

## Indonesia: Revision of Indonesia's Criminal Code

(Bangkok/Jakarta, 12 February 2018) – The Asian Forum for Human Rights and Development (FORUM-ASIA) expresses grave concern over the on-going revision of the Indonesian Criminal Code. The amendments to the Criminal Code are a setback for the country as they are inherently discriminatory and potentially harmful to the fundamental freedoms of the people, especially the rights to the freedom of expression, assembly and association.

While some of the proposed articles have been agreed to by the working committee bestowed with drafting the amendments, others are still under discussion, such as those related to the Lesbian, Gay, Bi-Sexual, Transgender and Intersex (LGBTI) community. These are expected to be discussed and agreed to on 14 February 2018. For the moment there is not clarity on when the proposed amendments will be tabled in the House of Representatives.

Attempts to amend the Criminal Code started in 1964, in order to override the existing Criminal Code, which was drafted under Dutch colonial rule, to make it more compatible with Indonesian values. The process, however, did not progress much until 2013. Since then discussions on the need for changes has intensified. The amendment of the Criminal Code was supposed to be finalised at the end of 2017, but some articles proved to be problematic, particularly those related to: defamation of the President and Vice-President; broadening of what is understood as adultery; co-habitation; and the criminalisation of same-sex relationship.

If the new Criminal Code is enacted, defamation of the President and the Vice-President will be punishable by up to five years of imprisonment (Article 263 (1)). A similar article of the existing Criminal Code was revoked by the Constitutional Court in 2006, as it was deemed to create legal uncertainty and leave too much space for multiple interpretations.<sup>1</sup> The reintroduction of such an article is contrary to the principle of equality before the law and legal certainty, as well as a constraint on the freedom of expression and opinion.

Other amended articles will: broaden what is understood as adultery (Article 484); and criminalise both co-habitation (Article 488), and consensual same sex relationship between adults (Article 495). Such legislation could not only lead to the legal persecution of vulnerable groups, but also further stigmatisation, discrimination, marginalisation and violent harassment. The criminalisation of co-habitation is problematic, among others reasons, because many Indonesian still have no identity documents which makes it impossible for them to register their marriage. In relation to the LGBTI community, the public discussion on the possible revision of the Criminal Code has already stirred up negative sentiments and incited further discrimination and violence against the community. Examples of this can be seen in the establishment of anti-LGBTI task forces in Aceh and West Java, and the increase of persecution of the community.

FORUM-ASIA stands in solidarity with our members and partners in Indonesia. It calls on the House of Representatives to reject the proposed amendments to the Criminal Code and to change articles that are

<sup>1</sup> Constitution Court of Indonesia Decision No. 013-022/PUU-IV/2006

potentially discriminatory, and consequently could cause the further shrinking of civic space in the country. The current proposed revisions of the Indonesian Criminal Code constitute a breach of the commitments made by Indonesia through the ratification of international rights treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

This poses a threat to human rights in the region, given the strategic and leadership role Indonesia plays in the Association of Southeast Asian Nations (ASEAN). The debate and proposed amendments in Indonesia, might, and in some cases already has, set a negative precedent for neighbouring countries to follow. Discriminatory laws should not set the norm in the region. Therefore, we hold the Government of Indonesia accountable to its commitment to human rights, not just for the country itself, but for the entire region.

**About FORUM-ASIA:**

*FORUM-ASIA is a regional human rights group with 58 member organisations in 19 countries across Asia. FORUM-ASIA has offices in Bangkok, Jakarta, Geneva and Kathmandu. FORUM-ASIA addresses key areas of human rights violations in the region, including freedoms of expression, assembly and association, human rights defenders, and democratisation.*

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