

# Shifting Boundaries and Contentions: The Regulation of “Victimless Crimes” in Indonesia<sup>†</sup>

Mirna Nadia  
Arryman Fellow Research Paper  
May 2017

**Abstract:** Indonesia has witnessed the shifting of regulation to control “victimless crimes” after the demise of the authoritarian New Order regime—from deploying gender norms via public policy and propaganda to forthright criminalization of those who deviate from such norms. By analyzing the shifting of the state’s regulations and attitudes of both elites’ and the public toward those who do not conform to the gender norms, this paper provides a case in which diffusion of contentious norms meets domestic politics and (potentially) generates changes in the legal sphere and social perception. Based on preliminary findings, it appears that the changing political environment and contentious norms diffusion provoke social opposition at the domestic level as newer norms promoted through transnational networks become increasingly visible and collide with the norms which are rooted within the nation.

**Keywords:** contentious norms, norms diffusion, resistance, victimless crimes, visibility

## 1. INTRODUCTION

Blackwood (2007) demonstrates how mechanisms to impose gender norms in Indonesia have shifted since the collapse of the authoritarian New Order regime—from deploying gender norms via public policy and propaganda to forthright criminalization of those considered deviant from the norms. Since the 1990s, discourses of norms governing “victimless crimes”<sup>1</sup> in Indonesia have changed in response to international pressure promoting sexual rights (Blackwood 2007). While a more open political environment is often seen as a window of opportunity for the promotion of sexual rights (often subsumed under the broader notion of human rights), in Indonesia an open political environment appears to coincide with increased resistance against

---

<sup>†</sup> This paper is an EDGS working paper—prepared for the Arryman Fellow Symposium, June 2017. This work was conducted under the auspices of Arryman Fellowship Award from the Indonesian Scholarship and Research Support Foundation (ISRSF) through generous academic donations from PT Djarum, Bank BCA, PT Adaro, the William Soeryadjaya Foundation, the Rajawali Foundation, and the Ford Foundation.

<sup>1</sup> “Victimless crimes” is a term that is sometimes used for various acts that are considered crimes under the law but apparently have no victim (E.D. Hirsch, Jr., et al. 2002). In this paper, I use the term “victimless crimes” to refer more specifically to any private non-coercive sexual relations between consenting adults. There is no consensus on exactly which crimes should be regarded as victimless. Due to a more specific usage of the term, I use it in quotation marks throughout this paper.

such efforts. In this paper, I question the occurrence of regulation against certain “victimless crimes” in the post-New Order regime despite so-called democratization and the increased intensity of efforts to promote human rights.

Indonesia has witnessed both the advancement and the pushback of sexual rights across regimes. This dynamic provides a case of how diffusion of certain contentious norms meets with domestic politics and (potentially) generates changes in legal status and social perception as well as variations of the diffusion process. While Indonesians are increasingly articulate in the discourse of sexuality, previous research demonstrates the rising of moral panic surrounding such contentious matters (Bennett and Davies 2015). Contestation over sexual rights occurs both in public and legal spheres. In 2016, as Indonesia is undergoing a process to revise its Penal Code, a proposal to criminalize certain sexual behaviors was brought up.<sup>2</sup> Notwithstanding the need for the Penal Code’s overhaul, legal activists and scholars have heavily criticized the 2016/2017 draft and suggested to the Council of People’s Representatives not to pass the draft in a rush (The Jakarta Post 2016).

The question of sexuality surrounding the Penal Code revision has intensified public debates and provoked anxiety, as the draft meddles with the “private sphere” and increasingly police “morality.”<sup>3</sup> In addition, there is contention among political factions about specific articles in the Penal Code draft—whether or not certain “victimless crimes” should be included (Tileman 2016). Parallel to the proposed revision of the Indonesian Penal Code still under review by the

---

<sup>2</sup> Two separate Codes were introduced under the Dutch colonial administration, *Wetboek van Strafrecht* for European only in 1867 and *Strafwet voor Inlanders* in 1872. Not until 1918 was a new criminal code for all ethnic groups issued—the *Wetboek van Strafwet (Kitab Undang-Undang Hukum Pidana, KUHP)* (Cribb 2010). Government Regulation No.1/1945 and No.73/1957 reinforced the use of KUHP across Indonesia, while Government Regulation No.2/1945 provided that “laws promulgated in the colonial era would be valid only as far as they were consistent with the Constitution” (Linnan 2008:75 in Cribb 2011). The 2016/2017 draft is not the first revision. Blackwood (2007) documents at least two other drafts that have circulated since the year 2000.

<sup>3</sup> Heated public debates and anxiety are observable in newspaper reports and in some intellectual/legal forums (Hermawan 2016; Hukum Online 2016b; Institute for Criminal Justice Reform 2016; Wirawan 2016; The Jakarta Post 2016).

legislature, the issue of “victimless crimes” was brought up in the Constitutional Court around July 2016 by an Islamic pro-family group, Family Love Alliance (*Aliansi Cinta Keluarga*, ALLA). The petitioners were concerned that there have been systematic movements to seek legalization of same-sex relations. They argued that the concept of same-sex relation is neither recognized nor accepted in Indonesia.<sup>4</sup>

Drawing on previous literature on contentious politics and international relations theory which deal with transnational norms diffusion, I argue that the contentious nature of norms governing certain “victimless crimes” and norms diffusion fuel social opposition at the domestic level as newer norms become increasingly visible and collide with the norms which are rooted within the heteronormative nation. Thus, efforts to criminalize those who do not conform to the norms has occurred. Resistances or countermovements may externalize and mobilize against the newly promoted norms endorsed by the proponents of sexual rights. Following Ayoub (2016), in this paper visibility is seen as the bridge between mobilizations and states—shifting the boundaries between public and private spheres and calling on the state and the public to deal with what previously was kept behind closed doors. Ayoub (2016) highlights the ways in which visibility may lead to either sociopolitical recognition of rights that influence the position of certain groups or to resistance at the domestic level. In Indonesia, acceptance does not appear to follow visibility, particularly in the promotion of sexual rights.

Previous research has offered plausible concepts and mechanisms for understanding norms diffusion not only within a country but also across borders (see for example: Keck and Sikkink 1999; McAdam, Tarrow, and Tilly 2001:333). The process of diffusion involves building alliances, generating pressure, and knowledge exchange across borders (Ayoub 2016). Keck and Sikkink (1999) highlight the existence of transnational advocacy networks which may generate normative pressure to push certain contentious issues already present in international

---

<sup>4</sup> Court transcripts of case No. 46/PUU-XIV/2016 (source: <http://www.mahkamahkonstitusi.go.id/>).

politics into the domestic sphere—thus, facilitating norms creation and diffusion at the domestic level. The diffusion of contentious norms into the domestic sphere has received less attention. As Ayoub (2016:39) points out, “previous studies focusing on contentious norms either overestimate diffusion to the domestic level or underestimate possible resistance and conflict between norms.” I aim to focus on changes generated from such a process—how contentious norms diffusion can potentially provoke resistance at the domestic level.

Norms diffusion involves changes in the behavior of the state and changes in the behavior of individuals within a society (Ayoub 2016). In this paper, I look into the shifting of the state’s regulations and attitudes of both elites’ and the public toward those who do not conform to the rooted gender norms to see how diffusion of contentious norms to the domestic level (potentially) generates changes in the behavior of the state and of individuals. The pathway through which norms diffusion occur and generate changes, however, will not be explained in this paper.

I use secondary scholarship and materials to conduct my study, including newspaper reports and reports from organizations such as the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and the Human Rights Watch (HRW). I rely on these materials to capture the alteration in the state’s regulations and social perceptions concerning certain “victimless crimes.”

This paper is organized as follows: First, I set the stage on which this phenomenon has occurred including how mechanisms to control human sexuality have been shifting in Indonesia. Second, I discuss the theoretical lens of my study based on previous scholarship in contentious politics and international relations theory. Last, I discuss why efforts to criminalize sexuality have occurred using that theoretical lens and offer a preliminary conclusion.

## 2. SETTING THE STAGE

### 2.1 Challenging heteronormativity

Indonesia is located in the Southeast Asian region that historically boasted a remarkable sexual diversity and has held relative tolerance toward it (Peletz 2011). Traditionally, gender ambiguous figures and transvestites were present in everyday life and relatively accepted as part of society, particularly in rituals and performances (Blackwood 2005a; Boellstorff 2005; Peletz 2011). Despite this sexual diversity, however, Indonesia has moved toward marginalization and criminalization of non-heteronormative sexual identity and behavior. Here, heteronormativity is defined as “the dominant pattern of partnership in a specific context and the model upon which a so-called ‘stable’ family life and, by extension, social life is built” (Wieringa, Bhaiya, and Katjasungkana 2015:4). Peletz (2011) emphasizes that heteronormativity is irreducible to heterosexuality. More than just promoting “normalized sexual practices,” it “informs the normativity of daily life, including institutions, laws and regulations that impact on the sexual and reproductive lives of members of society as well as the moral imperatives that influence people’s personal lives” (Wieringa 2012:518). Nevertheless, heteronormativity and heterosexuality are closely linked since heteronormativity informs what kind of sexuality is regarded as the “natural” order (Wieringa 2012).

During the authoritarian New Order regime, heteronormativity was strongly promoted—undergirding the state’s public policies and propaganda regarding family life (Boellstorff 2004, 2005; Blackwood 2007). What was guarded by the state and bolstered by a certain Islamic view was the gender binary that confined women to motherhood and wifedom and assigned men to leadership positions and the public domain (Blackwood 2005a, 2007; Wieringa, Bhaiya, and Katjasungkana 2015). Those who did not conform to this heteronormativity risked being ostracized by their communities (Bennett 2005a). Rather than through the formal legal system, however, transgressive behavior was disciplined through informal mechanisms such as gossip and ostracism (Peletz 2011).

Heteronormativity appears to be increasingly diluted in the post New Order regime. Due partly to the sudden elimination of censorship, transgressive sexual behaviors are increasingly visible in mass media (Blackwood 2007; Kitley 2008; Brenner 2011). Another example is the issue of sexual permissiveness that is often contemplated by both conservative and liberal alike. Although no reliable data are available concerning the incidence of premarital sex in the entire population, some reports indicate that the number is rising.<sup>5</sup> Studies concerning premarital abortion (Hull, Sarwono, and Widiantoro 1993; Utomo and McDonald 2009) and the expansion of the sex industry in urban and rural areas (Situmorang 2003; Utomo and McDonald 2009) also highlight increased sexual permissiveness in Indonesia. While several studies discuss risks of sexual permissiveness in relation to health (for example: Utomo and McDonald 2009) and family resilience (Singarimbun 1997), this is not to suggest that increased sexual permissiveness is the root of such problems.

### 2.3 Rights and regimes

As many other societies, Indonesian society has undergone rapid social change related to globalization and the development of information technology (Wieringa, Bhaiya, and Katjasungkana 2015). One such change related to this paper is the growing intensity of discourses on human, women's and sexual rights. Discourses on human rights, including women's and sexual rights, have been promoted since the early 1990s by world conferences such as the International Conference on Population and Development (ICPD) in 1994 (Wieringa, Bhaiya, and Katjasungkana 2015). Sexual rights were recognized for the first time at this conference—that every individual has the right to pursue a satisfying, safe, and pleasurable sexual life (Wieringa, Bhaiya, and Katjasungkana 2015). Although in 2004 the World Health Organization (WHO) came up with a working definition of these sexual rights, the question of sexual orientation was not explicitly addressed (Wieringa, Bhaiya, and Katjasungkana 2015:36).

---

<sup>5</sup> For previous research and reports see for example: Situmorang (2003); Statistics Indonesia and Macro International (2008); Diarsvitri et al. (2011); Statistics Indonesia et al. (2013).

Furthermore, WHO's working definition is not legally binding and does not put any obligation on member states (Wieringa, Bhaiya, and Katjasungkana 2015). In 2006, however, a set of international principles based on rights to self-determined sexual orientation and gender identity called the Yogyakarta Principles was developed (Wieringa, Bhaiya, and Katjasungkana 2015).

In 1991, Indonesia faced condemnation for the Dili Massacre from the international world. After facing international pressure, the New Order regime established the National Commission on Human Rights in 1993 (Curnow 2015). A highly-monitored press limits information that could be accessed by Indonesians at that time. Nevertheless, there was a heightened awareness of human rights—rights as citizens of a sovereign state (Offord and Cantrell 2001). Also significant was the establishment of the Human Rights Court and the National Commission on Violence Against Women (*Komnas Perempuan*) in 1998 (M. Ford 2011). Indonesia has signed and ratified several international conventions to show commitment toward the protection of human rights (M. Ford 2011). Parallel to the intensification of Indonesia's engagement with international standards that impact the promotion of human rights, however, backlash has risen from conservative elements to push back international norms such as those concerning gender equality (Budianta 2006:918) and the rights of sexual minorities (Blackwood 2005b, 2007).

Previous studies document the existence of organizations promoting the rights of sexual minorities since the 1980.<sup>6</sup> Nevertheless, as Blackwood (2007) demonstrates, these organizations operated underground prior to the end of the New Order regime. Only then did

---

<sup>6</sup> Organizations and publications geared toward gay and lesbian communities emerged in the 1980s as a response to the gay rights movements in Western countries. Lambda Indonesia existed from 1982-1985 and published the bulletin *G: the gay lifestyle* (*G: gaya hidup ceria*). Yogyakarta Gay Brotherhood (PGY, *Persaudaraan Gay Nusantara*) was established in 1985 and published the limited circulation zine *Jaka*. In 1987, the Working Group for Indonesians Lesbians and Gay Men (KKLGN, *Kelompok Kerja Lesbian dan Gay Nusantara*) was established and published the bimonthly *Gaya Nusantara*. This group is still active under the name GAYa Nusantara and has a tight connection with international organizations dealing with AIDS. A prominent lesbian organization, Chandra Kirana, has existed since 1993, and some other organizations which promote sexual rights and tolerance for sex, gender, and sexuality emerged (or formalized) later, such as Ardhanary Institute in 2005 and Arus Pelangi in 2006 (see: Oetomo and Emond 1991; Offord and Cantrell 2001; Blackwood 2007).

these organizations become increasingly visible, cashing in on international support and the democratic movement to claim their rights. Offord and Cantrell (2001) also highlight that the representation of these rights in Indonesia “is known by their omission in both the legal and political discourse.” These rights were not recognized as part of the human rights guaranteed by the state.

M. Ford (2011) argues that neither regime change nor increased access to Indonesia for the international rights community has immediately resulted in the adoption of human rights in policy and the legal framework. The mismatch between the Universal Human Rights and the Indonesian context revolves around the so-called Asian value (M. Ford 2011), legal pluralism (M. Ford 2011; Hadiprayitno 2010; Curnow 2015), bureaucratic and structural barriers (Robison and Hadiz 2004 in M. Ford 2011), and the limits of the Indonesian Constitution (Lerner 2013). In addition, many scholars express cynicism regarding the adoption of human rights in legal and political spheres, perceiving it mainly as an effort to appease international criticism or to situate Indonesia among other democratic countries (M. Ford 2011; Curnow 2015).

In the absence of an overarching agenda, human rights activists in different rights fields follow different trajectories (M. Ford 2011). This divergence is also due partly to the varied agendas of the international rights movement—oftentimes local human rights groups reflect the agendas of their international allies and especially their donors (M. Ford 2011). According to M. Ford (2011), the outcome of human rights movements in different rights fields depends on the strength of the international lobby, the extent to which international norms regarding human rights are taken up locally, and the political costs of the “acquiescence to international pressure.”

Characteristics of movements also vary across regimes and different rights fields. While movements to promote women’s right are relatively neutral (M. Ford 2011), such is not the case for movements promoting the rights of sexual minorities (Offord and Cantrell 2001). During the post-New Order regime, however, movements in both rights fields have faced significant

challenges. Decentralization has made it possible for conservative groups to lobby for criminalization of those who do not conform to heteronormativity at subnational levels. Significant pushback from the conservative element in the form of legal changes that police women's behavior and confine them to more "traditional roles" has hampered the promotion of international norms regarding gender equality (Budianta 2006; M. Ford 2011).

### 2.3 Shifting identity

Global Human Rights instruments has become problematic in Indonesian context. Built upon a model of a fixed binary, they fail to incorporate the sex and gender pluralism that is present within Indonesian society (Wieringa, Bhaiya, and Katjasungkana 2015). Boellstorff (2004, 2005), for example, discusses how *gay* and *lesbian* in Indonesia are to be understood differently from gay and lesbian in Western context. Nevertheless, as highlighted by Offord and Cantrell (2001), these identities are increasingly altered due to "the globalization of an essentialist stance toward homosexuality and contemporary gay and lesbian representations." What I refer to as a "shift" in this section is not a unidirectional change of one's identity, but a shift from a more fluid construction of identity into something more fixed. Defining identity is, indeed, a contentious subject in many fields of study and has also become problematic in debates concerning human rights—how to reconcile the need for a fixed identity and the fluid subject. The question of constructing a recognizable political identity collides with Indonesian sexuality in its actuality (Offord and Cantrell 2001).

Organizing around an identity provides a catalyst for gay and lesbian activism in Western context as well as in urban Indonesia. There exists, however, significant differences between the experiences of those in Western context and those in Indonesia due partly to Indonesians' attitudes toward family and community (Offord and Cantrell 2001; Boellstorff 2004), a strong notion of proper citizenship promoted by the state in the so-called "family principle" (*azas kekeluargaan*), and "incommensurability" between religion and desire (Boellstorff 2004, 2005).

### **3. THEORETICAL LENS**

#### 3.1 Politics of visibility as a strategy (?)

The gay liberation and women liberation movements in the 1970s-early 1980s in the United States exemplify what can be achieved through public visibility. Coming out has become a key strategy in movements as the atomized experience of “closeted” individuals’ shifts to the public sphere. Visibility draws others to them, thus increasing the number of mobilized participants in their struggles toward emancipation (Greenberg 1997). “Coming out” becomes a way to conceptualize identity, the bridge between individual experience and collective experience, and eventually a strategy for social change. Whittier (2012:145), for example, defines politics of visibility as an action of collective coming out that involves not only redefining individual identities but also transforming mainstream culture, institutions, and public policy (Whittier 2012). In this sense, visibility is understood as a possible movement strategy that activists can choose whether or not to engage.

In this paper, however, visibility does not refer specifically to a strategic movement choice. Rather, I use the concept of norm visibility defined by Ayoub (2016:22) as “the relative ability of governments and publics to see and interact with new ideas and images that define the standards of appropriate behavior within their international societies.” More specifically, Ayoub (2016) differentiates interpersonal visibility from public visibility. Interpersonal visibility is what brings individuals into interaction with one another, while public visibility refers to the collective coming out of a group to engage and be seen by society and the state. It is this public visibility that is the focus in this paper.

Ayoub (2016) demonstrates the ways in which norm visibility is essential for diffusion of transnational norms promoting LGBT rights across Europe. To Ayoub (2016:4), “the key to understanding processes of social change lies in a closer examination of the ways in which—and the degree to which—marginalized groups make governments and societies see and interact

with their ideas.” Although I do not intend to elaborate the mechanisms and processes through which norm visibility operates and generates social changes, I argue that norm visibility may explain the increase of countervailing forces against the promotion of sexual rights and the tightening of regulations to enforce heteronormativity in Indonesia.

### 3.2 Political Opportunity Structure, Norms Diffusion, and Visibility

Political Opportunity Structure (POS) is generally defined as “features of regimes and institutions that facilitate or inhibit a political actor’s collective action to changes in those features” (Tilly and Tarrow 2007:49). Criticisms have been made against this rigid definition of POS.<sup>7</sup> Among the notable criticisms are those regarding POS’ structural bias (Kurzman 1996) and inconclusive empirical evidence (Koopmans 2005). Kurzman (1996) highlights that a tight correlation between subjective perceptions and the structure of opportunities may not hold true if “challengers fail to perceive opportunities or if they perceive opportunities when none exists.”

Later, McAdam, Tarrow, and Tilly (2001) developed a less rigid definition of POS that leaves more room to the role of agency (Koopmans 2005; Ho 2016). Most opportunities are not structural; rather they are subject to attribution—they must be visible to potential challengers and be perceived as an opportunity (McAdam, Tarrow, Tilly 2001: 43). The same goes for threat: “Opportunities and threats are not objective categories, but depend on the kind of collective attribution that the classical agenda limited to framing of movement goals” (McAdam, Tarrow, and Tilly 2001:45). In this paper, POS is defined as circumstances in a particular political system that are identified and attributed as opportunity and are able to create a window of opportunity for collective action within a given context.

Although Tarrow and Tilly (2015:20) argue that political opportunity structure shapes contentious politics mostly at local and national levels, they also recognize the growing

---

<sup>7</sup> Ming-sho Ho (2016), for example, summarizes some of the criticisms toward POS.

connections among peoples and groups across borders. Thus, it is important to look beyond the national border at how global discourses affect the framing of local issues, the formation of transnational networks, and movement coalition (Tarrow and Tilly 2015). Looking at the diffusion of norms governing certain “victimless crimes” (often under the broader umbrella of human rights) provides a case in which imported international norms meet domestic politics in Indonesia. In this paper, norms diffusion is defined as “the spread of an innovation to a state or society, when the decision to adopt the innovation is influenced by some other state or society. In this case, diffusion is related party to the processes by which people work to effect social and political change” (Ayoub 2016).

Transnational advocacy networks may push normative pressure to put certain transgressive issues already present in international politics into the domestic sphere, which may cause norm diffusion. Risse and Sikkink (1999) argue that effective links between transnational activist networks and local activists facilitate norms diffusion and that the effectiveness depends on the openness of political opportunity structures at domestic and international levels. In a closed domestic context, international allies may help local activists try to bring pressure from the outside (Keck and Sikkink 1999: 93). This so-called “boomerang” pattern of transnational networks targets the state’s behavior and often characterizes human rights campaigns (Keck and Sikkink 1999). The New Order era provides a case in which this “boomerang” pattern occurred. Nevertheless, a more open political environment does not seem to favor the diffusion of international norms promoting sexual rights in Indonesia. Democracy is often perceived as facilitating a tolerant environment in which people may safely “come out.” In the case of movements promoting sexual rights, Encarnación (2014) demonstrates that democracy, by allowing freedom of association, makes it possible for robust civil society to organize. Indonesia, however, provides a variation to such a claim that I will discuss in the next section.

## 4. DISCUSSION

### 4.1 The Breakdown of control mechanisms

As Blackwood (2007:296) notes, “a properly gendered citizenry did not need strict state regulations to govern sexuality.” During the New Order period, there was no need for formal regulations, as gender norms were rigidly produced via public policy and propaganda promoting family life and motherhood. Those who transgress are labelled as deviant and immoral to varying degrees (Bennett and Davies 2015:149). Bennett (2005) demonstrates how shame functions as a regulatory mechanism and shapes sexuality in Indonesia. Shame, thus, served as a sufficient control mechanism during the New Order era. Arneson (2007) explains, “[s]hame in a decent society serves as a mechanism of enforcement of legal norms and also of informal social norms.” Social norms are “instilled through education and socialization by the exemplary behavior of others” in which the state also plays a role (Arneson 2007).

Shame confines individual experience which is considered deviant to the private sphere. Although transgressors are present in everyday life, represented in the media, and able to organize (under certain conditions) as I summarized in the previous section, their existence was never political. People tend to conform and negotiate with the norms by having clandestine relationships to avoid shame and ostracism (Bennett 2005b). As Schneider (2005) argues, stigma and scrutiny will cause people who do not conform to the norms to retreat from public attention. Nevertheless, stigma is not constant. According to Goffman (1963) stigma is related to the social construction—whether or not an attribute is stigmatized depends on the context and the “social audience” (Goffman 1963). In fact, stigma does not work in a society that longer cares. In this case, keeping sexuality private does not equate the concept of “the closet” in which people live their “shameful life” in private.

No matter how entrenched heteronormativity is in Indonesia, its inherent instability opens a possibility for transformation (Wieringa, Bhaiya, and Katjasungkana 2015). As I have explained

in a previous section, heteronormativity appears to be increasingly diluted. This dilution can be read as the changing context and “social audience” and the insufficiency of control mechanisms currently existing in society. The current debates concerning “victimless crimes” both in public and legal spheres indicate that the norms governing sexuality in Indonesia are contested. As Simmons (1969) states, “The crux of it is that the several publics have unequal voices in defining who is deviant and in enforcing their standard.” The assumption is that the more powerful groups control what becomes defined as deviant behavior.

#### 4.2 Out in the open

The collapse of the authoritarian New Order regime in 1998 is commonly treated as a critical juncture in studies of contemporary Indonesia (see for example: Boellstorff 2005; Blackwood 2007; Ford 2011). The end of the New Order authoritarian regime gave rise to “more open expression of both conservative Islamic and more open liberal tendencies in a contestation of sexuality” (N. J. Ford, Shaluhayah, and Suryoputro 2007). The representation of modern gay men and lesbians in the media, despite unfair characterization, has given homosexuality its visibility (Oetomo and Emond 1991; Blackwood 2007). By the end of 1990s, organizations dealing with sexual minorities became more visible, gaining power from democratic movements and international support (Blackwood 2007). This changing political environment coincides with the increased importance of discourse on human, women’s, and sexual rights. Indonesia’s engagement with international standards and conventions on human, women’s, and sexual rights intensified along with the more open political environment. Despite increased permissiveness and visibility, the level of acceptance for those who do not conform to heteronormativity is still relatively low. Instead, the increased visibility appears in parallel to increased hostility in the public sphere.

An ILGA conference was supposed to be held in Surabaya in March 2010, following a proposal from GAYa Nusantara to make Indonesia the conference host (ILGA 2010). Although the

conference was previously endorsed by the local city police, their endorsement was withdrawn after pressure from local media and fundamentalist groups which threatened to disrupt the conference with violent protests (ILGA 2010). Protestors were headed by an ad-hoc coalition of seven conservative and vigilante Islamic groups including the Indonesian Council of Ulema (MUI); the Islamic Defender Front (FPI); and the Hizb-ut-Tahrir (HTI), a local chapter of a worldwide pan-Islamic political network of the same name (ILGA 2010). Later, in December, the FPI forced the closure of the LGBT film festival *Q!* in Jakarta. In June 2012, a book discussion at the Social and Islamic Studies Institute, Yogyakarta, featuring Irshad Manji, a Canadian advocate for the view that Islam accepts homosexuals, was disrupted by a mob led by the Indonesian Mujahidin Council (MMI) (ILGA 2012). A more recent report in 2016 also shows the increased intensity of an onslaught against sexual minorities instead of tolerance. In Yogyakarta, hundreds of people carrying signs reading “LGBT is a disease” stood not so far from a group of rights activists with banners stating “stop attacks on democracy and threats against minorities” (BBC News 2016). What I mention in this paragraph does not capture all the countervailing actions against the promotion of sexual rights in Indonesia, but I hope these examples can provide an illustration of the kinds of countermovements taking place at the street level in the post-New Order era.

A more open political environment—what is expected from a democratic country—is supposed to be related to a better diffusion of international norms, particularly in this case diffusion of norms promoting sexual rights. Encarnación (2014:97) demonstrates a correlation between gay rights and democracy, although he also acknowledges the possibility of democracy being used to undermine the rights of minority. Risse and Sikkink (1999) argue that the openness of political opportunity structures at domestic and international levels facilitates norms diffusion, as it increases the effectiveness of links between transnational activist networks and local activists. Nevertheless, Ayoub (2016) claims that the rate of social and legal recognition of contentious norms may vary across democratic countries despite pressure from international institutions. In

Indonesia, it appears that a more open political environment does not relate to a more effective norms diffusion.

Coming out may refer to a way for social movements participants or those allied with them and their constituencies to disclose their identity, bridging personal and collective experience, and push for social changes (Whittier 2012). Coming out also means that the individuals engaged in such actions have crossed an important threshold by which, as D’Emilio (1997) highlights, they make themselves vulnerable to a backlash by giving up the safety of the “closet.” These two explanations, I think, are observable in the examples above. The two contending groups’ meeting on the street in Yogyakarta, displaying different signs—one supporting the rights of sexual minorities while the other condemning LGBT (BBC News 2016)—also demonstrates how the new norms are now visible and can engage the publics and state officials to interact with the new ideas and images governed by these norms.

#### 4.3 Norms Diffusion, [in]visibility and resistances<sup>8</sup>

Blackwood (2007: 303-304) argues that efforts to criminalize “victimless” sexual behavior resemble a moral panic due to the shifting of political regime. I find that regime change alone is less salient as an explanation for the emergence of criminalization of certain sexual behavior. Open political opportunity often relates to more effective diffusion and adoption of international norms promoting human rights (Encarnación 2014; Keck and Sikkink 1999). Prior to the authoritarian New Order regime (1965-1998), Indonesia had experienced a democratic regime but had not witnessed efforts to criminalize “victimless” sexual behavior, at least not with the same intensity as what has occurred in the post-New Order era. This fact complicates the view that a democratic environment provides an opportunity for contending groups to advance their interest in regulating sexuality through the changing of the state’s law. I suggest that

---

<sup>8</sup> Data in this section draw mainly on the report by ILGA in October 2016 of state-sponsored homophobia and also reports from HRW.

democratization indeed provides political environment that is susceptible to the claim making process as shown in this paper, but democratization alone cannot fully explain why such efforts to criminalize certain “victimless crimes” occur—*why this? why now?*

Blackwood (2007) argues that visibility does not really evoke such change, although she agrees that visibility may lead to increased violence against those who transgress heteronormative norms. Her argument is based on her observation that, indeed, organizations and communities dealing with sexual minorities (those who are regarded as transgressors) have existed since the late 1980s. According to Blackwood (2007), these identities and behaviors were visible by then. I do not dispute the existence of these organizations and communities prior to the end of New Order regime. Nevertheless, I do think that this argument needs to be investigated further. *What kind of visibility?* It is useful to separate the two kinds of visibility: interpersonal visibility and public visibility. Borrowing Ayoub's (2016) definitions, interpersonal visibility is what brings individuals into interaction with one another, while public visibility refers to the collective coming out of a group to engage and be seen by society and state. Although I agree that transgressive sexual behavior is not new, it was not previously a public's matter. Organizations and media dealing with sexual minorities may have existed but their existence was not political. As the visibility of the norms promoting sexual rights becomes increasingly visible, it force conservative element in society and the state to deal with the what before was commonly discussed behind closed doors.

In this paper, norms diffusion can be understood as “the spread of an innovation to a state or society, when the decision to adopt the innovation is influenced by some other state or society” (Ayoub 2016: 7). As norms are related to changes in behavior, behavioral dimension can be a proxy to observe norms (Katzenstein and Byrnes 2006; Ayoub 2016). Behavior changes in this paper are measured by looking at the state's regulations and social attitude toward sexual minorities. The assumption is that effective norms diffusion will produce protective regulations for sexual rights and/or anti-discrimination laws and create a more positive social attitude toward

sexual minorities. The findings show that, despite the anti-discrimination law in employment enacted in 2003 (Carroll 2016), resistances occur both at state and individual levels (**Table 1-4**).

Based on reports from ILGA, attitudes of the Indonesian public and elites toward those who do not conform to heteronormativity are varied (Carroll 2016; Carroll and Robotham 2016). Visibility of those who are considered transgressors is relatively low (**Table 1**). Level of acceptance toward family members who do not conform is also low. Nevertheless, more than 50% of respondents think that sexual minorities should not be bullied (**Table 1**). While less than 50% of the public think that those who do not conform to heteronormativity should be criminalized (**Table 2**), acceptance toward private consensual same-sex relationships and same-sex marriage is, however, still low.

Apart from public attitude, I also investigate elites' attitude toward sexual minorities and their rights. In line with Blackwood's ([2005], 2007) observations, I find outright rejection from Indonesian elites toward those who do not conform to heteronormativity. Open political environment, apparently, does not guarantee the absorption of sexual rights norm into Indonesian domestic politics. Apart from the increased vigilante activities, Indonesia has witnessed hostile remarks from state officials, clerics, public intellectuals, and academia toward these identities and behaviors (Blackwood [2005b] 2007; Carroll 2016).

In March 2015, the MUI issued a *fatwa* (religious ruling) that deemed homosexuality *haram* (proscribed by Islamic law)—this statement has no legal standing but is nonetheless important. The *fatwa* condemned homosexuality as a disease that needs to be cured and proposed a series of brutal penalties, ranging from caning to death (Carroll 2016).<sup>9</sup> It was, as Carroll (2016) puts it, “hard to take the March 2015, MUI fatwa seriously—the call for criminalizing homosexual acts seemed so out of line with the Indonesian government’s general patterns of ignoring LGBT.”

---

<sup>9</sup> The original report can be found in: Antonia Molloy, ‘Indonesia’s highest Islamic clerical body issues fatwa proposing death penalty for people caught having gay sex,’ *The Independent*, 15 April 2015.

In January 2016, Muhammad Nasir, the Minister of Technology Research and Higher Education issued a statement as a reaction to the existence of what he perceived as a university-affiliated LGBT community, the Support Group and Resource Center and Sexuality Studies (SGRC):

LGBTIQ community should be barred from university campuses as they corrupted the morals of the nation when a university was meant to uphold moral values and the values of the ancestors of Indonesia (Carroll 2016).

This view is not unchallenged. Although SGRC is not an official University student body, Center of Gender and Sexuality Study (*Pusat Kajian Gender dan Seksualitas*, Puska Genseks) of University of Indonesia publish a statement supporting SGRC, stating:

By prohibiting sexuality to be studied and researched, Menristek [Muhammad Nasir] closes the opportunity to expand knowledge and the implementation of research findings to the plural and multicultural Indonesian society...We [Puska Genseks] view LGBT as a complex issue, which cannot be judged solely based on subjective moral grounding...LGBT issue touches upon the rights of [Indonesian] citizens guarded by the Constitution (Puska Genseks 2016).

Nasir's statement, however, was followed by those of other state officials such as Ridwan Kamil who warned citizens of Bandung (the capital of West Java province) that any discussion of LGBT in social media will be banned.<sup>10</sup> HRW documents a series of comments against sexual minorities by government officials beginning in January 2016 which grew into an outpouring of intolerance from vigilante groups and mainstream religious organizations (Human Rights Watch 2016). Both ILGA and HRW reported that seven cabinet members and at least five political parties' representatives joined in to condemn LGBT and calling for restriction and compulsory treatment. Among these notable people is the Minister of Defense, calling LGBT "more of a threat than nuclear warfare (whose destruction was limited to specific areas, not threatening a whole nation)" (Carroll 2016).

---

<sup>10</sup> Original report can be found in: 'Bandung Mayor: You can support LGBT rights, just don't do it on social media or I'll have you blocked,' *Coconuts Jakarta*, 27 January 2016.

The setback of sexual rights promotion also occurred in the legal arena. Despite entrenched heteronormativity, “victimless” sexual behaviors have never been prohibited under the Indonesian Penal Code (Blackwood 2007). Since the collapse of the authoritarian New Order in 1998, however, Indonesia has moved toward explicit prohibition of non-heteronormative sexual identities and behaviors through proposed revisions of the Indonesian Penal Code (**Table 3**). To complicate the picture, Law No. 22 on Regional Government was enacted in 1999. The law gives full autonomy to each district which also means that the power to legislate personal and moral issues was extended to regional governments (Utomo and McDonald 2009). Under President Habibie’s government (1998-1999), the Province of Aceh received its special status, declared by Law 44/1999 (Salim 2010). This autonomy was followed by the implementation of Islamic law (Law 18/2001) and confirmation of the jurisdiction of Shari’a Court (*Mahkamah Syar’iyah*) (Salim 2010). Due partly to this decentralization and particularly to the legitimation of Islamic law in Muslim areas such as Aceh and Palembang, sexual behavior is actively policed. Aceh province is an exemplary case of the consequences of such legislation on the exertion of sexual rights. Although it is often seen as a remedy for Aceh secession efforts (Salim 2008), the administration of Islamic law can also be read as “a project of future-oriented social transformation” (Feener 2013).

Relevant to my study, Brenner (2011) notes that many Islamic bylaws tend to focus on policing human behavior related to morality and sexuality. Such development of Islamic bylaws and subnational regulations (**Table 4**) can be read as a result of the increase in influence of conservative Islam or increased suspicion toward the promotion of sexual rights. Although these bylaws are supported by the MUI, several prominent organizations such as *Komnas Perempuan* and the National Human Rights Commission (Komisi Nasional Hak Manusia, Komnas HAM) express their concern about how these bylaws appear to violate human rights and tend to discriminate against women (Butt and Parsons 2014).

After being stalled for years, revising the Indonesian Penal Code has become a priority of the National Legislation Program (*Program Legislasi Nasional*, Prolegnas) under Joko Widodo's presidency (Tempo 2017; Hukum Online 2016a). The current draft includes provisions that seek to criminalize *zina* (commonly understood as any extra-marital sexual relation) and homosexuality (**Table 3**). Several political parties currently in the legislature agreed on the criminalization of *zina*, while three others rejected it (Wirawan 2016).<sup>11</sup> Despite increased Islamic party representation in the legislature, previous study shows that the pushing of Islamic norms enjoys little support (Butt 2003). It is still possible that these provisions may be voted down by the legislature. To date, the outcomes are uncertain.

During the turbulent transition between 1999 and 2003, Indonesia witnessed the emergence of the Constitutional Court that serves as an arbiter in the country's chaotic politics (Mietzner 2010). Dressel (2015) notes, there is an increasing trend to rely on courts and the judicial process to address contentious debates including "core moral predicaments, public policy questions, and political controversies." Parallel to the ongoing process to revise the Penal Code in the legislature, a petition for judicial review was brought to the Constitutional Court of Indonesia by AILA.<sup>12</sup> The petition includes a request to review Article 284 paragraphs 1 to 5 and Article 292 which regulate "victimless" sexual behavior, as to whether they contradict the Constitution (**Table 3**). Several expert witnesses testified at the Constitutional Court, including academics from some notable universities and the MUI. Despite reluctance from the government's representatives, the judicial review is going forward. Against the petition were *Komnas*

---

<sup>11</sup> During the Working Committee Meeting (*Rapat Panitia Kerja*) of the Council of People's Representatives, several political parties agreed for Article 484 in the draft: *Partai Keadilan Sejahtera (PKS)*, *Partai Persatuan Pembangunan (PPP)*, *Partai Kebangkitan Bangsa (PKB)*, *Partai Amanat Nasional (PAN)*, *Partai Nasdem*, *Partai Gerakan Indonesia Raya (Gerindra)*, and *Partai Hanura*; three rejected (*Partai Demokrasi Indonesia Perjuangan (PDI-P)*, *Partai Golkar*, and *Partai Demokrat*). Article 484 expands article 284 in the current Penal Code to criminalize any extra-marital sexual relations (Wirawan 2016).

<sup>12</sup> AILA is a small non-governmental organization (NGO) based in Jakarta. Its membership includes several public intellectuals and members of academia. The petition was brought by 12 women members, including AILA's leader herself—Rita Hendrawati Soebagyo. The petition was filed as Case No. 46/PUU-XIV/2016 in June 2016 (source: <http://www.mahkamahkonstitusi.go.id/>).

*Perempuan* and several prominent civil organizations such as Legal Aid Foundation (YLBHI) and Institute for Criminal Justice Reform (ICJR).<sup>13</sup>

The way the public and elites have responded shows that norm visibility does exist. Both the state and the public see and respond to the new ideas and images that define the standard of behavior. These responses signify not only interpersonal visibility, but also public visibility in which collective coming out is seen by the public and the state. While recognition and acceptance do not follow visibility in Indonesia, in other cases visibility leads to significant achievements, such as in the 1970s gay liberation and women's liberation movements in the United States (D'Emilio 1997). D'Emilio argues, however, that this success has contributed to overreliance on a strategy of coming out and obscured "the institutionalized ways in which homophobia and heterosexism are reproduced" (D'Emilio 1997:170). Thus, I do not intend to suggest that by coming out, sexual minorities will necessarily end their oppression. As Ayoub (2016) points out, visibility may lead to either sociopolitical recognition of rights of certain groups or to resistance at the domestic level.

In 2012, Indonesia faced international pressure in which it was specifically asked to address violence against sexual minorities which were on the increased. Responding to the urge to eliminate laws and bylaws that criminalize and discriminate against sexual minorities, Indonesia issued a statement: "Here, the State representatives may have been referring to the fact that Qanun Jinayah Aceh (Shari'a Law) is legal guidance on regulations about forbidden acts or wrongdoings according to the teaching of Islam (Shari'a), from which interpretations flows, rather than a book of rigid statutes that overtly outlaw same-sex sexual relations, *per se*."<sup>14</sup> The United Nations Committee on Economic, Social and Cultural Rights also urged Indonesia to rectify what

---

<sup>13</sup> Court transcripts of case No. 46/PUU-XIV/2016 (source: <http://www.mahkamahkonstitusi.go.id/>).

<sup>14</sup> The exchange occurred in the 2012 Universal Periodic Review under United Nations Human Rights Office of the High Commissioner, the statement was quoted from Carroll (2016).

appears to be violations to these international convention.<sup>15</sup> The reluctance to address the issue of violence toward minorities and sexual rights appears to demonstrate the selective implementation in which the state may engage. The “boomerang” pattern that Keck and Sikkink (1999) suggest, while working *relatively* well in addressing gross human rights violation (M. Ford 2011), is not really effective in promoting the rights of sexual minorities.

Norms diffusion promoting sexual rights has not been effective in Indonesia. Instead of recognition and acceptance, norms diffusion has met with significant resistance and backlash in both public and legal spheres. Eric Heinze’s (1995) observations prove to be true, as he asserts “as the frontiers of human rights advance, prospects for cultural disagreement increase” (Heinze, 1995: 70 in Offord and Cantrell 2001). Nevertheless, previous studies show that sometimes backlash is more preferable than silence. In other settings, contestation against sexual minorities when they “come out” is expected but rarely leads to a sustained backlash (Ayoub 2016). For example, in Poland, where the Catholic church has a strong role in the process of nation-building, resistances occur but that it can be self-defeating and enhance the salience of the newer norm in the domestic setting (Ayoub [2014], 2016). To date, however, Indonesia has not witnessed any pushback (or at least, I did not capture any) against discrimination, violence, and criminalization of sexual minorities. Not that efforts to promote sexual rights are futile. The fact that several prominent civil organizations stand up against criminalization of “victimless crimes” and that less than 50% of the public think they should be criminalized shows, I think, show a meaningful acceptance of sexual rights. It is also worth noting that more than 50% of the public think that human rights should be applied to everyone, regardless of sexuality and gender expression (**Table 2**). Equally important is that a large portion of the respondents has confusion

---

<sup>15</sup> Original source: Committee on Economic, Social and Cultural Rights, concluding observations on the initial report of Indonesia, E/C.12/IDN/CO/1, 19 June 2014, at para.6. Documented from ILGA’s report on state-sponsored homophobia (Carroll 2016)

or uncertainty regarding sexuality and gender constructions—something that, perhaps, can be changed.

#### 4.4 The shifting boundaries and colliding norms

During the new order regime, heteronormativity was strongly guarded by the state, sweeping those who deviate from the norms under the rug. Thus, provide a safe place in which they can retreat from public scrutiny while at the same time isolate them from the politics. Coming out, however, render these “invisible” people visible and subject to scrutiny and state’s regulation. Engaging in coming out, they relinquish the safety of the closet and occupy public space—shifting the boundaries between public and private. Both coming out as a movement strategy and queer theory assume the desirability of public visibility. This notion, however, is problematic in Indonesian context in which the promoted new norms meet significant countervailing forces. *Does public visibility prove to be desirable in the way Indonesians understand their sexuality?*

The construction of sexual identity in Indonesia is not isolated from global discourses. The 1990s witnessed the shifting of sexual identity in Indonesia due to globalization of a more fixed stance toward non-normative identity and representation of contemporary gay and lesbian (Offord and Cantrell 2001). One of the reasons why human rights instruments are problematic is that they are also built on the binary heteronormative model of sexes and genders—thus leaving little space for gender and sexual pluralism (Wieringa, Bhaiya, and Katjasungkana 2015). As Greenberg (1997:179) notes, “to facilitate communication and collective action humans map their perception of the world’s plenitude cognitively into categories that simplify complexity. They ignore some features of the terrain, highlight others, and sometimes represent features that don’t exist.” This simplification often fails to recognize distinction, but in the way that human language and social life operate, simplification of categories is unavoidable (Greenberg 1997:179). Classifying is to accept that there will be those who are excluded. As previously “invisible” people come out and conform to more fixed categories, there are those who are excluded because they do not fall under any categories of the new classification system.

## 5. CONCLUSION

In this paper, I question why efforts to criminalize of “victimless crimes” have occurred. I argue that efforts to criminalize “victimless crimes” emerged as the increasingly visible norms promoting sexual rights collide with the norms which are rooted within the heteronormative nation. Utilizing Ayoub’s (2016) concept of norms diffusion and visibility, I investigate how both public and the state respond to norms diffusion and public visibility.

I conclude that visible norms promoting sexual rights in Indonesia lead to various resistances and countermovements, including efforts to criminalize “victimless” sexual behavior. Although for some cases visibility is a preferable strategy in promoting contentious norms, in Indonesia it provokes resistances that are followed by repression by the state, rather than recognition and acceptance. Visibility appears to be perceived as a threat and provokes contestation that pushes people to mobilize against these promoted newer norms. This is not to say that visibility as a strategy is not favorable for promoting sexual rights. Despite the occurrence of countermovements and repressions, it is premature to predict that recognition and acceptance will not take place. Even “first-mover” countries, such as Nordic countries and the Netherlands, which were early adopters of sexual rights, need decades to crystalize newly adopted norms into their legislative and legal frameworks (Ayoub 2016). Thus, rather than interpreting the backlash as a failure in the promotion of sexual rights, I suggest that the struggle may continue.

Although this paper deals with normative values, it is not my goal to evaluate the normative essences of the contending norms. Nor is it my goal to juxtapose Indonesian politics with “forward-thinking” international norms. Previous studies have expressed caution about cultural essentialism in the promotion of certain norms under the banner of human rights (see for example: Bielefeldt 2000). Conrad (2014) and Ayoub (2016) also note the pitfall of essentialism in some transnational activism, questioning both the power relation and the normative contents of demands promoted in such activism. While I also sympathize with these notions, my aim is

to better understand the way in which the spread of international norms governing “victimless crimes” (often subsumed under the broader notion of universal human rights) faces significant backlash in the Indonesian context.

The question of how these international norms under the banner of human rights spread across the world and meet resistances are of particular interest. It may be fruitful for future research to explore the mechanisms through which different actors and institutions within a certain context with particular histories and systems of belief respond to the diffusion of these contentious norms and their visibility. How do activists perceive the risk of visibility in a specific context and navigate around it? When and how is visibility, rather than the safety of the “closet,” an option in advancing contentious norms governing sexual rights, and vice versa? Which actors have the power to frame such contentious issues and how do they situate themselves within the movements? These questions are worthy of further investigation.

\*\*\*

## REFERENCES

- Arneson, Richard J. 2007. "Shame, Stigma, and Disgust in the Decent Society." *The Journal of Ethics* 11 (1): 31–63. doi:10.1007/s10892-006-9007-y.
- Ayoub, Philip M. 2016. *When States Come Out: Europe's Sexual Minorities and The Politics of Visibility*. New York, USA: Cambridge University Press.
- Ayoub, Phillip M. 2014. "With Arms Wide Shut: Threat Perception, Norm Reception, and Mobilized Resistance to LGBT Rights." *Journal of Human Rights* 13 (3): 337–62. doi:10.1080/14754835.2014.919213.
- BBC News. 2016. "The Sudden Intensity of Indonesia's Anti-Gay Onslaught." *BBC News*, February 29, sec. Asia. <http://www.bbc.com/news/world-asia-35657114>.
- Bennett, Linda Rae. 2005a. *Women, Islam and Modernity: Single Women, Sexuality and Reproductive Health in Contemporary Indonesia*. London; New York: RoutledgeCurzon. <http://public.eblib.com/choice/publicfullrecord.aspx?p=199898>.
- . 2005b. "Patterns of Resistance and Transgression in Eastern Indonesia: Single Women's Practices of Clandestine Courtship and Cohabitation." *Culture, Health & Sexuality* 7 (2): 101–12. doi:10.1080/13691050412331291397.
- Bennett, Linda Rae, and Sharyn Graham Davies, eds. 2015. *Sex and Sexualities in Contemporary Indonesia: Sexual Politics, Health, Diversity, and Representations*. New York, USA: Routledge, Taylor & Francis Group.
- Bielefeldt, Heiner. 2000. "'Western' versus 'Islamic' Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights." *Political Theory* 28 (1): 90–121.
- Blackwood, Evelyn. 2005a. "Gender Transgression in Colonial and Postcolonial Indonesia." *The Journal of Asian Studies* 64 (4): 849–879.
- . 2005b. "Transnational Sexualities in One Place: Indonesian Readings." *Gender & Society* 19 (2): 221–42. doi:10.1177/0891243204272862.
- . 2007. "Regulation of Sexuality in Indonesian Discourse: Normative Gender, Criminal Law and Shifting Strategies of Control." *Culture, Health & Sexuality* 9 (3): 293–307. doi:10.1080/13691050601120589.
- Boellstorff, Tom. 2004. "Citizenship in Gay Indonesia." *The Journal of Asian Studies* 63 (2): 367–402.
- . 2005. "Between Religion and Desire: Being Muslim and Gay in Indonesia." *American Anthropologist* 107 (4): 575–85.
- Brenner, Suzanne. 2011. "Private Moralities in the Public Sphere: Democratization, Islam, and Gender in Indonesia." *American Anthropologist* 113 (3): 478–90. doi:10.1111/j.1548-1433.2010.01355.x.
- Budianta, Melani. 2006. "Decentralizing Engagements: Women and the Democratization Process in Indonesia." *Signs: Journal of Women in Culture and Society* 31 (4): 915–23. doi:10.1086/504338.
- Butt, Simon. 2003. "Indonesia: Can Legal Diversity Exist within a Single National Law?" [2003] *AltLawJl* 93; (2003) 28(6) *Alternative Law Journal* 304." *Alternative Journal* 28 (6). <http://www.austlii.edu.au/au/journals/AltLawJl/2003/93.html>.
- Butt, Simon, and Nicholas Parsons. 2014. "Judicial Review and the Supreme Court in Indonesia: A New Space for Law?" *Indonesia* 97 (1): 55–85. doi:10.1353/ind.2014.0011.
- Carroll, Aengus. 2016. *State Sponsored Homophobia 2016: A World Survey of Sexual Orientation Laws: Criminalisation, Protection and Recognition*. 11th ed. Geneva: ILGA. [http://www.academia.edu/download/45712454/SSHR2016\\_WEB\\_\\_110516.pdf](http://www.academia.edu/download/45712454/SSHR2016_WEB__110516.pdf).
- Carroll, Aengus, and George Robotham. 2016. *International Lesbian, Gay, Bisexual, Trans and Intersex Association: The Personal and the Political Attitudes to LGBTI People Around the World*. Geneva: ILGA.
- Conrad, Ryan, ed. 2014. *Against Equality: Queer Revolution, Not Mere Inclusion*. Oakland, CA: AK Press.
- Cribb, Robert. 2010. "Legal Pluralism and Criminal Law in the Dutch Colonial Order." *Indonesia*, no. 90: 47–66.
- Curnow, Jayne. 2015. "Legal Support Structures and the Realisation of Muslim Women's Rights in Indonesia." *Asian Studies Review* 39 (2): 213–28. doi:10.1080/10357823.2015.1025695.
- D'Emilio, John. 1997. "Capitalism and Gay Identity." In *The Gender Sexuality Reader*, edited by Micaela di Leonardo and Roger N Lancaster. Culture, History, Political Economy. New York, USA: Routledge.
- Diarsvitri, Wienta, Iwu Dwisetyani Utomo, Teresa Neeman, and Antonius Oktavian. 2011. "Beyond Sexual Desire and Curiosity: Sexuality among Senior High School Students in Papua and West

- Papua Provinces (Indonesia) and Implications for HIV Prevention." *Culture, Health & Sexuality* 13 (9): 1047–60. doi:10.1080/13691058.2011.599862.
- Dressel, Björn. 2015. "Courts and Judicialization in Southeast Asia." In *Routledge Handbook of Southeast Asian Democratization*, edited by William Case, 268–81. New York, USA: Routledge, Taylor & Francis group.
- E.D. Hirsch, Jr., et al., ed. 2002. "Victimless Crimes." In *The New Dictionary of Cultural Literacy: What Every American Needs to Know*, 3rd ed. Houghton Mifflin.
- Encarnación, Omar G. 2014. "Gay Rights: Why Democracy Matters." *Journal of Democracy* 25 (3): 90–104. doi:10.1353/jod.2014.0044.
- Feener, R. Michael. 2013. "Social Engineering Through Shari'a: Islamic Law and State-Directed Da'wa in Contemporary Aceh." *Indonesia Law Review* 3 (3): 285–310.
- Ford, Michele. 2011. "International Networks and Human Rights in Indonesia." In *Human Rights in Asia*, edited by Thomas W.D. Davis and Davis Galligan, 38–55. Cheltenham, UK: Edward Elgar Publishing.
- Ford, Nicholas J., Zahroh Shaluhiah, and Antono Suryoputro. 2007. "A Rather Benign Sexual Culture: Socio-Sexual Lifestyles of Youth in Urban Central Java, Indonesia." *Population, Space and Place* 13 (1): 59–76. doi:10.1002/psp.443.
- Government of Republic of Indonesia. n.d. "Rancangan Undang-Undang 2012." *Hukumonline.com/Pusatdata*.  
<http://www.hukumonline.com/pusatdata/detail/17797/nprt/481/rancangan-uu-2012-kitab-undang-undang-hukum-pidana>.
- . n.d. "Wetboek van Strafrecht (WvS)." *Hukumonline.com/Pusatdata*.  
[http://www.hukumonline.com/pusatdata/detail/lt4c7b7fd88a8c3/nprt/38/wetboek-van-strafrecht-\(wvs\)-kitab-undang-undang-hukum-pidana-\(kuhp\)](http://www.hukumonline.com/pusatdata/detail/lt4c7b7fd88a8c3/nprt/38/wetboek-van-strafrecht-(wvs)-kitab-undang-undang-hukum-pidana-(kuhp)).
- Greenberg, David F. 1997. "Transformations of Homosexuality-Based Classification." In *The Gender Sexuality Reader*, edited by Micaela di Leonardo and Roger N Lancaster, 179–93. Culture, History, Political Economy. New York, USA: Routledge.
- Hadiprayitno, Irene Istiningsih. 2010. "Defensive Enforcement: Human Rights in Indonesia." *Human Rights Review* 11 (3): 373–99. doi:10.1007/s12142-009-0143-1.
- Hermawan, Ary. 2016. "COMMENTARY: Why AILA Is a Bigger Threat to Freedom than the FPI." *The Jakarta Post*. <http://www.thejakartapost.com/news/2016/08/30/commentary-why-aila-is-a-bigger-threat-to-freedom-than-the-fpi.html>.
- Ho, Ming-sho. 2016. "Making an Opportunity: Strategic Bipartisanship in Taiwan's Environmental Movement." *Sociological Perspectives* 59 (3): 543–560.
- Hukum Online. 2016a. "Hukumonline English | Govt to Prioritize Pending Legislation in 2016 Prolegnas." <http://en.hukumonline.com/pages/lt564dbed343e5c/govt-to-prioritize-pending-legislation-in-2016-prolegnas>.
- . 2016b. "Dua Ahli Kritik Pasal Zina Dalam KUHP." *Hukumonline.com*. July 26. <http://www.hukumonline.com/berita/baca/lt57976982a09db/dua-ahli-kritik-pasal-zina-dalam-kuhp>.
- Hull, Terence H., Sarsanto W. Sarwono, and Ninuk Widyantoro. 1993. "Induced Abortion in Indonesia." *Studies in Family Planning* 24 (4): 241. doi:10.2307/2939192.
- Human Rights Watch. 2016. "These Political Games Ruin Our Lives." *Human Rights Watch*. August 10. <https://www.hrw.org/report/2016/08/10/these-political-games-ruin-our-lives/indonesias-lgbt-community-under-threat>.
- ILGA. 2010. "A Statement from the ILGA-ASIA BOARD on the Cancellation of 4th ILGA-Asia Conference in Surabaya, Indonesia." *ILGA*. April 14. <http://ilga.org/a-statement-from-the-ilga-asia-board-on-the-cancellation-of-4th-ilga-asia-conference-in-surabaya-indonesia/>.
- . 2012. "Homophobia Remains a Problem in Indonesia: Scholar." *ILGA*. June 10. <http://ilga.org/homophobia-remains-a-problem-in-indonesia-scholar/>.
- Institute for Criminal Justice Reform. 2016. "Ahli Dalam Judicial Review Perluasan Tindak Pidana Asusila : Kriminalisasi Dan Penggunaan Pidana, Harusnya Sebagai Ultimum Remedium." *ICJR*. <http://icjr.or.id/ahli-dalam-judicial-review-perluasan-tindak-pidana-asusila-kriminalisasi-dan-penggunaan-pidana-harusnya-sebagai-ultimum-remedium/>.
- Katzenstein, Peter J., and Timothy A. Byrnes. 2006. "Transnational Religion in an Expanding Europe." *Perspectives on Politics* 4 (4): 679–694.

- Keck, Margaret E., and Kathryn Sikkink. 1999. "Transnational Advocacy Networks in International and Regional Politics." *Blackwell Publisher*.
- Kitley, Philip. 2008. "Playboy Indonesia and the Media: Commerce and the Islamic Public Sphere on Trial in Indonesia." *South East Asia Research* 16 (1): 85–116.
- Koopmans, Ruud. 2005. "The Missing Link between Structure and Agency: Outline of an Evolutionary Approach to Social Movements." *Mobilization: An International Quarterly* 10 (1): 19–33.
- Kurzman, Charles. 1996. "Structural Opportunity and Perceived Opportunity in Social-Movement Theory: The Iranian Revolution of 1979." *American Sociological Review* 61 (1): 153. doi:10.2307/2096411.
- Lerner, Hanna. 2013. "Permissive Constitutions, Democracy, and Religious Freedom in India, Indonesia, Israel, and Turkey." *World Politics* 65 (4): 609–55. doi:10.1017/S0043887113000208.
- McAdam, Doug, Sidney Tarrow, and Charles Tilly. 2001. *Dynamics of Contention*. First edition. New York, USA: Cambridge University Press.
- Mietzner, Marcus. 2010. "Political Conflict Resolution and Democratic Consolidation in Indonesia: The Role of the Constitutional Court." *Journal of East Asian Studies* 10 (3): 397–424.
- Oetomo, Dédé, and Bruce Emond. 1991. "Homoseksualitas Di Indonesia." *Prisma* XX (7): 84–96.
- Offord, Baden, and Leon Cantrell. 2001. "Homosexual Rights as Human Rights in Indonesia and Australia." *Journal of Homosexuality* 40 (3–4): 233–52. doi:10.1300/J082v40n03\_12.
- Peletz, Michael G. 2011. "Gender Pluralism: Muslim Southeast Asia since Early Modern Times." *Social Research* 78 (2): 659–85.
- Puska Genseks, Puska. 2016. "Pernyataan Kami Terhadap Respon Menristek Atas LGBT Di Perguruan Tinggi." *Puska Gender & Seksualitas UI*. <http://genseks.fisip.ui.ac.id/pernyataan-kami-sebagai-respon-menristek-atas-lgbt-di-perguruan-tinggi/>.
- Salim, Arskal. 2008. *Challenging the Secular State: The Islamization of Law in Modern Indonesia*. Honolulu: University of Hawaii Press.
- . 2010. "Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh." *The Journal of Legal Pluralism and Unofficial Law* 42 (61): 1–29.
- Schneider, Andreas. 2005. "A Model of Sexual Constraint and Sexual Emancipation." *Sociological Perspectives* 48 (2): 255–70. doi:10.1525/sop.2005.48.2.255.
- Singarimbun, Masri. 1997. "Seksualitas Dan Ketahanan Keluarga." *Jurnal Populasi* 8 (1). <https://journal.ugm.ac.id/populasi/article/view/11577>.
- Situmorang, Augustina. 2003. "Adolescent Reproductive Health in Indonesia." *Jakarta: STARH Program*.
- Statistics Indonesia, and Macro International. 2008. *Indonesia Young Adult Reproductive Health Survey 2007*. Calverton, Maryland, USA: BPS and Macro International.
- Statistics Indonesia, National Population and Family Planning Board, Ministry of Health, and ICF International. 2013. *Indonesia Demographic and Health Survey 2012: Adolescent Reproductive Health*. Jakarta, Indonesia: BPS, BKKBN, Kemenkes and ICF International.
- Tarrow, Sidney, and Charles Tilly. 2015. *Contentious Politics*. Second. New York, USA: Oxford University Press.
- Tempo. 2017. "Bikinan Zaman Belanda, RUU KUHP Jadi Prioritas Prolegnas | Hukum | Tempo.co." *Tempo News*. Accessed January 24. <https://m.tempo.co/read/news/2014/11/21/063623550/bikinan-zaman-belanda-ruu-kuhp-jadi-prioritas-prolegnas>.
- The Jakarta Post. 2016. "Don't Rush Criminal Code Amendment." *The Jakarta Post*. <http://www.thejakartapost.com/academia/2016/06/23/dont-rush-criminal-code-amendment.html>.
- Tileman. 2016. "Indonesia's Long Wait for Its Own Criminal Code." *Indonesia at Melbourne*. November 9. <http://indonesiaatmelbourne.unimelb.edu.au/indonesias-long-wait-for-its-own-criminal-code/>.
- Tilly, Charles, and Sidney Tarrow. 2007. *Contentious Politics*. New York, USA: Paradigm.
- Utomo, Iwu Dwisetyani, and Peter McDonald. 2009. "Adolescent Reproductive Health in Indonesia: Contested Values and Policy Inaction." *Studies in Family Planning* 40 (2): 133–146.
- Whittier, Nancy. 2012. "The Politics of Coming Out: Visibility and Identity in Activism against Child Sexual Abuse." In *Strategies for Social Change*, edited by M. Gregory Maney, Rachel V. Kutz-Flamenbaum, Deana A. Rohlinger, and Jeff Goodwin. Vol. 37. Social Movements, Protest, and Contention. Minneapolis: University of Minnesota Press.
- Wieringa, Saskia. 2012. "Passionate Aesthetics and Symbolic Subversion: Heteronormativity in India and Indonesia." *Asian Studies Review* 36 (4): 515–30. doi:10.1080/10357823.2012.739997.

- Wieringa, Saskia, Abha Bhaiya, and Nursyahbani Katjasungkana. 2015. *Heteronormativity, Passionate Aesthetics and Symbolic Subversion in Asia*. Chicago, USA: Sussex Academic Press.
- Wirawan, Jerome. 2016. "Pembahasan Pasal Perzinaan Revisi KUHP Menuai Polemik." *BBC Indonesia*, December 16, sec. Indonesia. <http://www.bbc.com/indonesia/indonesia-38325721>.

## Appendix

**Table 1.** Public personal attitude toward non-heteronormative sexual identity and behavior.

Questions	Percentages (%)	
1. Do you personally know someone who does not identify with the sex they were assigned at birth or who identifies as transgender?	Yes	19
	No	56
	Don't know	24
2. How would you feel if your neighbor were gay or lesbian?	No concern	26
	Somewhat uncomfortable	32
	Very uncomfortable	41
3. How would you feel if you were unable to determine your neighbor's gender at first?	No concern	53
	Somewhat uncomfortable	31
	Very uncomfortable	16
4. Would you be upset if one of your children told you they were in love with someone of the same sex?	Not upset	9
	Somewhat upset	12
	Very upset	79
5. If a male child always dressed and expressed himself as a girl, would you find it acceptable?	Yes	8
	No	77
	Don't know	15
6. If a female child always dressed and expressed herself as a boy, would you find it acceptable?	Yes	20
	No	64
	Don't know	16
7. Is there a conflict between same-sex desire and your religious beliefs?	Yes	51
	No	20
	Don't know	11
	No religious belief	2
	Prefer not to answer	16

(Source: Carroll and Robotham 2016).

**Table 2.** Public political attitude toward non-heteronormative sexual identity and behavior.

Questions	Percentages (%)	
1. Human rights should be applied to everyone, regardless of whom they feel attracted to or the gender they identify	Strongly agree	43
	Somewhat agree	14
	Neither	18
	Somewhat disagree	9
	Strongly disagree	17
2. People who feel attracted to the same sex?	Are born that way	6
	Become so	4
	Chose to be so	42
	Don't know	47
3. Same-sex desire is a Western World phenomenon	Strongly agree	28
	Somewhat agree	17
	Neither	20
	Somewhat disagree	14
	Strongly disagree	21
4. Do you believe that people who do not identify with the sex they were assigned at birth?	Are born that way	18
	Become so	6
	Chose to be so	30
	Don't know	46
5. Gender is assigned at birth and always fixed	Strongly agree	72
	Somewhat agree	8
	Neither	15
	Somewhat disagree	2
	Strongly disagree	3
6. Bullying of young people who identify or are perceived as gay, lesbian, or transgender is a significant problem	Strongly agree	36
	Somewhat agree	14
	Neither	26
	Somewhat disagree	10

7. Being gay, lesbian, bisexual, transgender, or intersex should be a crime	Strongly disagree	14
	Strongly agree	27
	Somewhat agree	11
	Neither	25
	Somewhat disagree	15
8. Adults should be allowed to have private consensual same-sex relationships	Strongly disagree	22
	Strongly agree	6
	Somewhat disagree	4
	Neither	18
	Somewhat disagree	7
9. Should same-sex marriage be legal?	Strongly disagree	65
	Yes	14
	No	69
	Don't know	17

(Source: Carroll and Robotham 2016).

**Table 3.** Revision(s) of the Indonesian Penal Code concerning certain “victimless crimes.”

Revisions	Current Penal Code	Draft Revision(s)	AILA’s Petition
Extra-marital sexual relation	<p>Article 284</p> <p>(1) By a maximum imprisonment of 9 months shall be punished:</p> <ul style="list-style-type: none"> <li>a. any married man who knowing that Article 27 of the Civil Code is applicable to him, commits adultery;</li> <li>b. any married woman who commits adultery.</li> </ul> <p>a. any man who takes a direct part in the act of knowing that the guilty co-partner is married.</p> <p>b. any unmarried woman who takes a direct part in the act knowing that the guilty co-partner is married and that Article 27 of the Civil Code is applicable to him.</p> <p>(2) No prosecution shall be installed unless by complaint of the insulted spouse, followed by a demand for divorce or severance from board and bed within the time of 3 months, if Article 27 of the Civil Code is applicable.</p> <p>(3) In respect of this complaint Articles 72, 73, and 75 shall not be applicable.</p>	<p>Article 483</p> <p>(1) By a maximum imprisonment of 5 years shall be punished:</p> <ul style="list-style-type: none"> <li>a. any married man who commits adultery with any women other than his spouse;</li> <li>b. any married woman who commits adultery with any men other than his spouse;</li> <li>c. any unmarried men who takes a direct part in the act knowing that the guilty co-partner is married.</li> <li>d. any unmarried woman who takes a direct part in the act knowing that the guilty co-partner is married.</li> <li>e. Anyone outside of marriage who commits fornications</li> </ul> <p>(2) No prosecution shall be installed unless by complaint of the insulted spouse or third party.</p> <p>(3) In respect of this complaint Articles 25, 26, and 28 shall not be applicable.</p> <p>(4) The complaint may be withdrawn as long as the judicial investigation has not commenced.</p> <p>*Article 484 in the Penal Code Draft of 2005 also includes the above points.</p>	<p>Article 284 to include both adultery and fornication and to change the process to be based not on complaint but on finding.</p>

- (4) The complaint may be withdrawn as long as the judicial investigation has not commenced.
- (5) If Article 27 of the Civil Code is applicable to the spouse, the complaint shall not be complied with as long as the marriage has not been severed by divorce or the verdict whereby severance from bed and board has been pronounced, has not become final.

Same-sex sexual relation

Article 292

Any adult who commits any obscene act with a minor of the same sex whose minority he/she knows or reasonably should presume, shall be punished by a maximum imprisonment of 5 years.

Article 492

Any person who commits any obscene act with a minor of the same sex who is under 18 years old, shall be punished by a minimum imprisonment of 1 year and a maximum imprisonment of 7 years.

Article 292 should be expanded to prohibit any same-sex sexual relation between two people of any age, not just those who are underage.

\*The revised Article applying criminalization for same-sex sexual relation also appears in 2005 Draft Penal Code (Article 493):

“A person who engages in indecent acts with another person of the same sex under 18 years of age will receive a sentence of imprisonment from 1 to 7 years.”

---

(Blackwood 2007; Government of Republic of Indonesia n. d, n. da).

**Table 4.** Regulations concerning “victimless crimes” at national and sub-national levels.

Level(s)	Regulations
National	<ul style="list-style-type: none"> <li>▪ Indonesian Penal Code Draft Article 483 and 492 regarding “victimless” sexual relations.</li> <li>▪ Anti-pornography Bill (2008) that outlaw broadly defined activities, images, artistic forms and dress styles in the name of morality.</li> <li>▪ Government Regulation 61/2014 on Reproductive Health stipulates that a “[h]ealthy sexual life ... includes social life that is: a. free from sexually transmitted diseases, b. free from sexual orientation dysfunction or deviance, c. free from physical and mental abuse, d. capable to control pregnancy, and e. in accordance with ethics and morals.”</li> </ul>
Subnational	<ul style="list-style-type: none"> <li>▪ Provincial Ordinance on the Eradication of Immoral Behavior (No. 13/2002) in South Sumatra: classifies and penalizes same sex relations as “immoral behavior.”</li> <li>▪ Local Regulation [City Ordinance] Batam City No. 6/2002 about Social Ordinance, Social Order Article 9: forbids the setting up of LGBT associations (explicitly mentioned).</li> <li>▪ Local Regulation [City Ordinance] Palembang City No. 2/2014 about the Abomination of Prostitution, Chapter V. Prohibition Provisions, Article 8: outlaws “homosexual” “prostitution.”</li> <li>▪ Local Regulation [City Ordinance] about Prevention, Eradication and Action toward Social Ills (No. 9/2010) in Padang Panjang, West Sumatera: its definition includes same sex relationships within its scope (paid or not paid for).</li> <li>▪ District Ordinance on Social Order (No. 10/2007) in Banjar, South Kalimantan Province: mentions “abnormal” homosexual and heterosexual acts (in addition to “normal” ones) in its definition of “prostitute.” No explanation is given for “normal” or “abnormal” acts. It also prohibits the formation of organizations “...leading to immoral acts,” that are “...unacceptable to the culture of [local] society.”</li> <li>▪ City Ordinance on the Development of a Value System in Social Life Based on the Teachings of Islam and Local Social Norms (No. 12/2009) in Tasikmalaya, West Java: prohibits adultery and prostitution, both heterosexual and homosexual.</li> <li>▪ Aceh Regulation No. 6/2014 [Provincial Ordinance] on criminal offenses under Sharia law, passed in 2014. The law stipulates: a punishment of 100 lashes and/or up to approximately eight years in prison. The regulation applies to local residents and to foreigners in the province for the crime of <i>Liwat</i> (male penetration) and <i>Musahaqah</i> (female same-sex sexual activity) in article 63 and 64.</li> </ul>

(Blackwood 2007; Brenner 2011; Carroll 2016).