



# ASEAN PARLIAMENTARIANS FOR HUMAN RIGHTS

## INDONESIA: REVIEW DRAFT PENAL CODE TO ENSURE THE RIGHT TO FREEDOM OF RELIGION OR BELIEF

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ASEAN Parliamentarians for Human Rights (APHR) calls for a substantial revision of Indonesia's Draft Penal Code in order to ensure the country complies with its obligations under international human rights law.

The current Draft Penal Code contains a number of highly problematic provisions that if adopted would violate the rights of women, religious minorities, lesbian, gay, bisexual and transgender people as well as the rights to freedom of expression and association. APHR is concerned that if adopted, the current draft could, instead of preventing crimes, worsen discrimination, fuel conflict, and legitimize policies of intolerance.

While the Draft Penal Code violates a number of human rights, the following analysis focuses on violations of the right to freedom of religion or belief. It calls on the Parliament of Indonesia to **amend Article 2 and repeal Chapter 7 relating to "Criminal Acts against Religion and Religious Life" and Article 483(a) of the draft Penal Code** in order to ensure people's right to freedom of religion or belief is guaranteed, to prevent discrimination on the basis of religion or belief, and protect religious minorities in the country.

APHR also urges the Parliament of Indonesia to take the time **to conduct open and inclusive consultations on the Draft Penal Code** with the broader public, relevant human rights organizations, and religious leaders, in order to ensure that the long-awaited revision of the Penal Code takes the opportunity to strengthen people's human rights and freedoms rather than infringe on them and legalize discrimination.

# INDONESIA'S OBLIGATIONS UNDER INTERNATIONAL HUMAN RIGHTS LAW

By ratifying a number of human rights instruments, Indonesia took on the responsibility to protect, respect, and fulfill the rights they enshrined. In particular, Indonesia committed to respect, protect and fulfill the rights to freedom of thought, conscience and religion, and the prohibition of discrimination when it ratified the International Covenant on Civil and Political Rights (ICCPR).

Indonesia further reiterated its commitment to "*uphold the highest standards in the promotion and protection of human rights*" when it recently became a member of the UN Human Rights Council.

As a party to the ICCPR, Indonesia must enact legislation to give domestic effect to its provisions as well as ensure that its domestic laws are in line with the ICCPR. It must therefore ensure that the provisions of its draft Penal Code do not violate the human rights enshrined in the ICCPR.

However, as it stands the current Draft Penal Code violates a number of Indonesia's obligations under international human rights law.

## THE RIGHT TO FREEDOM OF RELIGION OR BELIEF

### Article 18 of the ICCPR

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

### Article 22 of the ASEAN Human Rights Declaration:

Every person has the right to freedom of thought, conscience and religion.

## CONCERNS ABOUT THE OFFICIAL RECOGNITION OF SIX RELIGIONS

Indonesia officially recognizes six religious groups: Islam, Protestantism, Catholicism, Hinduism, Buddhism, and Confucianism, excluding hundreds of other local religions and beliefs.

The right to freedom of religion or belief is not limited to "*traditional religions or to religions and beliefs with institutional characteristics.*" Legalizing only certain religion only paves the way for discrimination against adherents to other religions or non-believers.

Therefore, Indonesia should review its restricted official recognition of religious groups, to ensure that it protects the right to freedom of religion or belief to all without discrimination.

## AMEND ARTICLE 2 TO ENSURE LEGAL CERTAINTY AND PREVENT DISCRIMINATION

Article 2 refers to the application of the "*laws that live in the community*" or "*living law*" which appears to refer to local-level customary criminal law.

However, the enforcement of unwritten customary laws conflicts with one of the most fundamental principles of criminal law, namely the principle of legality. It requires that the applicable law define offenses clearly and narrowly so that individuals can adapt their behavior accordingly and know which acts will make them liable.

In addition, it has been well-documented how hundreds of local-level regulations discriminate against women as well as religious and gender minorities. Although the Draft Penal Code states that the "*laws that live in the community*" are in force as long as they are "*in accordance with the values contained in Pancasila, the 1945 Constitution of the Republic of Indonesia, human rights, and general legal principles...*," it opens the door to the application of these discriminatory regulations.

Therefore, Indonesia's Parliament should amend Article 2 so that it reads as "*The provisions referred to in Article 1 paragraph (1) must be implemented in accordance with the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, and international human rights law and standards.*"

## REPEAL PROVISIONS RELATING TO BLASPHEMY

Articles 304 to 308 of the Draft Penal code expand PNPS Law 1 of 1965 concerning the Prevention of Abuse and/or Blasphemy in Religion, and criminalize blasphemy, the disturbing of religious ceremony, making noise near a place of worship and public insult of a cleric.

Religions or belief are not protected against blasphemy, insults or defamation under international human rights law. Instead, international human rights law makes it clear that criminalizing individuals for blasphemy, insult or defamation of religions or beliefs violates the right to freedom of expression.

The right to freedom of religion or belief primarily protects the individual<sup>1</sup> but does not protect religions or beliefs per se. Therefore, the right to freedom of religion or belief does not protect a religion or belief from criticism or ridicule. While religious insult, offense, defamation or blasphemy may offend people it does not result in the violation of the right to freedom of religion or belief.

To go even further, laws that criminalize disrespect of a religion or other belief system, including blasphemy laws, defamation of religions and religious insults are incompatible with the right to freedom of expression. Speech that is deemed offensive is still protected as free speech and should not be criminalized.

Further, the right to equality and the protection of all persons against discrimination, including on the basis of religion or belief is at the heart of human rights law. Yet, international experts have documented how many blasphemy laws are often<sup>2</sup> applied in a discriminatory manner. In Indonesia, according to Human Rights Watch, more than 150 people have been convicted under the blasphemy law since it was passed in 1965, mainly religious minorities.

Placing religion as a legal subject is also problematic as it cannot represent itself in the legal process. This means that it presupposes that certain designated people only can represent a religion. Given the diversity associated with religious beliefs, even within one religion, if the state hears and takes one interpretation of a religion, it means that it is discriminating against other interpretations of the religion.

In addition, blasphemy laws have been proven to be counterproductive as they can lead to the rejection of all forms of dialogues, debates and criticisms on inter-or intra-faith issues, which can be constructive and necessary to harmonious societies.

Therefore, Indonesia's Parliament should repeal Articles 304, 305, 307, and 308 in their entirety.

## RESPECT THE FREEDOM TO ADOPT, CHANGE OR RENOUNCE A RELIGION OR BELIEF

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Article 306 criminalizes individuals who publicly try to persuade someone to renounce a religion recognized by Indonesia with a maximum four years' imprisonment.

The right to freedom of religion or belief includes the freedom to adopt, change or renounce a religion or belief. The ICCPR protects "*atheistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief.*" International human rights law also recognizes the right to attempt to convince and convert other people, for example through teaching, as long as it is not coercive.

Therefore, Indonesia's Parliament should repeal Article 306.

## NON-REPETITION OF EXISTING CRIMINAL OFFENCES

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Article 309 and Article 483 (a) create additional criminal offences for destroying, or burning places of worship and theft of religious sacred objects.

The draft penal code already contains provisions relating to theft (chapter xxiv) and to damage of property (chapter xxix, part II). These provisions are sufficient and also apply to religious artifacts and places of worship. Therefore, there is no need to reiterate Article 309 and Article 483(a) as these acts will already be covered under the provisions relating to theft and damage of property.Â

Furthermore, Article 309 also contains a reference to defamation of religion. As explained above, this runs contrary to Indonesia's obligations under international human rights law.

Indonesia's Parliament should therefore repeal Articles 309 and 483(a).