a meeting with the Ministry of Social Affairs (Kemensos), in a push to get access to the BPJS health insurance for LGBT groups, especially *waria* who are susceptible to HIV/AIDS. From this meeting, it was hoped that the Ministry of Social Affairs will investigate and accept the proposal.⁵²

Response of the International World

The UN Human Rights Council⁵³ has concluded that LGBT groups in numerous countries, including Indonesia, are vulnerable to violence in the form of murder, rape, torture or cruel and inhumane treatment as well as legal discrimination such as in their work environment, education, health, family or their sexual orientation.⁵⁴ In line with the above report, Carlos F. Carceres, in the USAID report, says that Indonesia is one of the countries in Asia that publicly discriminates against LGBT, and rejects homosexuals although there is nothing specific on homosexuality in the national law. For Carceres, Indonesia strongly prohibits LGBT development.⁵⁵

Moreover, the report from the Special Representative on the Situation of Human Rights Defenders, Hina Jilani, when on an official visit to Indonesia from June 5th to 12th 2007, found a credible report about violence against LGBT activists. First, the case of Mrs Maria, a legal assistant from GAYa Nusantara, East Java, who was intimidated and harassed. When she reported her case to the police, her report was not followed up on the grounds that LGBT issues are 'outside products'. Second, the case of Hartoyo, while in Aceh.⁵⁶

Komnas Perempuan, a national level human rights mechanism, has also received complaints of discrimination and violence experienced by lesbians and male to female transgendered people. In 2010, Komnas Perempuan recorded three instances of the dissolution of peaceful LGBTIQ activities by violent religious minorities. These include the ILGA conference in Surabaya, a human rights training seminar for LGBTIQ groups in Depok lead by the Human Rights Commission and Arus Pelangi, and

the Q! Film Festival. Police and the Civil Service Unit (apparatus for the enforcement of local rules) conducted prostitution raids, which represent an avenue for violence and other human rights violations against *waria*. Komnas Perempuan recorded a case of a *waria* who died when being pursued by police in Tangerang (2009); one case of arbitrary detention in Jakarta (2009); and three cases of physical violence and sexual abuse by the local police; and one case by the police in Aceh (2008-2011). None of these cases have been investigated thoroughly.⁵⁷

Of the cases experienced by LGBT groups, the case of the dissolution of the Q! Festival Film contains elements of a hate crime, where the main targets of hatred are LGBT individuals, groups or sympathisers. Only a fraction of above cases were reported by human rights or LGBT organisations to international rights agencies because national mechanisms do not resolve these cases well. Only the Hartoyo case (2007) received considerable attention at the international level. At least three international mechanisms namely, Hina Jilani (2008), Manfred Nowak (2009) and the UN Human Rights Commission on 'Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity' (November 17 2011), documented these cases in their official reports.

Although Hartoyo's case was submitted to the international mechanism, he did not receive rehabilitation, vindication and compensation from the government for what the police did to him. Many other cases also have no significant follow-up report from the civil society to the international mechanisms, support, or compensation from the government. Therefore, it seems that the government disregards these cases.⁵⁸ In response to these cases at the international level, at the 2012 UPR Session in Switzerland, concern was expressed over the discriminatory behaviour and intolerance on the basis of sexual orientation and gender identity in Indonesia. The delegation from Spain recommended that the Indonesian government eliminate the laws that criminalise same-sex relationships and discrimination based on sexual orientation in the UPR Indonesia session.

These international recommendations demonstrate that the condition of LGBT Human Rights in Indonesia is alarming. Even in RPJMN (Rencana Pembangunan Jangka Menengah

Nasional) and RAN (Rencana Aksi Nasional—national action plan of human rights) Human Rights government have accommodated human rights, however it cannot be ignored that Indonesian policies are still influenced by religious and cultural perspectives which are biased against LGBT groups. Therefore, LGBT human rights are not a priority for

the government and the execution of these policies shows insensitivity towards these individuals. The promotion of LGBT human rights and the protection and fulfilment of LGBT human rights must be done thoroughly as mandated in the 1945 Constitution, and this has to begin with changes to the legal and social culture in the community.

References

- Cáceres, C. F. (2008). *Review of Legal Frameworks and the Situation of Human Rights related to Sexual Diversity in Low and Middle Income Countries*, New York: Study Commissioned by UNAIDS.
- Coming Out itu Perlu, (2010). *Our Voice Zine*, Volume 01.
- Crawford, C. Neta. (2002), *Argument and Change in World Politic; Etnics, Colonialization, and Humanitarian Intervention*, Cambridge, United Kingdom: Cambridge University Press.
- Hartoyo, dkk, (2013). *Sesuai Kata Hati; Kisah Perjuangan 7 Waria*, Jakarta: Ourvoice dan Rehal Pustaka.
- Hillary Clinton: Homoseksual Bukan Soal Barat, (2011). *Our Voice Zine*, Volume 5.
- Komnas Perempuan, (2011). *Laporan Independen Universal Periodic Review (UPR) Komnas Perempuan kepada Dewan HAM PBB*, Jakarta: Komnas Perempuan.
- Muhammad H., Mulia M., dan Wahid M. (2011). *Fiqh Seksualitas*, Jakarta: PKBI.
- Mulia, M (2015). *Mengupas Seksualitas: Mengerti Arti, Fungsi, dan Problematika Seksual Manusia Era Kita*, Jakarta: Opus Press.
- , (2008). "Adakah Islam Bicara Soal Homo?", *Madina*.
- , (2008). "Allah hanya Melihat Taqwa, bukan Orientasi Seksual Manusia", *Jurnal Perempuan* Vol. 58.
- Oetomo, D. dan Suvianita, K. (2013), *Hidup sebagai LGBT di Asia: Laporan Nasional Indonesia, Tinjauan dan Analisa Partisipatif tentang Lingkungan Hukum dan Sosial bagi Orang dan Masyarakat Madani Lesbian, Gay Biseksual dan Transgender (LGBT)*, Jakarta: USAID dan UNDP.
- Our Profile, Metamorfosis Kedua 'Jen Kattleya'*, (2012). *Our Voice Zine*, Volume 11.
- Pemimpin Pesantren Waria 'Senin-Kamis' Menunaikan Ibadah Umroh*, (2013). *Our Voice Zine*, Volume 04.
- Romli, M. G. "Lesbian dalam Seksualitas Islam", *Jurnal Perempuan* Volume. 58.
- Peter, R. B. dan Castermans-Hollemans, M. (2004), *The Role of Human Rights in Foreign Policy*, New York: Palgrave Macmillan.
- Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Ms. Hina Jilani. (2008), *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, Addendum Mission to Indonesia, A/HRC/7.28/Add.2*.
- Report of the United Nations High Commissioner for Human Rights, (2011). *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*.
- Shuniyya Ruhama: Jangan Menyerah Terlahir Sebagai Sosok LGBT*, (2012). *Our Voice Zine*, Volume 09.
- Suryakusuma, J. (2014), 'View Point: Leaders Come and Go; Gay Are Here to Stay', *Jakarta Post*.
- Waria-waria yang Menjadi Pengusaha Sukses di Dunia*, (2012). *Our Voice Zine*, Volume 15.
- Wieringa, E. S. (2011). "Keanekaragaman Gender di Asia: Pertarungan Diskursif dan Implikasi Legal", *Jurnal Gandrung* Vol.1 No.2.

Web Links:

- Ardhanary Institute, "About Us", http://ardhanaryinstitute.org/?page_id=141, accessed 28 April 2015.
- Arus Pelangi, (2012). "Visi dan Misi", <http://www.aruspelangi.or.id>, accessed 15 May 2014.
- "DPR; Konstitusi di Indonesia Tak Buka Peluang Pernikahan Sesama Jenis", (2015). Republika, <http://www.republika.co.id/berita/dpr-ri/berita-dpr-ri/15/06/28/nqn79r-dpr-konstitusi-di-indonesia-tak-buka-peluang-pernikahan-sesama-jenis>, accessed 30 August 2015.
- GAYa NUSANTARA, (2008). "Sejarah Gay dan Waria di Dunia", <http://www.GAYaNusantara.org>, accessed 11 May 2014.
- "Menag; Indonesia Sulit Terima Pernikahan Sesama Jenis", (2015). Kompas, <http://nasional.kompas.com/read/2015/07/02/17045061/Menag.Indonesia.Sulit.Terima.Pernikahan.Sesama.Jenis>, accessed 3 August 2015.
- "Muhammadiyah; LGBT Bukan Hak Asasi". (2015). Republika, <http://www.republika.co.id/berita/nasional/umum/15/06/29/nqo7bo-muhammadiyah-lgbt-bukan-hak-asasi>, accessed 3 August 2015.
- "MUI, Ulama, dan Pemerintah harus Tolak Pernikahan Sesama Jenis" (2015). Republika, <http://www.republika.co.id/berita/nasional/umum/15/06/28/nqn0d-q-mui-ulama-dan-pemerintah-harus-tolak-pernikahan-sesama-jenis>, accessed 7 August 2015.
- "MUI Keluarkan Fatwa Hukum Mati Kaum Homoseksual" (2015). <http://nasional.tempo.co/read/news/2015/03/17/078650564/mui-keluarkan-fatwa-hukum-mati-kaum-homoseksual>, accessed 7 August 2015.
- "PGI: Gereja Tak Akan Restui Perkawinan Sejenis", (2015), Kompas, http://nasional.kompas.com/read/2015/07/10/13020621/PGI.Gereja.Tak.Akan.Restui.Perkawinan.Sejenis?utm_campaign=related&utm_medium=bp-kompas&utm_source=news&, accessed 30 August 2015.
- "Romo Benny: Tidak Mungkin Indonesia Legalkan Perkawinan Sejenis", (2015). Kompas, <http://nasional.kompas.com/read/2015/07/04/04281461/Romo.Benny.Tidak.Mungkin.Indonesia.Legalkan.Perkawinan.Sejenis>, accessed 30 August 2015.
- Siradj, A. Said. "LGBT dalam Pandangan Islam", www.puanamalhayati.or.id/archieves/948, accessed 3 August 2015.
- "Siaran Pers Komnas Perempuan: Kebijakan Diskriminatif yang Bertentangan dengan Konstitusi", Komnas Perempuan, <http://www.komnasperempuan.or.id/kebijakan-diskriminatif-yang-bertentangan-dengan-konstitusi/>, accessed 29 August 2015.
- Yatna Pelangi, (2014). "In Memoriam Bu Maryani", www.suarakita.org/2014/04/in-memoriam-bu-maryani/, accessed 03 June 2015.
- Yatna Pelangi, (2012). 'Kunjungan 18 negara ke Pesantren Waria', www.suarakita.org/2012/07/kunjungan-18-negara-ke-pesantren-waria/, accessed 20 May 2015.
- YIFOS, 'Sejarah YIFOS', <https://yifos.wordpress.com/tentang-yifos/history/>, accessed 22 December 2014.
- United Nations, (2010). "Ending Violence and Criminal Sanctions Based on Sexual Orientation, Gender Identity; Confront prejudice, speak out against violence, Secretary-General says at event on 'Ending Sanctions Based on Sexual Orientation, Gender Identity'", http://www.un.org/News/Press/docs/2010/sgsm_13311.doc.htm.

Interviews:

- Dede Oetomo, interview, 14 May 2014.
 Dwi Yulia R, interview, 19 April 2014.
 Hartoyo, interview, 27 April 2014.
 Hartoyo, interview, 7 May 2015.
 Masruchah, interview, 3 September 2014.
 RR. Sri Agustine, interview, 7 May 2015.
 Pradizza Putri, interview, 7 May 2015.
 Yudi, interview, 7 May 2015.

(Endnotes)

- 1 This paper is a part of a Thesis with the title Human Rights in Indonesian Foreign Policy; A Case Study of Lesbian, Gay, Bisexual, and Transgender/Transsexual (LGBT).
- 2 Peter R. Baehr and Monique Castermans-Hollemans, *The Role of Human Rights in Foreign Policy*, (New York: Palgrave Macmillan, 2004), p. 21.
- 3 Neta C. Crawford, *Argument and Change in World Politics; Ethics, Colonialization, and Humanitarian Intervention*, (Cambridge, United Kingdom: Cambridge University Press, 2002), pp. 11 – 18.
- 4 Musdah Mulia, *Mengupas Seksualitas: Mengerti Arti, Fungsi, dan Problematika Seksual Manusia Era Kita* (Jakarta: Opus Press, 2015), p. 22.
- 5 Our Voice Zine, *Coming Out itu Perlu*, Volume 01, (2010).
- 6 Our Voice Zine, *Hillary Clinton: Homoseksual Bukan Soal Barat*, Volume 5, (2011).
- 7 United Nations, "Ending Violence and Criminal Sanctions Based on Sexual Orientation, Gender Identity; Confront prejudice, speak out against violence, Secretary-General says at event on 'Ending Sanctions Based on Sexual Orientation, Gender Identity'", 10 December 2010, [on line]
- 8 Kyai Husein Muhammad, Siti Musdah Mulia, and Marzuki Wahid, *Fiqh Seksualitas*, (Jakarta: PKBI, 2011).
- 9 Siti Musdah Mulia, "Adakah Islam Bicara Soal Homo?", *Madina*, May (2008), pp. 90 - 92. Also see [on line] <http://www.icrp-online.org/wmview.php>, accessed 1 September 2015, and also see Siti Musdah Mulia, "Allah hanya Melihat Taqwa, bukan Orientasi Seksual Manusia", *Jurnal Perempuan* 58, (2008), pp. 122 – 126.
- 10 Masruchah, interview, 3 September 2014.
- 11 Saskia E. Wieringa, "Keanekaragaman Gender di Asia: Pertarungan Diskursif dan Implikasi Legal", *Jurnal Gandrung* Vol.1 No.2 December, (Surabaya: GAYa Nusantara dan Hivos, 2011), p. 17.
- 12 Wadam – *wanita* Adam (wanita is female in Bahasa Indonesia).
- 13 Waria – an amalgam of Wanita Pria in Bahasa Indonesia.
- 14 Kongres Lesbi dan Gay Indonesia.
- 15 Jaringan Lesbi dan Gay Indonesia.
- 16 This data refers to the attackers from the Gerakan Anti-Maksiat group (GAM).
- 17 Sejarah tentang gay ini mengutip tulisan di GAYa NUSANTARA, "Sejarah Gay dan Waria di Dunia" [online] <http://www.GAYaNusantara.org>, accessed 11 May 2014.
- 18 Julia Suryakusuma. (2014), 'View Point: Leaders Come and Go; Gay Are Here to Stay', *Jakarta Post*, Wednesday June 25 2014.
- 19 Dede Oetomo, interview, 14 May 2014.
- 20 Arus Pelangi, "Visi dan Misi", [on line] <http://www.aruspelangi.or.id>, accessed 15 May 2014.
- 21 Hartoyo, interview, 27 April 2014.
- 22 Hartoyo, interview, 7 May 2015.
- 23 Yudi, interview, 7 May 2015.
- 24 YIFOS, 'Sejarah YIFOS', [on line] <https://yifos.wordpress.com/tentang-yifos/history/>, accessed 22 December 2014.
- 25 Dwi Yulia R (Edith), interview, 19 April 2014.
- 26 RR. Sri Agustine, interview, 7 May 2015.
- 27 Ardhanary Institute, "About Us", [on line] http://ardhanaryinstitute.org/?page_id=141, accessed 28 April 2015.
- 28 Dizz Traksi, interview, 7 May 2015.
- 29 Hartoyo, dkk, *Sesuai Kata Hati; Kisah Perjuangan 7 Waria*, (Jakarta: Ourvoice and Rehal Pustaka, 2014), pp. 79-83. Also see Our Voice Zine, *Pemimpin Pesantren Waria 'Senin-Kamis' Menunaikan Ibadah Umroh*, Volume 04, (2013).
- 30 Yatna Pelangi, "In Memoriam Bu Maryani", [on line] www.suarakita.org/2014/04/in-memoriam-bu-maryani/ accessed 3 June, 2015.

- 31 Yatna Pelangi, 'Kunjungan 18 negara ke Pesantren Waria', [on line] www.suarakita.org/2012/07/kunjungan-18-negara-ke-pesantren-waria/ accessed 20 May 2015.
- 32 Our Voice Zine, *Waria-waria yang Menjadi Pengusaha Sukses di Dunia*, Volume 15, (2012).
- 33 Our Voice Zine, *Our Profile, Metamorfosis Kedua 'Jen Kattleya'*, Volume 11, (2012).
- 34 Our Voice Zine, *Shuniyya Ruhama: Jangan Menyerah Terlahir Sebagai Sosok LGBT*, Volume 09, (2012).
- 35 Republika Online (ROL), "Muhammadiyah; LGBT Bukan Hak Asasi" [on line] <http://www.republika.co.id/berita/nasional/umum/15/06/29/nqo7bo-muhammadiyah-lgbt-bukan-hak-asasi>, accessed 3 August 2015.
- 36 Republika Online (ROL), "MUI, Ulama, dan Pemerintah harus Tolak Pernikahan Sesama Jenis" [on line] <http://www.republika.co.id/berita/nasional/umum/15/06/28/nqnodq-mui-ulama-dan-pemerintah-harus-tolak-pernikahan-sesama-jenis>, accessed 7 August 2015.
- 37 Republika Online (ROL), "MUI Keluarkan Fatwa Hukum Mati Kaum Hooseksual", <http://nasional.tempo.co/read/news/2015/03/17/078650564/mui-keluarkan-fatwa-hukum-mati-kaum-homoseksual>, accessed 7 August 2015
- 38 Diskusi terbatas dengan tema 'Menangkal Pernikahan Sejenis' telah dilaksanakan pada tanggal 8 Juli 2015 (Rabu) di Kampus Universitas Muhammadiyah, Cireunde, Jakarta. Diskusi dihadiri 25 orang peserta yang berasal dari akademisi, psikolog, praktisi hukum, dan aktivis di lingkungan Muhammadiyah. Diskusi ini menghasilkan rekomendasi penolakan terhadap isu pernikahan sejenis dan diusulkan menjadi salah satu bahasan dalam Mukhtamar Muhammadiyah di Makassar on 3 – 7 August 2015.
- 39 Said Aqiel Siradj, "LGBT dalam Pandangan Islam", [online], www.puanamalhayati.or.id/archives/948, accessed 3 August 2015.
- 40 Kompas, "Romo Benny: Tidak Mungkin Indonesia Legalkan Perkawinan Sejenis" [online], <http://nasional.kompas.com/read/2015/07/04/04281461/Romo.Benny.Tidak.Mungkin.Indonesia.Legalkan.Perkawinan.Sejenis>, accessed 30 August 2015.
- 41 Kompas, "PGI: Gereja Tak Akan Restui Perkawinan Sejenis", [online],
- 42 Republika Online (ROL), "DPR; Konstitusi di Indonesia Tak Buka Peluang Pernikahan Sesama Jenis", [online] <http://www.republika.co.id/berita/dpr-ri/berita-dpr-ri/15/06/28/nqn79r-dpr-konstitusi-di-indonesia-tak-buka-peluang-pernikahan-sesama-jenis>, accessed 30 August 2015.
- 43 Musdah Mulia, *Mengupas Seksualitas*, p. 96.
- 44 Muhammad Guntur Romli, "Lesbian dalam Seksualitas Islam", *Jurnal Perempuan* Vol. 58, pp. 5-12.
- 45 See Ester Mariani Ga, "Lesbian dalam Penafsiran Agama"
- 46 Kompas, "Menag; Indonesia Sulit Terima Pernikahan Sesama Jenis", [online], <http://nasional.kompas.com/read/2015/07/02/17045061/Menag.Indonesia.Sulit.Terima.Pernikahan.Sesama.Jenis>, accessed 3 August 2015.
- 47 Kompas, "Menag; Indonesia Sulit Terima Pernikahan Sesama Jenis", [online], <http://nasional.kompas.com/read/2015/07/02/17045061/Menag.Indonesia.Sulit.Terima.Pernikahan.Sesama.Jenis>, accessed 3 August 2015.
- 48 HRWG, KontraS, Imparsial, Koalisi NGO HAM Aceh, Demos, CMARs Surabaya, Protection International, PIAR NTT, Arus Pelangi, Serikat Buruh Migran Indonesia, Ardhanary Institute, GAYa Nusantara, KKSP Medan, ECOSOC Rights, Yayasan Pulih, Gandi, Lembaga Dayak Panarung, ECPAT, and JALA PRT.
- 49 Focus Group Discussion (FGD) Tesis 'HAM dalam Kebijakan Luar Negeri Indonesia, Studi Kasus Lesbian, Gay, Biseksual, Transgender/ Transeksual', 29 June 2015
- 50 Dede Oetomo and Khanis Suvianita. *Hidup sebagai LGBT di Asia: Laporan Nasional Indonesia, Tinjauan dan Analisa Partisipatif tentang Lingkungan Hukum dan Sosial bagi Orang dan Masyarakat Madani Lesbian, Gay Biseksual dan Transgender (LGBT)*, (Jakarta: USAID and UNDP, 2013), p. 25.
- 51 Dede Oetomo and Khanis Suvianita. *Hidup sebagai LGBT di Asia*, p. 25.
- 52 FGD 'HAM dalam Kebijakan Luar Negeri Indonesia'.
- 53 Komisi HAM PBB (*United Nations Commission*) telah berganti nama menjadi Dewan HAM PBB (*The Human Rights Council*) berdasarkan Resolusi 60/251 on 15 March 2006. Mandate dan ruang lingkup kerja Dewan HAM can be seen in the document A/RES/60/251 Human Rights Council.
- 54 Report of the United Nations High Commissioner for Human Rights, *Discriminatory laws and practices and acts of violence against individuals based on their sexual orientation and gender identity*, 17 November, 2011. A/HRC/19.41, paragraph 35.
- 55 Carlos F. Cáceres, *Review of Legal Frameworks and the Situation of Human Rights related to Sexual Diversity in Low and Middle Income Countries*, (New York: Study Commissioned by UNAIDS, 2008).
- 56 Report of the Special Representative of the Secretary-General on the situation of human rights defenders, Ms. Hina Jilani, Promotion and Protection of All Human Rights, Civil, Political, Economic, Social, and Cultural Rights, Including the Right to Development, Addendum Mission to Indonesia, A/HRC/7.28/Add.2, 28 Januari 2008, paragraph 59 - 60.
- 57 Komnas Perempuan, *Laporan Independen Universal Periodic Review (UPR) Komnas Perempuan kepada Dewan HAM PBB, 21 November 2011*, (Jakarta: Komnas Perempuan, 2011), Paragraph 13.
- 58 Hartoyo, interview, 7 May 2015.