

**Universal Periodic Review of**

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**Joint submission by:**

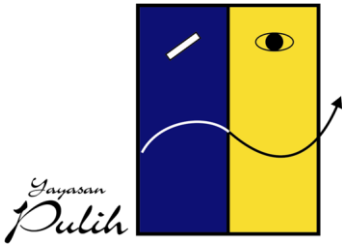
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**Key Words:** comprehensive sexuality education - access to sexual and reproductive health and rights information, education and services –adolescent sexual and reproductive health – discrimination and violence on the basis of sexual orientation and gender identity- child sexual abuse – sexual violence – child, early and forced marriage – trafficking.

### **Executive Summary**

1. This report is submitted by a coalition of NGOs in Indonesia<sup>1</sup> and the Sexual Rights Initiative<sup>2</sup> to highlight human rights violations in Indonesia related to sexual and reproductive health and rights.
2. The lack of quality comprehensive sexuality education (CSE) and access to sexual and reproductive health services hampers young people’s abilities to make healthy decisions about their sexual lives. This negatively impacts young people’s health outcomes including: high prevalence of HIV and AIDS, early pregnancies, unsafe abortions, child marriages and sexual violence and exploitation as well as a lack of understanding and acceptance of lesbian, gay, bisexual, transgender and intersex(LGBTI) persons. Overall the coalition considers these violations a result of generations of the absence of CSE. It should be noted that in the current national curriculum, information on sexual and reproductive health is taught in the biology subject and comprises only of the description of human reproductive organs, the conception and knowledge on sexually transmitted diseases.
3. There is an increase in number and severity of cases of child sexual violence and exploitation in Indonesia, while at the same time implementation of the laws and policies fail to protect children from sexual violence. Furthermore law enforcers do not fully understand the root causes of child sexual violence and the impact it has on children. Therefore, effective measures for prevention are yet to be taken, including providing CSE, which promotes respect for men and women equally.
4. The lack of state protection was apparent when the existence and position of LGBT persons became a topic of heated public controversy in early 2016. Comments from several public officials lead to outburst and actions towards LGBT groups and resulted in deprivations of civil, political, economic, social and cultural rights that should also be enjoyed by LGBT individuals according to the Constitution. There seems to be a lack of understanding on human rights in general and on LGBT rights as a part of human rights. The omission of information on sexual orientation and gender identity in the current reproductive health education results in a lack of understanding of sexual diversity in the society at large, which in turn allows for religious and cultural interpretations that are in contradiction to human rights perspectives. In this respect, the Yogyakarta Principles are a fundamental tool for inclusion of the diversity perspective in the public policies that have to be taken into account in education.

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<sup>1</sup> Aliansi Remaja Independen, Rutgers WPF Indonesia, Ardhanari Institute, GWL-INA, Suara Kita, Perempuan Mahardika and Pulih

<sup>2</sup>The **Sexual Rights Initiative** is an international coalition including Akahata –a Latin American team working on sexualities and genders, Action Canada for Sexual Health and Rights, Creating Resources for Empowerment and Action (India), the Polish Federation for Women and Family Planning, the Coalition of African Lesbians and others.

## **Comprehensive Sexuality Education (CSE)**

### **Progress and gaps in the implementation of recommendation from 2<sup>nd</sup> cycle of UPR**

5. [108.124 *Ensure, through the Ministry of National Education, the inclusion of sexual and reproductive education in the national secondary curriculum as part of the preparation for adult life, which will contribute to prevent, inter alia, early marriage, unwanted pregnancy and the spread of HIV/AIDS among adolescents (Honduras)*]. The Government of Indonesia (GoI) has made some progress on this recommendation through setting an objective on ‘increased knowledge and understanding of reproductive health for young people’ in the Midterm National Development Plan 2015-2019 and the Strategic Plan 2015-2019 of the Ministry of Education and Culture (MONE) to increase the average age of marriage and to reduce the number of teenage pregnancies. In addition, in 2014 two governmental regulations were issued and include the right to reproductive health information and education for young people<sup>3</sup> as well as a presidential instruction<sup>4</sup> on prevention of child sexual abuse that requires inclusion of reproductive health and child empowerment in the curriculum to be implemented by MONE, Ministry of Health (MOH) and Ministry of Religious Affairs (MORA).
6. However, these positive developments are not accompanied by implementation and monitoring of these regulations and the requirement for more coordination among ministries. There are also no regulations on the content of the education materials, which at present is not comprehensive, nor rights-based.

### **Legal and Social Policy Context**

7. The right to obtain information, protection and assistance to realize every citizen’s reproductive rights in accordance with social ethics and religious norms is secured at the national level in Article 5C of the Population Law No.52/2009 as well as in Article 73 c of the Health Law No.36/2009. Government Regulation no 87 of 2014 on Population Development, Family Development, Family Planning and Family Information system, includes the right to receive correct information about reproduction in order to be able to take healthy and responsible decisions in one’s sexual life. Government Regulation 61 of 2014 on Reproductive Health states that young people have a right to receive communication, information and education as part of reproductive health services in formal and non-formal environment.
8. In addition the State’s obligation to provide CSE is secured through the ratification of several international human rights instruments as well as of progressive national laws and policies. Nevertheless, there remains a significant gap between these commitments on CSE and the content of the current reproductive health education in schools. In an effort to boost the quality of adolescents’ sexual and reproductive health and rights (ASRHR) education materials, UNFPA and UNESCO introduced the International Technical Guidelines on Sexuality Education (ITGSE) in Indonesia in 2012. Based on the ITGSE, the MoH developed National Reference Material for Teachers on Adolescent Reproductive Health Education. During the launching of this material in 2015, the MoNE was suggested<sup>5</sup> during a panel discussion to develop a policy to encourage the Government at sub-national level to use the ITGSE to

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<sup>3</sup> Government regulation No 61 of 2014 on Reproductive Health and Government Regulation No 87 of 2014 on Population Development, Family Development, Family Planning and Family Information system

<sup>4</sup> Presidential instruction no 5 of 2014

<sup>5</sup> <http://indonesia.unfpa.org/news/2015/09/reference-materials-for-teachers-on-adolescent-sexual-and-reproductive-health->

revise material for reproductive health education. However, to date no information on the development of this policy has been made public by MONE, nor made reference to in the MONE Strategic Plan.

9. The Pornography Law No.44/2008 is potentially restrictive as it prohibits all materials that depict anything that is considered to violate moral norms in society. This restrictive stance is also reflected in the Law on Information and Electronic Transactions (ITE), No.11/2008. Furthermore, a proposed revision in the Criminal Code contains articles which criminalises the 'showing of' and the 'promotion of device' to prevent pregnancy. If these articles are to be retained and enforced, the provision of services or contraceptives to unmarried will become a criminal act.

## Problem Identification

10. School children receive 'reproductive health education' that is limited by cultural or religious norms that deny adolescent sexuality. This results in a lack of understanding as can be seen in the Indonesian Demographic Health Survey (IDHS) conducted in 2012. According to the survey, only 49,4% of girls and 50,1% boys aged 15-19 years know that one time sexual intercourse can lead to pregnancy<sup>6</sup>; 75.2% girls and 76.5% of boys 15-19 years do not recognize signs of sexually transmitted diseases<sup>7</sup>. So when young adolescents do not get the information they need, they cannot make healthy decisions about their sexual lives. According to data from the MoH, in 2015<sup>8</sup> 25 000 young people in Indonesia are living with HIV and there were 4696 new HIV cases found only in Jakarta, not to mention other provinces.
11. The absence of CSE is further not accompanied by unmarried adolescents' access to sexual and reproductive health services. Contraceptives are only available for married couples as stated in the Health Law no.36/2009 and Government Regulation no. 61/2014. At the same time the adolescent Reproductive Health component of IDHS showed that around 6 in 10 male respondents reported they had a partner who had an unplanned pregnancy, which resulted in abortion (either induced or spontaneous abortion). A total of 24% of women and 19% of men aged 15-24 years personally know someone who had an aborted pregnancy. This proportion is three times higher than that reported in the 2007 IYARHS (8 per cent and 6 percent respectively).<sup>9</sup> However, since pregnancy among unmarried women and men is stigmatised, we can assume that the number of unplanned pregnancies is much higher than reported, and is mostly covered up by a marriage.
12. In addition for parents and teachers it is still difficult to talk about sexuality. On May 9, 2016, the Minister of Education, Anies Bawesdan revealed that despite being trained by medical personnel, teachers are still reluctant to discuss reproductive health in a comprehensive manner.

## Recommendations

13. The GoI should implement, monitor and evaluate the delivery of CSE as included in law No.52 / 2009 on Population Development and Family Development and stipulated in Article 5c: 'to receive information, protection, and assistance to realize the rights of reproduction in accordance with social ethics and

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<sup>6</sup> <https://dhsprogram.com/pubs/pdf/FR281/FR281.pdf>

<sup>7</sup> <https://dhsprogram.com/pubs/pdf/FR281/FR281.pdf>

<sup>8</sup> <http://www.depkes.go.id/resources/download/pusdatin/infodatin/Infodatin%20AIDS.pdf>

<sup>9</sup> <https://dhsprogram.com/pubs/pdf/FR281/FR281.pdf>

- religious norms’ as well as through the MoNE, to ensure it includes understanding of diverse sexualities and genders, prevention of SOGIE based violence and discrimination, gender equality and human rights, which will go beyond biological explanations of reproduction by providing information that empowers children to protect themselves against sexual violence and to make healthy choices in their sexual lives.
14. The coalition recommends strengthening teacher’s capacity to deliver CSE related to the materials developed by MoH and based on ITGSE.
  15. The GoI should engage in a collaborative relationship with civil society including young people and teachers to promote CSE according to ITGSE reference and UNESCO guidelines within and outside the school environment.
  16. The MoNe should develop a policy to encourage the government at a sub-national level to continue using the ITGSE material for CSE.
  17. The GoI should ensure that access to SRH services for young people is in place and not restricted by pornography law, ITE law or Criminal Code.

## **Violence and Discrimination against Lesbian, Gay, Bisexual, Transgender and Intersex Persons**

### **Progress and gaps in the implementation of recommendation from 2<sup>nd</sup> cycle of UPR**

18. [109.20. *Eliminate the legislation which criminalizes sexual relations among persons of the same sex, as well as all legislation which discriminates on the basis of sexual orientation, particularly in the Aceh province, where since the establishment of the Sharia Law in 2002 these kind of relations are not allowed (Spain)*]. This recommendation was rejected by the GoI on the grounds that it does not reflect the actual situation in the provinces referred to. However, cases of violence and discrimination based on sexual orientation are reported all over Indonesia, including in Aceh<sup>10</sup>. Regarding legislation that criminalises same-sex relations, in Aceh, a bylaw based on Sharia by the name Qanun Jinayat was implemented at the end of 2015<sup>11</sup> with punishments including that anyone doing *liwath* (anal sex between two consenting men) or *musahaqah* (tribadism between two consenting women) will be punished by the maximum of 100 lashes or 1,000 grams of gold fine or 100 months of imprisonment. This implies that two women hugging in public can be accused of breaching this bylaw as seen in a case in 2015<sup>12,13</sup>.
19. A recent positive development came through the Chief of Police’s Circular Letter No. SE / 6 / X / 2015<sup>14</sup> as it included prohibition of Hate Speech on the basis of sexual orientation. However, this circular serves as guidance for police officers only. Furthermore, while appreciating the Government’s efforts in conducting numerous human rights training courses for police and military officers as mentioned in the 2012 UPR session, government agencies still failed to address various forms of violence and

<sup>10</sup>See “Gays, Lesbians face discrimination in Sharia Aceh”: <http://www.thejakartapost.com/news/2010/01/20/gays-lesbians-face-discrimination-sharia-aceh.html>

<sup>11</sup> See “Qanun Jinayat Mulai Resmi Berlak di Aceh, Inilah Hukumannya”: <http://www.acehterkini.com/2015/10/qanun-jinayat-mulai-resmi-berlak-di.html>

<sup>12</sup> See Human Rights Watch, “HRW soroti Kasus 2 Wanita Ditangkap di Aceh karena Pelukan”: <http://international.sindonews.com/read/1050454/40/hrw-soroti-kasus-2-wanita-ditangkap-di-aceh-karena-pelukan-1444021500>

<sup>13</sup> See Annual report of the Commission on Violence against Women, 2016 pages 25, 45, dan 46 [http://www.komnasperempuan.go.id/wp-content/uploads/2016/03/KOMNAS-PEREMPUAN-\\_-CATATAN-TAHUNAN-2016edisi-Launching-7-Maret-2016.pdf](http://www.komnasperempuan.go.id/wp-content/uploads/2016/03/KOMNAS-PEREMPUAN-_-CATATAN-TAHUNAN-2016edisi-Launching-7-Maret-2016.pdf)

<sup>14</sup>See point 2 - g number 11) SE/6/X/2015 and

<http://nasional.kompas.com/read/2015/10/30/06060001/Bermacam.Hal.yang.Perlu.Diketahui.soal.Edaran.Kapolri.tentang.Hate.Speech>.

discrimination against LGBTI, especially during the rise of public controversy and rejection such as in January to March 2016.

## Legal & Social Policy Context

20. There is no national legislation that criminalises same-sex relationships in Indonesia. However, legislation that perpetuates discrimination on the basis of sexual orientation still exists. Law No. 44 of 2008 on Pornography includes 'lesbian' and 'homosexual' as examples of 'deviant sexual behaviours' in its explanation page<sup>15</sup>. Government Regulation No. 54 of 2007 on the Implementation of Child Adoption prohibits same sex couple from adopting children<sup>16</sup>. Government Regulation No. 61 of 2014 on Reproductive Health uses the term 'sexual orientation disorder' in one article and includes 'homosexual/lesbian' as examples of 'deviant sexual behaviours' in the explanation part of another article<sup>17</sup>.
21. Article 28 of the Indonesian Constitution states that everyone is entitled to be free of discriminatory treatment on any basis and deserves protection. This right to protection is supported by the obligation of the state to protect, promote, enforce and fulfil human rights in Article 4 and 5. The full enjoyment of human rights is also guaranteed and set forth in Law No. 39 of 1999 on Human Rights. Despite this legislation, the right to protection from discrimination on the grounds of sexual orientation and gender identity or expression (SOGIE) is not specifically recognized by the State. Furthermore, public discourse that same-sex relationships and transgender identities or expressions are not in accordance with the principles set out in the Constitution, religion and the values and culture of Indonesia, has a negative impact on drafting of public policies and the treatment of the LGBTI people in general. This has resulted in a number of discriminatory articles in legislation as set out above. Therefore LGBTI people in Indonesia face legal challenges and public rejection. This is evident from the fact that local governments, like Aceh, are allowed to make their own local regulations that may criminalize same-sex relationship or transgender identities or expressions, even though at national level this is not punishable. A further alarming development is a recent effort to criminalize LGBT through a Judicial Review of the Criminal Code article 292 in the Constitutional Court<sup>18</sup>, which is, until this date, undecided in the constitutional court.

## Problem Identification

22. The lack of protection for LGBT people clearly surfaced when, from January to March 2016, LGBT issues were the subjects of public controversy<sup>19</sup>. In this period, public officials gave statements rejecting, stigmatizing or discriminating LGBT people, including calling LGBT a serious threat to the nation<sup>20</sup>,

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<sup>15</sup> See "lesbian" and "homosexual" as examples of deviant sexual behaviors in the explanation page of article 4 (1) a, Law No. 44 / 2008 on Pornografi

<sup>16</sup> Prohibition of same sex couples to adopt children in article 13 of Government Regulation No. 54 / 2007 on adoption of children

<sup>17</sup> See the use of the term "sexual orientation disorder" in article 26 point (2) b and inclusion of "homosexual /lesbian" as examples of "deviant sexual behaviors" in the explanation page of article 27b of Government Regulation No. 61 / 2014

<sup>18</sup> <http://www.news.com.au/world/breaking-news/indonesia-mulls-criminalising-gay-sex/news-story/769e9167c caaffbe959f2fc6852ad0a9>

<sup>19</sup> See "SGRC UI Bikin Klarifikasi, Bukan Tempat Kencan bagi LGBT": <http://www.lensaindonesia.com/2016/01/22/sgrc-ui-bikin-klarifikasi-bukan-tempat-kencan-bagi-lgbt.html>

<sup>20</sup> See "LGBT Ancaman Serius bagi Bangsa": <http://www.beritasatu.com/hukum/343869-anggota-dpr-lgbt-ancaman-serius-bagi-bangsa.html>

contrary to positive law<sup>21</sup>, dangerous<sup>2223</sup>, should be banned in Indonesia<sup>24</sup>, whose aid funds are similar to those of terrorists and thus should be blocked<sup>25</sup>. In a national television debate on February 16, a number of experts and public officials stated that homosexuality and bisexuality are mental illnesses, deviant behaviours, and that the LGBT campaign is propaganda<sup>26</sup>. On February 23, the Indonesian Broadcasting Commission-issued a circular to all broadcasting institutions prohibiting to show any man who has a feminine appearance<sup>27</sup>.

23. On March 3, 2016, organisations considered to have LGBT contents on their websites were requested by the Ministry of Communications and Information Technology to provide data on the managers of the sites<sup>28</sup>. Statements by some public officials who gave a clarification<sup>29</sup>, a neutral statement<sup>3031</sup>, or that LGBT also have rights<sup>32</sup> and should be protected<sup>33</sup> are appreciated. Nevertheless, these statements are not sufficient to provide protection for LGBT persons because many ended with remarks that LGBT is a kind of disorder or disease that needs to be healed<sup>3435</sup>, and accusations that LGBT groups deliberately invite others, especially children, to be LGBT<sup>3637</sup>. This opinion was supported by the Association for Clinical Psychologist-Association of Psychologists Indonesia (IPK-HIMPSI), which issued a statement supporting the efforts to heal LGBT<sup>38</sup>. Similarly, the Central Board of Indonesian Psychiatrist Association (PP PDSKJI) stated that homosexuals and bisexuals are people with psychological problems<sup>3940</sup>, and the Director of Prevention and Control of Mental Health Problems and Narcotics from the MoH stated that the Guidelines for Classification and Diagnosis of Mental Disorders III (PPDGJ III) are out-dated and this

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<sup>21</sup> See: "Reni Marlinawati: Praktik LGBT Bertentangan dengan Hukum Positif": <http://www.konfrontasi.com/content/nasional/reni-marlinawati-praktik-lgbt-bertentangan-dengan-hukum-positif>

<sup>22</sup>See: "MENPORA: LGBT Bahaya Kalau Dibiarkan": <http://www.republika.co.id/berita/nasional/umum/16/02/05/o22wdn361-menpora-lgbt-bahaya-kalau-dibiarkan>  
<sup>23</sup> See "Mahfudz Siddiq; Indonesia dalam Darurat Bahaya LGBT" <http://www.tribunnews.com/nasional/2016/02/20/mahfudz-siddiq-indonesia-dalam-da-urat-bahaya-lgbt>

<sup>24</sup>See: "Ketua MPR; LGBT Tak Boleh Berkembang di Indonesia": <http://nasional.republika.co.id/berita/nasional/umum/16/02/02/o1wkcr301-ketua-mpr-lgbt-tak-boleh-berkembang-di-indonesia>

<sup>25</sup> See "Wakil Ketua MPR: Dana Bantuan untuk LGBT Sama dengan Dana Teroris": <https://kabarlgbt.org/2016/02/19/wakil-ketua-mpr-dana-bantuan-untuk-lgbt-sama-dengan-dana-teroris/>

<sup>26</sup> See "Indonesia Lawyers Club: LGBT Marak, Apa Sikap Kita?" (16/02/2016): <https://www.youtube.com/watch?v=ByQG4pPaE7Y>

<sup>27</sup> See "Edaran kepada Seluruh Lembaga Penyiaran mengenai Pria yang Kewanitaan": <http://www.kpi.go.id/index.php/lihat-sanksi/33267-edaran-kepada-seluruh-lembaga-penyiaran-mengenai-pria-yang-kewanitaan>

<sup>28</sup> Berdasarkan informasi dari Suara Kita, email dikirimkan dari ekstensi "@kominfo.go.id" (ekstensi alamat email resmi Kemenkominfo) namun tidak disertai surat ataupun logo resmi kementerian, serta tidak menyebutkan tujuan yang jelas terkait dimintanya alamat dan data personal pengelola situs; lihat juga "Government drafts ban on LGBT websites": <http://www.thejakartapost.com/news/2016/03/05/government-drafts-ban-lgbt-websites.html>

<sup>29</sup> See "Menristek M. Nasir Meluruskan Pernyataan Kontroversinya 'LGBT Dilarang Masuk Kampus?': <https://mzochim.com/2016/01/26/menristek-m-nasir-meluruskan-pernyataan-kontroversinya-lgbt-dilarang-masuk-kampus/>

<sup>30</sup> See "JK: Tidak Perlu UU LGBT": <http://news.liputan6.com/read/2439623/jk-tidak-perlu-uu-lgbt>

<sup>31</sup> See "Menteri Agama; Kita Tak Boleh Memusuhi LGBT": [http://nasional.kompas.com/read/2016/02/17/13175201/Menteri\\_Agama\\_Kita\\_Tak\\_Boleh\\_Memusuhi\\_LGBT](http://nasional.kompas.com/read/2016/02/17/13175201/Menteri_Agama_Kita_Tak_Boleh_Memusuhi_LGBT)

<sup>32</sup> See "Anggota DPR Geram Menristekdikti Larang Kegiatan SGRC di UI": <http://www.beritasatu.com/nasional/344438-anggota-dpr-geram-menristekdikti-la-rang-kegiatan-sgrc-di-ui.html>

<sup>33</sup> See "Luhut; LGBT juga WNI, Punya Hak Dilindungi Negara": <http://nasional.kompas.com/read/2016/02/12/11405371/Luhut.LGBT.Juga.WNI.Punya.Hak.Dilindungi.Negara>

<sup>34</sup> See "Luhut: Jangan Kucilkan LGBT": <http://www.republika.co.id/berita/koran/publik/16/02/16/o2mosi6-luhut-jangan-kucilkan-lgbt>

<sup>35</sup> See "Tolak LGBT, Tetapi Tetap Hormati dan Tindak Diskriminasi": <http://nasional.sindonews.com/read/1086103/15/tolak-lgbt-tapi-tetap-hormati-dan-tidak-diskriminasi-1455710414>

<sup>36</sup> See "Pernah Punya Bos Gay, Ridwan Kamil: LGBT Itu Hak Pribadi": <https://m.tempo.co/read/news/2016/01/29/058740464/pernah-punya-bos-gay-ridwan-kamil-lgbt-itu-hak-pribadi>

<sup>37</sup> See "KPAI Tolak Propaganda Kelompok LGBT": <http://nasional.republika.co.id/berita/nasional/umum/16/02/16/o2n8pw354-kpai-tolak-propaganda-kelompok-lgbt>

<sup>38</sup> See "Himpunan Psikolog Menentang Kelompok yang Halangi Pemulihan Penyandang LGBT":

<http://nasional.republika.co.id/berita/nasional/umum/16/02/06/o23v6v330-himpunan-psikolog-menentang-kelompok-yang-halangi-pemulihan-penyandang-lgbt>

<sup>39</sup> See "Pernyataan Sikap PP PDSKJI":

[http://pdskii.org/img\\_galeri/33648SuratPernyataanPDSKJI.jpg](http://pdskii.org/img_galeri/33648SuratPernyataanPDSKJI.jpg)[http://pdskii.org/img\\_galeri/478992SuratPernyataanPDSKJI\\_0001.jpg](http://pdskii.org/img_galeri/478992SuratPernyataanPDSKJI_0001.jpg)

<sup>40</sup> ODMK (People with Psychological Problems) is a term that was born from The Act No. 18/2014 on Mental Health. However, the act actually didn't mention anything about LGBT, homoseksual, lesbian, or transgender. ODMK is only defined in general as people at risks of having mental disorder (see article 1 point 2).

could be a "momentum to put LGBT" back into it<sup>41</sup>. This later developed into efforts to draft policies that criminalize LGBT<sup>42</sup> persons or to provide rehabilitation to change the sexual orientation of LGBT<sup>43</sup> persons.

24. All these negative statements by public officials provided a stage for the emergence of groups in society that demanded the government to take action against the LGBT movement<sup>44</sup>. These groups made petitions against LGBT<sup>45</sup> persons and LGBT rejection banners<sup>46</sup><sup>47</sup>. Correspondingly, a number of conservative religious groups expressed opposition, either in the form of a position paper<sup>48</sup>, a demonstration<sup>49</sup><sup>50</sup>, putting up banners<sup>51</sup>, and even distributed leaflets containing hateful speech<sup>52</sup> and threats of violence against LGBT<sup>53</sup>. The Indonesian Ulema Council (MUI) also refers to Fatwa No. 57 of 2014, which states that LGBT can be punished with death penalty<sup>54</sup>. During this period, activities considered related to LGBT faced challenges, such as the dissolution of the seminar of the Rumah Belajar Pelangi (Rainbow Learning House)<sup>55</sup>, the cancellation of the socialization of HIV/AIDS G Nite Party<sup>56</sup>, and the closure of the religious school of transvestites in Yogyakarta<sup>57</sup>. No protection was provided by the State in these cases.

25. All this controversy resulted in deprivations of civil, political, economic, social and cultural rights. The right to association and assembly was lost when perceived LGBT activities were dissolved. The right to freedom of thought and expression was lost when those who were seen as LGBT or pro-LGBT, became the target of cyber bullying and received comments containing insults<sup>58</sup> and several LGBT people were forced to change their appearance, for example by wearing a veil, to avoid public pressure. Their right to self-determination was deprived when friends or family members, including those who previously had begun to accept, started re-urging LGBT people to be 'cured' or to get married<sup>59</sup>. Their right to freedom

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<sup>41</sup> See "LGBT Direkomendasikan Masuk dalam ODMK": <http://www.republika.co.id/berita/nasional/umum/16/02/12/o2fnvx394-lgbt-di-rekomendasikan-masuk-dalam-odmk>

<sup>42</sup> See "PKS Gagas RUU Anti-LGBT": <http://nasional.republika.co.id/berita/nasional/politik/16/02/24/o31ryg394-pks-gagas-ruu-anti-lgbt>

<sup>43</sup> See "Mensos Sebut Penyandang LGBT Bisa Direhabilitasi": <http://nasional.sindonews.com/read/1089014/15/mensos-sebut-penyandang-lgbt-bisa-di-rehabilitasi-1456671655>

<sup>44</sup> See "ICMI Minta Pemerintah Gunakan Pranata Hukum Tindak Gerakan Penyebaran LGBT": <http://news.detik.com/berita/3146410/icmi-minta-pemerintah-gunakan-pranata-hukum-tindak-gerakan-penyebaran-lgbt>

<sup>45</sup> See petisi penolakan LGBT di Indonesia: [http://www.petitionline.net/signatures/penolakan\\_legalisasi-lgbt\\_di\\_indonesia/](http://www.petitionline.net/signatures/penolakan_legalisasi-lgbt_di_indonesia/)

<sup>46</sup> See "Aksi di Solo, Bentangkan Spanduk Kumpulkan Tanda Tangan Tolak LGBT": <http://www.solopos.com/2016/02/28/fenomena-lgbt-aksi-di-solo-bentangkan-spanduk-kumpulkan-tanda-tangan-tolak-lgbt-695943>

<sup>47</sup> See "Aliansi Masyarakat Bekasi Bentangkan Spanduk Tolak LGBT": <https://pasangmata.detik.com/contribution/198561>

<sup>48</sup> See "Seruan Bersama Majelis Agama, Pemerintah Larang Dukungan LGBT": <https://m.tempo.co/read/news/2016/02/19/173746382/seruan-bersama-majelis-agama-pemerintah-larang-dukungan-lgbt>

<sup>49</sup> See "REALTIME NEWS : FUI Gelar Aksi Tolak LGBT di Simpang Tugu Pal Putih Yogya": <http://iogia.tribunnews.com/2016/02/23/realtime-news-fui-gelar-aksi-tolak-lgbt-di-simpang-tugu-pal-putih-yogya>

<sup>50</sup> See "Massa FUI Hadang Demo Pendukung LGBT di Tugu Yogya": <https://m.tempo.co/read/news/2016/02/23/058747549/massa-fui-hadang-demo-pendukung-lgbt-di-tugu-yogya>

<sup>51</sup> See "Spanduk Tolak Penyuka Sesama Jenis Mejeng di Bandung": <http://news.okezone.com/read/2016/01/27/525/1298422/spanduk-tolak-penyuka-sesama-jenis-mejeng-di-bandung>

<sup>52</sup> See "Aksi HTI Tolak LGBT Diacungi Jempol Warga Tabalong": <http://hizbut-tahrir.or.id/2016/03/20/aksi-hti-tolak-lgbt-diacungi-jempol-warga-tabalong/>

<sup>53</sup> During their street protest in Yogyakarta on February 23, 2016, AM FUI (an Islamic conservative group) also distributed press releasesheet, containing their statement about rejecting LGBT, being ready to go into war, demand to the government, police force, military, and local government to do the "eradication of LGBT disease", and a statement that they would burn, stone, or drop LGBT from the highest places as punishments if the state officials don't take any firm actions about LGBT.

<sup>54</sup> See "MUI Tegaskan LGBT haram": <http://parmusi.org/mui-tegaskan-lgbt-haram/>

<sup>55</sup> Bersama Polisi, FPI Bubarkan Acara LGBT Ilegal Di Jakarta": <http://www.fpi.or.id/2016/02/bersama-polisi-fpi-bubarkan-acara-lgbt.html>

<sup>56</sup> See "'Pesta' Gay Surabaya, Panitia: Hanya Sosialisasi HIV/AIDS": <https://m.tempo.co/read/news/2016/02/08/058743050/pesta-gay-surabaya-panitia-hanya-sosialisasi-hiv-aids>

<sup>57</sup> See "Pesantren Waria di Yogyakarta Ditutup, LBH Protes": [http://www.bbc.com/indonesia/berita\\_indonesia/2016/02/160225\\_indonesia\\_po\\_npes\\_waria\\_ditutup](http://www.bbc.com/indonesia/berita_indonesia/2016/02/160225_indonesia_po_npes_waria_ditutup)

<sup>58</sup> Everyday in the period of Januari to March 2016, Suara Kita's social media accounts received a lot of hate comments. An article about LGBT activist who responded to a tweet containing hate from a former state official also received hundreds of hate comments toward that activist and toward LGBT in general

<sup>59</sup> In January to March 2016, there were some LBTs who contacted Ardhany Institute, saying that their family had started to urge them to get married or started to think that they could be "cured" again.



and personal security was also deprived mostly because fear and the feeling of being watched in public places haunted them. In addition, various controversies and rejection towards LGBT persons also had an impact on the reluctance of educational institutions to host discussions about LGBT<sup>60</sup> issues.

## **Recommendations**

26. The Gol, through the Ministry of Justice and Human Rights, should uphold the rights of all Indonesians to be free from violence, stigma and discrimination on any basis, as laid down in the constitution and in Law no 39 of 1999,m and should ensure the rights of diverse groups, including LGBTI persons.
27. Gol, through the Indonesian National Police, should investigate and punish in accordance with the law, any individuals or groups who propagate hate speech or commit an act of violence and hatred against LGBTI, including those conducted on behalf of groups with particular religious beliefs.
28. The efforts of providing training on human rights issues for police and military personnel should be continued and include educational material that explain the rights of minorities including LGBTI persons, as stated in the constitution.
29. In accordance with the Constitution of 1945 article 28E, the Gol must directly and unequivocally provide protection for the freedom of association, freedom of assembly, and freedom of expression, for all citizens including LGBTI persons, by protecting every peaceful assembly from forced dissolution.

## **Child Sexual Abuse and Exploitation**

### **Legal, Policy and Social Context**

30. In response to high rates of child sexual violence in 2014, the president issued Presidential Instruction No. 5 of 2014, on a National Movement Against Sexual Abuse that includes instructions for communication, information, and education to children, communities, and stakeholders on reproductive health, the impact of sexual crimes to children's development, the empowerment of children, and other prevention efforts. However, this regulation does not accommodate rights to access to CSE as an effective way to prevent sexual violence.
31. Later that year followed Law no 35 of 2014, in lieu of the Child Protection Law, which contains a clause that states that parents have the task and responsibility to prevent early marriage as well as a clause on prevention and protection of child victims of sexual violence in article 69A through education about reproductive health, religious values, and the values of decency. However it is prone to interpretation that does not respect the human rights of the victim and/or blames the victim for the assault nor does it ensure victim's rights to continue their education.
32. In an effort to protect children from violence in school, the MoNE issued regulation No. 82/ 2015, concerning the Prevention and Handling of Violence in Education Settings, which states clearly that children are entitled to protection from sexual crimes in educational settings. However, the various articles fail to mention that teachers and educational staff can be offenders as well.
33. In May 2016 the President signed Government Regulation in lieu of Law (Perppu) No. 1 of 2016 being

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<sup>60</sup> See "Di Balik Pembubaran Diskusi LGBT di ITB Bandung" <http://www.rappler.com/indonesia/123911-pembubaran-diskusi-lgbt-itb-bandung>

the Second Amendment to the law on Child Protection. Widely discussed articles were the penalties for those found guilty, namely chemical castration, the public announcement of the identity of the child sex offenders and the death penalty. The Institute for Criminal Justice Reform (ICJR) strongly opposed the chemical castration and death penalty and plans to file a judicial review<sup>61</sup>. In the opinion of the Coalition, this law does not support the protection of victims; instead it creates new problems by violating the human rights of offenders. In practice, law enforcement needs to be improved and legal processes needs to be more sensitive to the condition of the victims, especially child victims who require a different approach and handling.

34. Related to child protection is also the fact that the media does not act in accordance to a code of conduct. According to a media analysis, 38% mix facts and opinions, reveal the identity of the victim (31%), or the identity of the perpetrator (20%)<sup>62</sup>.
35. The Ministry of Women Empowerment and Child Protection (MoWECP) has included significant steps in its strategic plan for 2015-2019. However the government agencies involved, fail to recognise the complexity and urgency of the problem of child sexual abuse and child exploitation. To protect children by making them aware of their rights, of healthy gender relations and how to recognise signs of violence, the coalition stresses the importance of implementing CSE in schools.

## **Problem Identification**

### *Child sexual abuse*

36. Child sexual abuse increased by 100% between 2013-2014, as reported by the Commission on Child Protection early 2016<sup>63</sup>. According to a survey of the Ministry of Social Affairs in cooperation with the MoWECP, the National Development Planning Agency and the Central Bureau of Statistics in 2014 there were at least 1.5 million adolescents (aged 15-19) who experienced sexual violence<sup>64</sup>. Frequently reported are cases of child prostitution, child victims of commercial sexual exploitation, child marriage, child victims of online sexual crimes, child victims of pornography in social media. There is no official data on the number of children who are victims of commercial sexual exploitation, but UNICEF estimates that 30% of women involved in prostitution are less than 18 years old<sup>65</sup>, with between 40,000 and 70,000 Indonesian children being victims of sexual exploitation. This number may not even include the increase of child sexual abuse due to the advancement of information technology.
37. In the last few years, cases of violence have become more severe, including gang rapes, where the victim dies in the end. Perpetrators of sexual violence also include an increasing number of children as offenders themselves<sup>66</sup>.
38. Sexual violence is often committed by people from close circles of the victim and trusted by them, who are actually supposed to protect children. However perpetrators, either family or not, often receive low penalties or not at all due to lack of law enforcement.

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<sup>61</sup> <http://en.hukumonline.com/pages/lt5746d453c6e5c/president-officially-introduces-chemical-castration-sentence-for-child-sex-offenders>

<sup>62</sup> Analisa Media Komnas Perempuan : Sejauhmana Media Telah Memiliki Perspektif Korban Kekerasan Seksual? (Juli-Desember 2015)

<sup>63</sup> <http://www.kpai.go.id/berita/kpai-pelecehan-seksual-pada-anak-meningkat-100/>

<sup>64</sup> <http://news.detik.com/berita/2584418/survei-ri-unicef-15-juta-remaja-alami-kekerasan-seksual-1-tahun-terakhir>

<sup>65</sup> [http://www.unicef.org/indonesia/id/SOWCR\\_2006\\_bi.pdf](http://www.unicef.org/indonesia/id/SOWCR_2006_bi.pdf) and [http://www.unicef.org/indonesia/id/Factsheet\\_CSEC\\_trafficking\\_Indonesia\\_Bahasa\\_Indonesia.pdf](http://www.unicef.org/indonesia/id/Factsheet_CSEC_trafficking_Indonesia_Bahasa_Indonesia.pdf)

<sup>66</sup> Reported by the Commission on Child Protection early 2016

39. Child victims of sexual abuse often receive treatment too late or because of stigmatized perceptions, and are ill treated thus aggravating their condition. As people do not recognize the signs of children who have been sexually abused, in the absence of adequate CSE, parents and communities fail to provide adequate protection. As a result child victims of violence often get layered effects, such as unwanted pregnancies, sexually transmitted diseases, and at the same time decline in school performance, bullying, expelled from school or community, or even die.
40. Increased access and use of the Internet exposes children and young people to different forms of sexual violence including children as objects of pornography, online sexual abuse or exploitation. The number of Internet users in Indonesia has rocketed 1,000% from 500 thousand users (1998) to 55.2 million (2009) which makes the country one of the world highest Internet users<sup>67</sup>. While at the same time young people are ill informed on the dangers of Internet because parents are not aware and schools fail to address this issue.

### *Child, Early and Forced Marriage*

41. According to IDHS<sup>68</sup> 17 % of women aged 20-24 years were married before the age of 18 years. In a country as large as Indonesia, that means that roughly 340,000 girls under 18 marry each year<sup>69</sup>. A recent UNICEF report<sup>70</sup> revealed that marriage of girls under 15 declined from 2008-2012, however marriage among girls age 16-17 has risen steadily. Furthermore, child marriage and education levels are interlinked, while poverty makes girls more vulnerable to child marriage. Child, early and force marriage can result in early pregnancy causing physical and mental health issues, complications during childbirth and dropping out of school. As the maternal mortality rate (MRR) in Indonesia has increased from 228 in 2007 to 359 in 2012, with maternal deaths higher in the poorest provinces and among the poorest women and children<sup>71</sup>, it is safe to assume a strong link between child marriage and MRR.
42. Legislation is inconsistent when it concerns the age of majority of a child. This leads to serious complications in the handling of child abuse cases and child, early and forced marriages. For example, with parental consent according to the Marriage Law, girls can marry at the age of 16, whereas the Child Protection Law states that a child is anyone under 18 years old who has never been married. This implies that the Marriage Law fails to meet the threshold of 18 years recommended by the Convention on the Rights of the Child (CRC)<sup>72</sup>. It also means that a child that has been married can be treated as an adult before the law and therefore does not receive special protections afforded to children under the age of 18 as required by the CRC. Furthermore, the minimum age of criminal responsibility is set at 12 years for children according to Law no 11 of 2012 on the Criminal Justice System of the Child.

### *Trafficking*

43. The GoI has ratified the Palermo Protocol (the Protocol to Prevent, Follow, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against

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<sup>67</sup><http://www.internetworldstats.com/asia/id.htm>

<sup>68</sup> Indonesian Demographic Health Survey, 2012 and UNICEF, Championing child rights and child protection in Indonesia, 2015

<sup>69</sup>This figure is calculated by multiplying Indonesia's child marriage rate (17%) by the total number of women ages 20-24 (10,003,920 women according to 2010 census data), and dividing by 5 to capture a yearly average for the 20-24 age range.

<sup>70</sup> [http://www.unicef.org/indonesia/Child\\_Marriage\\_Report\\_Policy\\_Brief\\_\(Report\\_Summary\)\\_160316.pdf](http://www.unicef.org/indonesia/Child_Marriage_Report_Policy_Brief_(Report_Summary)_160316.pdf)

<sup>71</sup> UNICEF, Annual report 2013, Indonesia

<sup>72</sup> [http://www.unicef.org/indonesia/Child\\_Marriage\\_Report\\_Policy\\_Brief\\_\(Report\\_Summary\)\\_160316.pdf](http://www.unicef.org/indonesia/Child_Marriage_Report_Policy_Brief_(Report_Summary)_160316.pdf)

Transnational Organized Crime) by Law No. 49 of 2009 (with reservation) as well as the Optional Protocol to the Convention on the Rights of the Child on the sale of children, prostitution of children and child pornography through the enactment of Law No. 10 of 2012. Although the GoI is taking measures to combat trafficking in persons (TIP), through prosecuting suspected traffickers and repatriation of 5,668 trafficking victims identified abroad in 2015 and provided temporary shelter for 441 victims. The 2016 Trafficking in Persons report<sup>73</sup> shows that Indonesia is classified in Tier 2 already for eight consecutive years, meaning there are no significant improvements for data collection and public reporting and prevention plans remain on the list. The magnitude of TIP is not known to its full extent as data collection remains a challenge. GOI estimates that 1.9 million of the 4.5 million Indonesian workers abroad are undocumented and are vulnerable for trafficking.

44. For children, sex trafficking has devastating consequences, including long-lasting physical and psychological trauma, risks for sexual transmitted diseases, HIV/AIDS, drug addiction, unwanted pregnancy and malnutrition.
45. Furthermore, law enforcement officials often ignore the provision concerning the rights of victims to restitution. This results in inconsistencies and lack of support for victims of violence or trafficking. Poor knowledge and skills by law enforcement officials, health and social workers on how to handle and to prevent violence against women and children, in combination with the absence of psychological support, reporting systems and data collection, results in the fact that only few victims have accessed the quality services they need.
46. Positive efforts consist of local legislations and Plans of Action to address sexual exploitation and trafficking of children. The National Action Plan guides ministries and local governments through Task Forces, to implement programmes to eradicate TIP, hence also sexual exploitation of children. While implementation of the laws and action plans face major challenges, including coordination and proper resourcing, some notable achievements have been made. In 2008, the MoWECP conducted anti trafficking outreach education in 33 provinces in 2008. Forty-one hospital based Integrated Service Centres have been established to provide medical, psychosocial as well as legal and social services for victims of trafficking, and more than 300 help desks are operational in police stations to assist women and child victims of violence, including trafficking. Full implementation of ministerial decree no. 1 of 2010 on Minimum Standards of Services for Women and Child Victims of Violence is needed in order to make these integrated service centres effective.

## Recommendations

47. The GoI should improve cooperation between national statistics bureau and the national commissions on Child Protection and Commission on Violence Against Women and other institutions to generate systematically collected verifiable data that are on all forms of violence against women and children including on child marriage, trafficking, child sexual abuse and exploitation disaggregated by age, geographical area, gender, disability etc. as well as on the different kind of services they accessed or received in order to get a better understanding on the magnitude and nature of sexual violence against children and the lack of services provided.

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<sup>73</sup> <https://id.usembassy.gov/wp-content/uploads/sites/72/2016/05/Indonesia-TIP-Report-2016.pdf>

48. The GoI needs to revise the child protection law No. 23 of 2002 and its amendments and include special protection to children who are in vulnerable positions, such as children who became victims of violence, children with special needs or disabilities, children of minority religions, beliefs, race, child perpetrators etc.
49. The GoI should develop full protection mechanisms of victims, prevent reoccurrence of blame and punishment on the victim, violation of the rights of victims (to education, life safety, etc.) and ensure the prosecution of child abuse is more child-friendly and does not make the child victim into a victim again (re-victimization of the victim) and to provide special treatment for child perpetrators, in line with CRC.
50. GoI is invited to engage in a partnership with NGOs and psychologists to better understand the complexity of sexual violence and the impacts on the victims and perpetrators, with emphasis on protection, the best interests of the child, gender equality, and respect for humanity.
51. GoI should take steps to enforce the implementation of the code of conduct of the mass media to ensure the identity of victims and child perpetrators is not exposed to the public.
52. The GoI together with MoRA must provide awareness that religious teachings are used not to blame victims or attach stigma / sin, but rather to protect them and invite young people to engage in equal relations and foster respect for others in order to prevent the occurrence of sexual violence.
53. The GoI should immediately issue the law on Elimination of Sexual Violence that is currently being prepared. This Law should have a comprehensive perspective of prevention of sexual violence; include articles on protection of victims and their full recovery, all in the best interest of the child, as well as articles on how to handle cases that involve child perpetrators.
54. The GoI through the MoWeCP should take immediate and comprehensive measures to prevent and stop child marriage and issue the (draft) Ministerial Regulation on preventing Child Marriage, as well as push local governments to use the recently launched Module on preventing Child Marriage<sup>74</sup>. The ministry is also recommended to coordinate with other relevant ministries such as MoNE (to keep girls in school) and MoRA to take effective measures to reduce dispensation for child marriage that is required for all marriages of girls and boys below the age of 16 and is usually granted in cases of pregnancy.
55. The GoI through MoWeCP and relevant ministries should take steps to fully implement the multi-sectoral approach as outlined in the ministerial decree no. 1 of 2010 on Minimum Standards of Services for Women and Child Victims of Violence in order to make these integrated service centres effective.

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<sup>74</sup> <https://www.youtube.com/watch?v=JrdVxzAosgA>