



ASEAN SOGIE CAUCUS

ASEAN SOGIE Caucus Input to report of the UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, in relation to the human rights to freedom of expression, association and assembly

This submission prepared by ASEAN SOGIE Caucus¹, Legally registered as Southeast Asia Sexual Orientation, Gender Identity and Expression Caucus (ASC), Inc. A regional human rights organization advocating for the fulfilment and protection of the LGBTQIA+ persons in Southeast Asia. The organization is in Special Consultative Status with the Economic and Social Council (ECOSOC) since 2021 and is based in Manila, The Philippines.

Direct Threat against ASEAN SOGIE Caucus (ASC)

Recently, we were compelled to cancel our scheduled advocacy training event, ASEAN Queer Advocacy Week, originally planned to be held in Jakarta, Indonesia from July 21 to 27, 2023. This decision was prompted by a series of security threats from various groups. The event was co-organized in collaboration with Arus Pelangi and FORUM-ASIA. We closely monitored the situation, particularly the surge in "anti-LGBT" sentiments on social media.

The Islamic Brotherhood Front (FPI) issued a statement advocating for holy war (jihad) in the event that the AAW proceeds, denouncing LGBT as barbaric and contrary to Indonesia's national principles (Pancasila).² They urged the government to deny permissions for any LGBT campaign activities. Notably, the FPI has close ties to the former Front Pembela Islam (FPI), whose leaders faced terrorism convictions and were implicated in organizing attacks against the 2010 ILGA Asia Conference in Surabaya.

Furthermore, a concerning WhatsApp message circulated by a police officer, instructing a Jakarta hotel manager to report activities related to the advocacy week. This led to online

¹ Written by ASEAN SOGIE Caucus Advocacy Officer, Lini Zurlia with final-proof by the Executive Director, Ryan Silverio

² "Pernyataan DPP FPI: Menolak Keras Acara ASEAN Queer Advocacy Week". DPP FPI, July 11, 2023. <https://www.faktakini.info/2023/07/pernyataan-dpp-fpi-menolak-keras-acara.html>



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media disseminating information about police surveillance in Jakarta, causing increased alarm. Subsequently, the police confirmed no findings regarding the AAW's whereabouts through a media statement.³

On July 13, 2023, our organizational social media account and website faced constant online harassment, including profiling of our staff, members of the board and our local partners. They received various forms of harassment from doxxing, phishing, unknown calls and even dead threats leading to the temporary relocation of our Advocacy Officer outside Indonesia.

In response to these security incidents, we've identified key risks and threats:

1. Restrictions on organizers, particularly Arus Pelangi and ASC, and local LGBTQIA+ organizations, in receiving funding from external sources.
2. Constraints on LGBTQIA+ groups organizing events, even in private spaces such as hotels, meeting facilities, or educational institutions.
3. The possibility of a review, investigation, and the risk of revocation of Arus Pelangi's legal status in Indonesia.
4. Further limitation of the political space for ASC to engage with ASEAN, potentially facing blacklisting by the organization.
5. In case of escalation, Indonesia may make diplomatic inquiries into the legal standing of ASEAN SOGIE Caucus in the Philippines, exposing ASC to negative exposure from the Philippine government, and the ECOSOC status of ASC, which could be raised during the status renewal in 2024.

Challenges to Freedom of Expression, Association and Assembly faced by LGBTQIA+ groups in Malaysia

On November 22, 2023, we released a joint statement together with 66 organizations in response to the raid of a social gathering in Kuala Lumpur⁴. The Royal Malaysia Police (PDRM), the Federal Territories Islamic Religious Department (JAWI), and the Kuala Lumpur City Hall

³ "News That The LGBT Community In ASEAN Will Hold A Meeting In Jakarta, Polda Metro Investigate The Truth". VOI, July 12, 2023 <https://voi.id/en/news/293137>

⁴ "Joint Statement: Civic spaces shrinking at an alarming rate for LGBTQ persons in Malaysia" ASEAN SOGIE Caucus, ILGA Asia and 66 others organizations, November 4, 2022 <https://www.civicus.org/documents/Malaysia-Halloween-Raid-Joint-Statement-Regional-CSO-Nov12022.pdf>



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(DBKL) collaborated in conducting a joint raid on a social gathering that brought together individuals with diverse sexual orientations, gender identities, and gender expressions (SOGIE), including LGBTQ individuals. The raid, which occurred on October 29, 2022, led to the arrests and interrogation of at least 24 gender-diverse individuals. These individuals were accused of vaguely defined offenses such as "encouraging vice" and "indecent acts," as well as the use of 'illegal substances' and the free expression of one's gender identity. All those detained have been released on bail and are awaiting further action.

These incidents, coupled with the prevailing and escalating LGBTphobia, have cast a chilling effect on the freedom of assembly and expression, both online and offline. Organizing LGBTQ-affirming events and the operation of LGBTQ-friendly businesses are hindered by the fear of police raids and concerns for the safety of LGBTQ attendees. Consequently, LGBTQ events continue to remain closed and small in scale.

The authority were using the following laws in attempt to arrest the queer people in Malaysia:

PENAL CODE OF MALAYSIA

Section 377A: Any person who has sexual connection with another person by the introduction of the penis into the anus or mouth of the other person is said to commit carnal intercourse against the order of nature.

Section 377B: Whoever voluntarily commits carnal intercourse against the order of nature shall be punished with imprisonment for a term which may extend to twenty years, and shall also be liable to whipping.

Section 377D: Any person who, in public or private, commits, or abets the commission of, or procures or attempts to procure the commission by any person of, any act of gross indecency with another person, shall be punished with imprisonment for a term which may extend to two years.

SYARIAH CRIMINAL OFFENCES (FEDERAL TERRITORIES) ACT 1997

Section 25 (Liwat) - Any male person who commits *liwat* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Section 26. (Musahaqah) - Any female person who commits *musahaqah* shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or

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to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

Section 28 (Male person posing as woman) - Any male person who, in any public place, wears a woman's attire and poses as a woman for immoral purposes shall be guilty of an offence and shall on conviction be liable to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Challenges to Freedom of Expression, Association and Assembly faced by LGBTQIA+ groups in Indonesia

In Indonesia, Arus Pelangi, an Indonesia LGBTQIA+ federation has observed that LGBTQIA+ organizations encounter obstacles when attempting to register. While there is no explicit law prohibiting the registration of LGBTQIA+ organizations, there is a widespread trend of rejection by the Ministry of Law and Human Rights. This rejection typically occurs unless the organization refrains from using specific terms such as lesbian, gay, bisexual, homosexual, and even the term waria, a local reference to transwomen. Mami Yuli⁵ a prominent transwoman activist in a close event with the Director General of Human Rights, Ministry Law and Human Rights⁶ said *"We submitted our registration application ten times, and it was only on the tenth attempt that we succeeded. The key factor for it was the removal of the term 'waria' from our organizational document, this is the real discrimination"*.

Meanwhile, in online spaces the government is pressured by the House commission to regulate in banning the content related to LGBT. The Ministry of Information and Informatics (Kominfo) then set up a panel to discuss the matter, however, though the regulation is not yet released they started to block any sites containing LGBT information⁷. This panel interprets that LGBT organizations as dangerous entities inconsistent with Indonesian

⁵ Mami Yuli's Profile <https://www.kompas.id/baca/humaniora/2023/10/11/mami-yuli-transpuan-doktor-pertama-di-indonesia>

⁶ Close event taking place in Jakarta on June 2023.

⁷ "Government drafts ban on LGBT websites". Jakarta Post, March 5, 2016
<https://www.thejakartapost.com/news/2016/03/05/government-drafts-ban-lgbt-websites.html>



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culture.⁸ Kominfo, in compliance with the Electronic and Transaction (ITE) Law, maintains a blocked URLs database known as "Trust Positif" (or Trust+). This database is provided to over five-hundred Internet service providers (ISPs) in Indonesia to facilitate the management of blocklists.

The Ministry encourages citizens to contribute to Trust+ by submitting URLs through email or a complaint form on the Kominfo website. Additionally, Kominfo has implemented a web crawler named "Cyber Drone 9" to search and incorporate publicly-available "negative content" into the Trust database. Due to these developments, websites, Facebook pages, and other online entities incorporating terms like "lesbian," "gay," "bisexual," or "transgender" began facing restrictions in 2016-17. These restrictions were imposed on the grounds of being deemed explicit and violating the Electronic Information and Transactions (ITE) Law. A report from Outright Action International has identified at least 38 distinct websites related to the LGBTIQ community that are blocked in Indonesia. These encompass platforms fostering a sense of community, such as transgendermap.com, those engaged in human rights advocacy like ilga.org, and even dating services like Grindr.

Additionally, in 2016 the Indonesian Broadcasting Commission (KPI) issued an ordinance that prohibited media broadcasters from depicting male sexual and gender diversity on air. Subsequently, the organization also implemented a ban on the appearance of transgender individuals on television.⁹

Laws and Regulation use and or potentially use by Indonesian authority in restricting the rights to freedom of peaceful assembly and association against LGBTQIA+ community:

Indonesia New Revised Penal Code, Law No 1 of 2023

Article 188 (1) Any person who spreads and develops the teachings of communism/marxism-leninism or **other ideology/belief that are contrary to Pancasila** in public by oral or written including disseminating or developing through any media, shall be punished with a maximum imprisonment of 4 (four) years.

⁸ "Kominfo Sebut Konten LGBT Langgar Budaya Indonesia." *CNN Indonesia*, February 13, 2019.

<https://www.cnnindonesia.com/teknologi/20190213130810-192-368860/kominfo-sebut-konten-lgbt-langgar-budaya-indonesia>

⁹ [Edaran Kepada Seluruh Lembaga Penyiaran Untuk Program yang mengangkat tema Lesbian, Gay, Biseksual dan Transgender \(LGBT\)](#)



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Article 256 Any Person who without prior notice to the authorities to hold a march, rally, or demonstration on a public street or public place that results in the disruption of the public interest, causes chaos, or riots in the community, shall be punished with imprisonment for a maximum of 6 (six) Months or a maximum fine of category II

Aceh Regulation (No. 6/2014) Articles 63 – 64.

“63. Liwath (1) Any person who deliberately performs Liwath Jarimah is threatened with ‘Uqubat Ta’zir at most 100 (one hundred) lashes or a fine of at least 1,000 (one thousand) grams of pure gold or a maximum of 100 (one hundred) months in jail. (2) Any person who repeats the act as referred to in paragraph (1) is threatened with ‘Uqubat Ta’zir 100 (a hundred) lashes which may be increased by a fine of at most 120 (one hundred and twenty) grams of pure gold and/or imprisonment of at most 12 months. ... 64. Musahaqah (1) Every person who deliberately commits Jarimah Musahaqah is threatened with ‘Uqubat Ta’zir at most 100 (a hundred) lashes or a fine of at least 1,000 (one thousand) grams of pure gold or a maximum of 100 (one hundred) months in jail. (2) Any person who repeats the act as referred to in paragraph (1) is threatened with ‘Uqubat Ta’zir 100 (a hundred) lashes which may be increased by a fine of at most 120 (one hundred and twenty) grams of pure gold and/or imprisonment of at most 12 months.”

Law No. 44 of 2008 concerning Pornography.

Explanation of Article 4 Paragraph (1) What is meant by "make" does not include for oneself and one's own interests. Letter a What is meant by "deviant sexual intercourse" includes sexual intercourse or other sexual activities with corpses, animals, oral sex, anal sex, lesbians and homosexuals.