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# Regulation of sexuality in Indonesian discourse: Normative gender, criminal law and shifting strategies of control

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## Abstract

This paper examines changes in the regulation of sexuality in Indonesia in the period since 1980 as seen through state, religious and lesbian and gay activist discourses on sexuality. Three different eras during that period of Indonesian history are compared. Under the New Order regime of Suharto, the Indonesian state sought to control sexuality through a deployment of gender. During the 1990s, state Islamic discourses of sexuality shifted in response to international pressures to support same-sex marriage and sexual rights. During the third period following the end of the Suharto regime in 1998, a conservative Islamic minority pushed for more restrictive laws in the State Penal Code, initiating intense public debate on the role of the state in questions of sexuality and morality. **Over this time period, the dominant discourse on sexuality moved from strategically linking normative gender with heterosexuality and marriage to direct attempts to legislate heterosexual marriage by criminalizing a wide range of sexual practices.**

## Résumé

Cet article examine les changements de la réglementation de la sexualité en Indonésie depuis 1980, tels qu'apparaissent dans les discours sur la sexualité, qu'ils proviennent de l'état, des instances religieuses ou des activistes gays et lesbiennes. Trois différentes périodes de l'histoire indonésienne sont comparées. Sous le «Nouvel Ordre» de Suharto, l'état indonésien cherchait à contrôler la sexualité à travers le déploiement du genre. Sous les gouvernements des années 90, les discours islamiques sur la sexualité ont changé en réponse aux pressions internationales en faveur du mariage entre conjoints du même sexe et des droits sexuels. Dans la troisième période qui a suivi la fin du régime de Suharto en 1998, une minorité islamique conservatrice a fait pression pour que des lois plus restrictives soient inscrites au code pénal national, ce qui a initié un débat public intense sur le rôle de l'état en matière de sexualité et de moralité. Après cette période, le discours dominant sur la sexualité est passé d'un lien stratégique entre normes de genre, hétérosexualité et mariage, à des tentatives directes de légiférer sur le mariage hétérosexuel en criminalisant de nombreuses pratiques sexuelles.

## Resumen

En este artículo analizamos los cambios en la legislación de la sexualidad en Indonesia durante el periodo desde 1980 examinada según los discursos estatales, religiosos y de los activistas de lesbianas y gays sobre la sexualidad. Comparamos tres épocas diferentes del periodo histórico del Indonesia. Bajo el Nuevo Orden del régimen de Suharto, el estado de Indonesia pretendió controlar la sexualidad a través de una distribución de géneros. Durante los noventa, los discursos islámicos sobre la sexualidad cambiaron en respuesta a las presiones internacionales en apoyo de los matrimonios

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entre personas del mismo sexo y de sus derechos sexuales. Durante el tercer periodo al finalizar el régimen de Suharto en 1998, una minoría islámica conservadora exigió leyes más estrictas en el Código Penal, iniciándose así un debate público intenso sobre el papel del estado en cuestiones de sexualidad y moralidad. Durante este periodo de tiempo, el discurso dominante sobre sexualidad pasó de vincular de forma estratégica a los sexos normativos con la heterosexualidad y el matrimonio e intentó directamente legislar el matrimonio heterosexual criminalizando toda una serie de prácticas sexuales.

**Keywords:** *Sexuality, Indonesia, marriage, criminal law, lesbians, Islam*

## Introduction

Indonesia since 1980 has seen the increasing visibility of alternative sexualities and transgendered identities. During that time a significant shift in discourses on sexuality has reshaped the way the state regulates sexuality. In this paper, I examine the changes in the regulation of sexuality in Indonesia during the period since 1980 as seen through media, state, religious and lesbian and gay activist discourses on sexuality. Three different eras during that period of Indonesian history are compared. First, I examine the way the Indonesian state under the New Order regime of Suharto sought to control sexuality through a deployment of gender. During this time the print media occupied a vital position in popularising and stigmatising certain representations of homosexuality. I then discuss the shifts in state and Islamic discourses of sexuality that occurred during the 1990s in response to international pressures to support same-sex marriage and sexual rights. During the third period following the end of the Suharto regime in 1998, an increasingly vocal conservative Islamic minority pushed for more restrictive laws in the State Penal Code governing sexual behaviours and public morals, initiating an intense public debate on the role of the state in questions of sexuality. Over this time period, discourse on sexuality moved from strategically linking normative gender with heterosexuality and marriage to directly legislating heterosexual marriage through efforts to criminalise a wide range of sexual practices.

The Indonesian state has maintained a neutral legal stance toward homosexuality. Since the beginning of its existence in 1945 the state has passed no laws proscribing transgender behaviour or sex acts between adult individuals of the same sex (Oetomo 2001). In the State Penal Code (Kitab Undang-Undang Hukum Pidana), only same-sex relations with a person who is not yet an adult (*belum dewasa*) are illegal.<sup>1</sup> Despite the absence of laws barring homosexuality among adults, *lesbi* and *gay* activist groups in Indonesia point to a pervasive pattern of discrimination directed toward *gay*, *lesbi* and *waria* (Diansari 2002).<sup>2</sup> While transvestite and gender ambiguous figures were popularly known in ritual and performance contexts in Indonesia before the 1980s, individuals who identified as *lesbi* and *gay* began to be visible only in the early 1980s.<sup>3</sup> At that time the terms '*lesbian*' or '*lesbi*' and '*gay*' came into use in the mainstream media, playing a large role in the creation and circulation of discourses about *lesbi* and *gay* identities at the same time that some Indonesians began to take on these terms to identify themselves.<sup>4</sup> *Lesbi* and *gay* have received death threats, been ostracized from families and communities, and faced emotional or physical abuse from their families (Network of All Colours, date not available). One of the founders of Swara Srikandi, a *lesbian* activist organisation started on-line in 2000, explained in a written response to media questions that being homosexual is not easy in Indonesia. She fears the animosity not only of the public but of her family and employer if they find out she is a *lesbian* (email dated February 21, 2003).

As Foucault (1980) pointed out, the deployment of sexual knowledge in the modern era is not only juridico-discursive but operates through a multiplicity of mechanisms to create knowledge of sex. Discourse on sexuality in Indonesia is deployed in a number of forms that are part of and separate from the state, including discourses of family, marriage, community and religion. New Order discourses were not directed at homosexuality per se but at the creation of normalized, reproductive citizens and, for the great majority of Indonesians, citizens who are faithful adherents of Islam (see also Blackwood 1995). While Foucault argues that the deployment of sexuality constitutes the modus operandi of sexual knowledge in the 'enlightened west', the primary vehicle for conveying normalising messages in Indonesia during the New Order period has been through what might be called, rephrasing Foucault, the deployment of gender (see also Mohanty 1991). Foucault (1980) does not explicitly make the connection with gender but Butler's (1990) analysis of sexuality and gender articulates the intertwining of the two. Butler (1990:11) writes, 'Gender ought not to be conceived merely as the cultural inscription of meaning on a pre-given sex (a juridical conception); gender must also designate the very apparatus of production whereby the sexes themselves are established.' The deployment of gender as an apparatus of power in Indonesia is located in the discursive practices of the state, religion and popular media. It works to marginalize and stigmatise practices that fall outside reproductive citizenship.

#### *Deploying gender to control sexuality*

Gender was invisibly but rigidly produced during the Suharto years as a way of stabilizing the Indonesian nation. Concepts of proper manhood and womanhood were advanced through state programs as well as the sermons and pronouncements of Islamic clerics. The deployment of gender in the post-colonial state served to create and maintain an image of 'natural' binary gender that orients women to wifely tasks and men to leadership positions in the household and so-called public domains (see Wieringa 1992, Sears 1996, Suryakusuma 1996).

Since the inception of Suharto's New Order in 1965, the Indonesian state has avidly pursued a policy promoting nuclear families and motherhood. Although the Indonesian state claims to have emancipated women, giving them greater access to education and some occupations, during Suharto's rule from 1966–1998, the state enshrined mother and wife as women's primary role and duty.<sup>5</sup> State ideology emphasises the importance of women's position as mothers; state policies consciously purvey the idea that women are primarily responsible for their children and their family's health, care and education. The national school system was used to inculcate state notions of femininity and masculinity in its students. Young girls were oriented toward their future careers as mothers and wives (Parker 1993), while the workplace was represented as the destination for young boys.

Even the world of theatre was forced to respond to the gender ideology propagated by the state through their direct sponsorship of only some genres of theatre. As late as the 1960s, gender play was a long-standing feature of several forms of Indonesian theatre; male and sometimes female performers playing the role of the other gender appealed to and entertained local villagers (Peacock 1968). In Bali, the dance-drama form Arja embraces gender fluidity through the performances of both masculine (coarse) and feminine (refined) styles by women. This form lost its popularity as the state increasingly controlled art education (Kellar 2004). The repressive gender ideology of the New Order era meant that

alternative gender identities, even in theatrical performances, were increasingly stigmatised (Kellar 2004).

Gender boundaries were more strictly drawn between men and women in contemporary Islamic doctrine in Indonesia as well. Although there are many threads of Islam in Indonesia, most sects uphold the idea of 'natural' gender difference.<sup>6</sup> Women are idealized as mothers and wives under the supervision of husbands (see Blackwood 1995, 2001). Even Islamic groups in Indonesia that have accepted the modernist idea of men and women's equality insist that men and women by nature are different; it is this difference, it is said, that makes women's realm the family and household, whereas men's realm is the nation and religious community (Wahid 1994, Hefner 2000). The failure to fulfill one's duty as a woman or man — through marriage and children — is seen as contrary to one's God-given nature.

The deployment of gender affects and reconstitutes everyday practices and norms of sexuality so that marriage is the only possible place and future for sexuality. The properness of marriage and the limitation of sexuality to marriage are concepts supported by both the state, through appeals to 'traditional values of Indonesia' (Howard 1996: 170), and Islamic moral precepts. For Indonesia's majority Islamic population, these moral precepts in turn are often indistinguishable from community norms. The mechanisms that regulate sexuality are very much a product of the synthesis of customary practices (*adat*) and Islamic law.<sup>7</sup> Indonesian Muslims almost universally acknowledge that any sexual relationships outside of heterosexual marriage are unacceptable to the moral code of Islam and customary practices (Bennett 2005). As Bennett (2005) compellingly demonstrates, men's and women's sexuality in Indonesia are seen as God-given attributes that are carefully controlled to maintain family honour and community order. Women who are known to have had sexual relations outside of marriage are considered disreputable, poorly brought up and a great shame to their families. Men's sexuality, however, is under much less surveillance and regulation than women's. Men are assumed to desire and to have extra-marital liaisons and are not generally condemned or punished for them (Bennett 2005). In this way, sexuality is regulated by gendered expectations about marriage and adulthood. The deployment of gender works to stabilise a limited heterosexuality for women, i.e. sexuality is proper and permissible only within marriage and under the control of a husband. For men, the deployment of gender entails an expectation of marriage and family that nevertheless tolerates extra-marital affairs.

Thus under the New Order women were expected to take on domestic and wifely tasks and men to be heads of families and households as well as active leaders in the public domain. Women were encouraged to be active citizens of the nation and to assume auxiliary roles in modernist Islamic institutions, but their status was dependent first on their ability to succeed as a wives and mothers, effectively tying women's bodies as reproductive vehicles to their gender performance. Women's and men's lives were constructed through a deployment of gender that made reproductive heterosexuality — through marriage — the core relationship of normative social life. A properly gendered citizenry did not need strict state regulations to govern sexuality.

### *Media representations of homosexuality*

While state and Islamic discourses emphasised gender normativity, the Indonesian print media since at least the early 1980s has been the primary source of information on non-normative sexualities for the general population and *lesbi* and *gay* individuals. Some of the

very earliest stories published in the print media were the stories of two *lesbian* couples, Aty and Nona, who ran away together, and Jossie and Bonnie, who were the first couple to have a public wedding (Gayatri 1993, Boellstorff 2005). The first case grabbed headlines because one woman was underage and the other was a famous singer. Parents of the young woman claimed their daughter had been kidnapped. Only a week later the news of Jossie and Bonnie's wedding appeared in the same weekly magazine (Gayatri 1993).<sup>8</sup> These and other media stories served as an unintended but important resource for an emerging understanding of being *gay* or *lesbi* in Indonesia (see also Boellstorff 2005). Several Jakarta *gay* men discovered the category *gay* through reading magazine articles that first appeared in the 1980s (Howard 1996). A *lesbi* in Yogyakarta, Java, recalled reading an article about *gay* and *lesbi* in *Intisari*, a monthly magazine, when she was about ten years old (1987), 'which helped her to understand her feelings' (Webster 2005:38). Most of the *lesbi* I interviewed during my research in west Sumatra in 2001 and 2004 also remembered finding out about *lesbi* from the magazines they read or found lying about the house, including *Kartini* and *Sarinah*, two women's magazines.<sup>9</sup> One woman told me she had read many true stories (*kisah nyata*) about *lesbi* in magazines and newspapers. These stories were about their lives, problems and quarrels, including one story about a *lesbi* who killed her lover.

Although stories of Indonesian *lesbi* and *gay* were carried in print media and began to appear on television in the 1990s, media attention to the topic did not normalize these sexualities. A *lesbian* activist in Jakarta whom I interviewed in 2001 complained: 'All those stories in the newspapers are biased. They all treat homosexuality as a crime or mental illness or disease'.<sup>10</sup> Gayatri (1993: 10), who tracked the media representations of *gay* and *lesbi* during the 1980s and early 1990s, noted the same thing: 'The print media portrayals of lesbianism never give positive images of sexuality. They show lesbian life as close to...criminal activities, prostitution,...drugs, free sex (promiscuity) (and) deviance'. Newspaper columnists in some of the mainstream newspapers played an important role in popularising certain ideas about sexuality. While some provided useful information to their readers, other columnists tended to rely on outdated western psychological theories of sexual development as well as Indonesian moral precepts about marriage to answer reader queries. In some cases, such as the following, they reject lesbianism as a possibility and encourage women to be 'normal,' i.e. heterosexual and married. A high school teacher in West Java, who had become suicidal because of a number of failed relationships with other women, wrote to a columnist in desperation: 'Then I wrote to Mrs. Leila Budiman (a psychologist...in a respectable [nationwide] newspaper based in Jakarta). Long time no reply. I kept writing and writing because I was so desperate, and she wrote about my case eventually (1990), after about a year! Yet, she wrote that I have to return to God and pray a lot' (Gayatri 1993: 23). In another advice column written by Budiman in 2004, the same exhortation to normality was apparent. In this column, a married woman confessed that she could only love women and had never really had any desire for her husband. Despite opportunities to leave her husband for a woman lover, however, she had refused because she felt responsible to her children. She complained that she now feels very lonely and sad because she has no love in her life. The columnist advised her to stay in her marriage, encouraging her to take up 'useful' activities and to appreciate her 'good' husband more: 'Then your problems that in the beginning seemed as big as an elephant will become as small as an ant', Budiman (2004) declared. **Her response clearly conveyed the belief that normality through marriage was much more important than any feelings of lesbian desire.**



Media stories cemented notions of heterosexual monogamy as the only acceptable practice 'through the persistent portrayal of any sexual behaviour outside marriage as sick and deviant' (Murray 1999: 143, see also Gayatri 1993, Oetomo 1996). According to one of the founders of Swara Srikandi, 'society has (a view) toward lesbians' life (as) wild, glamorous, and full of drugs' because of such media representations (MilaBlü 2003: 20). For this reason, a number of *lesbi* in Indonesia distanced themselves from the term *lesbi*, but activists, such as those in Swara Srikandi, have reclaimed the term. Media accounts of depressed, suicidal or murderous lesbians, women 'acting like men' and transvestite men all enforced the notion that such individuals were sick (*sakit*). The word *sakit* is in fact a commonly used term to refer to a *gay* or *lesbi* individual and is used by *gay* and *lesbi* themselves. Media representations create a popular attitude of distaste and even repugnance toward same-sex sexuality. While these media representations increase the visibility of *lesbi* and *gay*, at the same time they work to stabilise normative heterosexuality by contrasting 'abnormal' and sick homosexuals with 'normal' heterosexuals (see Foucault 1980).

#### *International pressures for same-sex marriage*

Through the efforts of groups such as the International Lesbian and Gay Association and the International Gay and Lesbian Human Rights Commission and the success of gay activists across a number of European countries to legalize same-sex marriage, in the 1990s a consortium of international lesbian and gay groups brought their demands for sexual rights and same-sex marriage to the international arena. Over the course of the 1990s several nations passed laws permitting same-sex marriage, while support for a universal right to sexual choice and same-sex marriage increased. Although *gay*, and particularly *lesbi*, activism was nearly invisible in Indonesia at that time, Indonesian state officials were forced to take notice of these issues and make explicit statements against the practice of homosexuality for the first time (Oetomo 2001).

At the International Conference on Population and Development in Cairo in 1994, held under the auspices of the United Nations with 180 states participating, a motion to adopt a statement supporting same-sex marriage was presented. The Indonesian Minister of Population, Haryono Suyono, declared that Indonesia would not support a declaration acknowledging same-sex marriage. President Suharto himself instructed the Indonesian delegation not to support the declaration, calling it 'such an odd thing' (Oetomo 2001: 121). Members of the Indonesian print media took this opposition to same-sex marriage as a declaration of the state's official position against homosexuality (Oetomo 2001).

Other statements by Indonesian state officials and clerics began to directly address the issue of homosexuality. In a paper on Islam and women's rights published in 1994, Abdurrahman Wahid (1994) declared that lesbianism is deviant and should not be condoned. His opposition to lesbianism was based on his belief that women have a duty to be mothers and wives.<sup>11</sup> That same year the Minister of Women's Affairs was quoted in an Indonesian newspaper stating that 'lesbianism is not part of Indonesian culture or state ideology' (Murray 1999: 142). The reference to 'Indonesian culture' is an oblique reference to what is seen as the basic foundation and value of Indonesia, family and marriage. Indonesian 'culture' is constructed in the modern Indonesian state as one in which individuals are expected and encouraged to value family and marriage ahead of their own desires, which means marrying and producing children above all else (Howard 1996, see also Boellstorff 2005). In 1997 a well-respected member of Muhammadiyah, one of the



largest Islamic organizations in Indonesia, who was running for a position in the national parliament, protested against the discussion of homosexuality and casual sex on commercial television talk shows. He argued that such topics were about behaviour that was 'in contradiction to our culture and religion' (Oetomo 2001: 143). The Minister of Information joined the argument, urging that commercial television stations should censor these topics because they were providing bad examples to people.

These comments by state and Islamic officials during the 1990s reveal a changing attitude toward sexual practices deemed outside normative gender. Where the deployment of gender had worked in the past to consolidate normative heterosexuality, the international visibility of a lesbian and gay rights movements seemed to call forth new tactics in dealing with 'perverse' sexualities. Wahid's statement (1994) explicitly disconnected lesbianism from normal womanhood, thus shoring up heterosexuality by an appeal to gender norms. The comments by the Minister of Women's Affairs make it clear that reproductive heterosexuality is a duty to the state. In these statements, state and Islamic leaders position homosexuality outside the accepted bounds of manhood and womanhood, and even outside culture, thus reinforcing the unnaturalness of such behaviour in the context of normatively reproductive genders.

While falling short of legal injunctions, these statements suggest a heightened concern about homosexuality in Indonesia. Such statements reinforce the stigma of homosexuality by declaring it deviant, unnatural and foreign. Activists associated with GAYa Nusantara (GN) argued that statements against same-sex marriage were part of Suharto's efforts to represent his regime as moral. During the 1990s, Suharto and his state party Golongan Karya were trying to stabilize their power by making stronger alliances with certain fundamentalist Islamic factions (Hefner 2000). Members of GN suspected that Suharto's statement against same-sex marriage was simply evidence of hypocrisy by the state (Oetomo 2001). Anti-homosexual statements from highly placed Muslim clerics, like Wahid in 1994, buttressed state pronouncements about the unnaturalness of homosexuality.

Public pronouncements by some state and Muslim officials constituted an effort to bring new tools to bear in the discursive production of knowledge about sexuality. Their statements promulgated an Indonesian sense of 'family values' that affirmed Islamic morals in contrast to the supposed immorality of homosexuality. If homosexuality was not Indonesian, then it could be ignored as the immoral product of western culture. As before, gender was deployed to make the argument that reproductive sexuality is natural to women and men, thereby reinforcing the idea that homosexuality is an unnatural and deviant practice. The main focus of their efforts continued to be on gendered bodies, ensuring that women and men fulfilled their so-called 'natural' roles properly. Where in the earlier years of the Suharto era it was considered adequate to create and encourage normalized heterosexuality and marriage as a means to deter non-reproductive behaviours, in the 1990s the perceived threat of international gay and lesbian activists' demands for human rights, a threat to the stability of normative gender and heterosexuality in Indonesia, led to more explicit discourse conveying messages about the abnormality of homosexuality for properly gendered Indonesian citizens.

#### *Era Reformasi and the appearance of lesbian activists*

With the fall of Suharto in 1998 and the beginning of Era Reformasi (Reformation Era), as it came to be called, it seemed that Indonesia might move toward a more democratic and

**open society.** In some regions in south Sulawesi, district level officials, who were proactive in HIV and AIDS education, provided public support and funding for *waria* organisations and beauty contests (Graham 2003). At the same time the new policy of state decentralisation and regional autonomy led to the strengthening of some regional fundamentalist movements and efforts to replace secular law with conservative Islamic law (*shariah*). Most movements toward *shariah* have had serious consequences for women's rights and the rights of sexual minorities. In addition, while new political parties formed that recognized the rights of *lesbi*, *gay* and *waria*, still other parties maintained strong religious objections to those same groups (Oetomo 2001).

With the end of the Suharto regime, *lesbi* and *gay* activist groups became more visible and vocal, taking strength from the democratic movement and their international colleagues to confront state and Islamic discourse directly and publicly. While the *gay* organization GAYa Nusantara had been in existence in Indonesia since the mid-1980s, it was not until the late 1990s that two well-organized activist *lesbian* organizations appeared in Jakarta, each with their own strategies for addressing discrimination against *lesbi* and *gay*. Swara Srikandi (The Voice of Srikandi), started on-line in 2000, is a *lesbian*-only organization. Members of both organizations are, for the most part, urban, university educated, professional, working women from families in the upper echelons of Indonesian society. Some have degrees from American universities and are quite comfortable using the English language. Because of state and Islamic pronouncements as well as print media articles connecting *lesbi* with criminal or amoral elements, Swara Srikandi (SS) at first maintained a low profile. None of the SS members were willing to reveal their identities, given the risks they faced should they become known publicly as *lesbi*. Over time, however, the organization shifted its focus from primarily serving as a support group for *lesbi* to embracing a more overtly political agenda. Since 2002, they have begun to work carefully and anonymously with media in an effort to develop a 'positive image' of Indonesian *lesbians*.<sup>12</sup> Swara Srikandi recognises that part of the problem for *lesbians* is the fact they are women but the organization is primarily concerned with issues affecting *lesbians* as a sexual minority. Consequently, they have developed tentative alliances with GAYa Nusantara and international lesbian and gay organizations.

A second group, Sector 15, formed in 1998 within the Indonesian Women's Coalition (Koalisi Perempuan Indonesia, KPI). Koalisi Perempuan Indonesia was organized to support women's issues and defend women's rights. It has actively pushed to insert human rights, women's rights and minority sexual rights into the Indonesian constitution. Sector 15, the 'minority sexual orientation group' that includes *lesbians*, bisexuals and transgender individuals, was part of the organisation from the beginning.<sup>13</sup> They conduct seminars to educate *lesbi* in Jakarta and also work to educate the general populace about *lesbi* through the media. Sector 15 is strongly aligned with women's rights issues. **They draw a close connection between women's issues and lesbian issues, arguing that gendered expectations and strictures on women's sexuality in general make it difficult for women as *lesbians* to be visible and politically active in Indonesia.**

### *Criminalizing 'indecent' acts*

Despite ongoing work by these and other groups in Indonesia to create a more democratic and open society, Era Reformasi has seen sustained efforts to criminalize a wide range of behaviours, including sexuality, through proposed revisions to the State Penal Code. This code was originally developed by the Dutch and used to administer the Dutch East Indies

colony from 1886. Efforts to revise the Penal Code were begun in 1981. Several drafts have been written by succeeding ministers of the Department of Justice but drafting the revision gained momentum following the downfall of Suharto (Andreas 2006). At least two revisions have circulated since 2000; the first contained 727 articles (referred to here as Draft I), while the second revision in 2005 (referred to here as Draft II) contained 741 articles.<sup>14</sup> According to the Minister of Justice Abdul Gani Abdullah, the revisions are an effort to update the Penal Code and bring it more in line with Indonesian culture and religion. He argued that the original Penal Code was based on Dutch principles whereas Indonesia must base its laws on its culture and religion (Radio Netherlands 2003). In supporting the need to draft revisions to the Penal Code established by the Dutch, former Ministry Justice Muladi pointed out that sexual acts in the east are treated differently than in the west. For instance, the criminalisation of *kumpul kebo* (living together outside of marriage) is a case in which 'for the west the only victim is the person involved but in the east the victim is the community or community norms' (Kompas Cybermedia 2003b). Justifications for the revisions were thus based on assertions of difference between Indonesian and 'western' values.

The proposed revision to the Penal Code constitutes a direct juridico-legal mechanism to control consensual sexuality. As presently written, it represents a significant shift from the policies of the New Order era and even the efforts in the 1990s to disconnect homosexuality from normative gender. The proposed laws regarding sexuality address consensual heterosexual relations outside of marriage; rape and indecent acts, which are primarily identified as acts based on violence or the threat of violence; acts with those under age (ages vary); and prostitution (unless otherwise specified the Articles discussed here refer to those in Draft II). The revised article applying explicitly to homosexuality, Article 493, reads as follows: 'A person who engages in indecent acts (perbuatan cabul) with another person of the same sex (sama jenis kelaminnya) under 18 years of age will receive a sentence of from one to seven years'.<sup>15</sup> This revision modifies the current law only to specify an actual age limit (18 years of age) and increase the upper limit of the sentence from five to seven years.<sup>16</sup> Neither explicitly outlaws homosexual relations between consenting adults. In contrast any sexual relations between a man and a woman outside of marriage (*zina*, adultery) are criminalised, although these sexual relations can only be punished if a complaint is brought before a judge. The maximum sentence allowed is five years.

As drafted in the 2005 revisions (Draft II), marriage is the only site for permissible heterosexual relations. The new codes are quite specific in identifying the actors in these relations as a man and a woman. In effect, these proposed revisions consolidate normative heterosexuality by strictly defining what is permissible and impermissible heterosexual sex and threatening punishment by the state of anyone engaging in sex outside of marriage.<sup>17</sup> Comparing the state view of heterosexuality and homosexuality as reflected in Draft II, in both cases relations with persons under age are forbidden. Under Article 493 the age of consent for homosexual relations is explicitly set at 18 years of age. For heterosexual relations, the code is more complicated and contradictory regarding age of consent for women; 18 and 14 years of age are given depending on the type of heterosexual relation, suggesting that women have fewer protections in heterosexual relations and are in general not viewed as agents in sexual matters. Furthermore, permissible heterosexual relations are limited to intercourse, i.e. penile-vaginal sex, because oral or anal heterosexual sex, in which 'a man inserts his penis into a woman's mouth or anus' (Article 489 [2] a) is forbidden. Thus not only is heterosexuality limited to marriage, the only legal form of heterosexuality is penile-vaginal sex. In the process of criminalizing behaviours that in the

past were unregulated by state law, the state through its representatives has become a focal point in producing a new knowledge of sexuality. These codes move beyond the deployment of gender by creating a knowledge of sexuality in which only certain acts are legal. The assumption that normatively gendered men and women need not be disciplined sexually is gone, replaced with an explicit and restrictive list of legal sexual acts.

The consequences of Article 493 for *lesbi* and *gay* in Indonesia are unclear. While not proscribing consensual adult homosexual relations, maintaining the illegality of same-sex relations between youth (with a specific age of consent) does two things: first, it compels a sense that such relations are immoral and, second, it prohibits sexual relations at just the time when most *lesbi* and *gay* are becoming active sexually. According to the *lesbi* I interviewed in West Sumatra, most started dating others of the same sex in middle and high school years (Blackwood 2005b). Although these relations were generally not disclosed to others outside of a small group of friends, the new code would give the state more power to disrupt such relationships and impose greater secrecy and psychological harm on those whom it seeks to control.

The revisions have been the subject of much heated and ongoing debate in Indonesia. The revised articles on sexuality appear in a section of the Penal Code entitled 'crimes against morality' (*tindak pidana kesusilaan*) and are greatly expanded over the current law. The debates have moved the discursive terrain away from the definition of properly gendered citizens to questions concerning the liberal notion of human rights (of privacy, of freedom of expression and association) versus the moral sensibilities of the people.<sup>18</sup> According to the compilers of the revision, these new articles take into account Islamic and customary law as well as international conventions (Kompas Cybermedia 2003d, Partai Keadilan 2004). Yet the section regulating sexuality is considered by most to directly reflect a conservative interpretation of Islamic law (*shariah*). In fact, one of the men responsible for developing the revisions, Yusril Mahendra, a Minister of Justice, is the head of an Islamic political party that strongly supports making *shariah* the state law (Radio Netherlands 2003). Human rights activists criticised the proposed revisions as a clear attempt to bring Islamic law into Indonesian law (Holzner and Oetomo 2004). As the debates have progressed, conservative Islamic leaders, such as Achmad Ali, argue that it is not just *shariah* that forbids sexual relations in the manner instituted in the proposed revisions, but all religions (Husaini 2003, Partai Keadilan 2004). By such statements those supporting inclusion of *shariah* seek to normalize their position by arguing that all religions (hence all good, moral people) view such relations, including homosexuality, as sinful. Rather than debate the issue on the grounds of morality, other critics, including those representing feminist women's organizations, argue that the proposed revisions intervene too far in the private lives of individuals, evoking notions of privacy and the liberal concept of the individual (Hukumonline 2003, Kompas Cybermedia 2003a, Kompas Cybermedia 2003c). Thus, one of the tensions in the debates is the struggle over the definition of morality (*kesusilaan*) and who has the power to regulate it, the individual, the community or the state.

For their part, *lesbi* and *gay* activists have become more visible as critics of the proposed revisions. The Network of All Colours, established in 2003, was a coalition of several *lesbi*, *gay*, and *waria* organizations on Java, including Sector 15 of KPI and SS. They argued that the proposed revisions violate their human rights, as established in the Universal Declaration of Human Rights (Indonesian Women's Coalition 2004, Kompas Cybermedia 2005). At a press conference in June 2004, members of the Network pointed to two articles in particular that may pose problems for them, including one that forbids a

couple to live together as husband and wife (Article 486, Draft II) and another that forbids an unmarried couple to have sexual relations (Article 484 [1] e, Draft II) (Hukumonline 2004). In Draft I, these articles pivoted on the notion of common decency (*perasaan kesusilaan masyarakat*). The Network argued that these articles could be used to punish *lesbi* and *gay* couples, particularly in areas of Indonesian where such behaviours may be judged to be offensive to the general populace. The concept of common decency or public morals continues to be a cornerstone of Draft II. Article 467 criminalises any behaviour that offends public decency (*kesusilaan di muka umum*) and could thus potentially be used to threaten same-sex relations because of the vagueness of the concept.

The proposed revisions continue to be debated in the media as they work their way through the legislative process. It appears that no consensus, either among media, the Indonesian citizenry or its leaders, has developed, suggesting that a powerful conservative Islamic alliance has not been able to emerge. At the same time, the effects of this process have had deleterious consequences. A newspaper article in the widely read newspaper Kompas improperly cites the text of Article 427 (Draft I) (Kompas Cybermedia 2003d). By leaving out the age stipulation, the newspaper gives the impression that the Article outlaws homosexuality in general. In effect, this debate has fostered a belief among the populace of the nation that the state plans to outlaw homosexuality. During this time period attacks by radical Islamic groups on *gay* and *waria* public events have increased.<sup>19</sup> Other political leaders have taken the lack of consensus on the issue to assert their own conservative views, including the chairperson of the 61st session of the United Nations Commission on Human Rights, Makarim Wibisono. He declared that lesbian, gay, bisexual and transgender (LGBT) rights cannot be included in a universal human rights law being considered by the Commission because it is against Islamic and Vatican law.<sup>20</sup>

In the 2004 presidential election, all candidates were asked their views on homosexuality, bringing the issue into full public view for the first time. While a range of views were expressed, from support and tolerance to condemnation, the views of the eventual winner were one of the most conservative. According to his election committee, Yudhoyono promised that 'deviant sexual acts' (*perilaku seksual menyimpang*) will not be legalised because they conflict with religion, whether Islam or others (Sinar Harapan 2004). Although it is not clear what he is referring to since homosexuality is not illegal in Indonesia, his statement probably reflects Islamic moral precepts against homosexuality and the persistence of the idea that homosexuality in Indonesia is illegal even though no laws have been passed. It also reflects Yudhoyono's willingness to use religion to support his campaign by giving it the appearance of moral superiority.

State attempts to narrowly define normative heterosexuality constitute a form of 'moral panic.' Moral panics come about when a group or behaviour seems to threaten societal values (Cohen 1980). In many cases they arise at the conjunction of powerful social transformations and movements that force communities and nations to swiftly respond to shifting economic and social conditions. Fueled by the media and shifts in the balance of power among political parties or ethnic groups, panics can be the basis for reactionary legislation used to stabilise the power of state or community leaders by showing that they are 'doing something' about the problem. For Indonesia, the fall of Suharto and his repressive regime, along with the reopening of the political process was just this type of event. The proposed revision to the Penal Code is an effort to shore up the stability of the state by placing all sexual relations outside of marriage, possibly including homosexuality, under the threat of punishment as offenses to moral sensibilities. In the name of preserving marriage by repressing 'immorality,' the revisions could be used to strengthen the power of



conservative Islamic groups or to realign political allegiances under the banner of moral sensibilities.<sup>21</sup>

## Conclusion

The emphasis on heterosexual marriage and the explicit prohibition of specific heterosexual and homosexual acts in the proposed revisions to the Penal Code suggest that a shift is occurring in state and Islamic discourses of sexuality. Whereas prior to the 1990s the deployment of gender was sufficient to support the production of heterosexually reproductive citizens, the proposed revisions are much more closely tied to definitions of sexual acts. The revisions bring into discourse specific acts that it then must repress. The notion of individual sexuality and sexual choice in this context seems to be gaining credence. State and Islamic leaders no longer expect that Indonesian citizens will 'naturally' adhere to and understand reproductive heterosexuality as the fulfillment of one's duties as properly gendered citizens.

This new discourse brings into play, perhaps for the first time, the 'deployment of sexuality' that Foucault envisioned occurring in the West with the medicalisation and criminalisation of sexual acts. I am not suggesting that Indonesia is thereby just coming into modernity, however, because Foucault's geographically and socially specific history cannot be applied in the same manner to contexts outside the so-called west. Under this new discourse Indonesian *lesbi* and *gay* may no longer be viewed as bad examples of men and women but as individuals whose sexual desires are a threat to the stability of the nation. These proposed revisions represent a transformation from a civil society in which human consensual relationships are governed by moral norms expressed in notions of normative gender to one regulated much more heavily by criminal law and state surveillance of individual behaviour. However, the intense debates about the proposed revisions indicate that these transformations are still unfolding, their direction uncertain as competing discourses of morality, modernity, individualism and sexual rights struggle for dominance.

Offord and Cantrell (2001: 245) suggest that as 'homosexuality becomes more visible (in Indonesia) there will be a legal and political response' regarding the concept of homosexual rights. Yet homosexuality has been visible at least in the media since the early 1980s. For Indonesia, it is not the emergence of a newly visible, activist *lesbi* and *gay* movement that has led to the shifting discourse on sexuality, but the development of a moral panic associated with the tremendous political and social changes occurring with the demise of the Suharto regime. Amid shifting alliances certain religious and political factions have been able to redirect international pressure for same-sex marriage and sexual rights toward a debate on the morality of the citizenry, whose growing sense of individualism and free choice threatens to undermine the stability of the state. In their efforts to redefine a normatively gendered citizenry, certain factions have sought to prop up heterosexual marriage by attempting to criminalise a wide range of sexual practices. While these shifts in discourse are unresolved, the debates have produced a new knowledge of sexuality more closely in line with Foucault's concept of the deployment of sexuality.

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## Notes

1. Article 292 of the State Penal Code. All translations are the author's unless otherwise noted.
2. *Waria* is an Indonesian term for males who typically live as women and take men as lovers. Oetomo 1996 describes *waria* as transgendered males who are sexually active with men who occupy the normative category for males in Indonesian society.
3. See Peacock (1968), Kellar (2004), Blackwood (2005a) for the period before the 1980s, also Peletz (2006) for Southeast Asia more generally. See Wieringa (1999) for a history of the first *lesbi* organization in Jakarta.
4. '*Lesbian*', '*lesbi*' and '*gay*' are cognates of the English terms 'lesbian' and 'gay,' although they do not share the same meanings and resonances as their English counterparts. For this reason, I italicize '*lesbian*' and '*gay*' when used in reference to Indonesian *lesbian* and *gay* people. The terms '*lesbian*' and '*lesbi*' are used in this article because both forms appear in the print media in Indonesian as well as in the literature of *lesbian* activists in Jakarta.
5. The New Order refers to the postwar regime of General Suharto, who became acting head of state in 1966 and remained President up until 1998.
6. See Bowen (1993), Hefner (2000) re Indonesia's 'secular' Islam.
7. See Robinson (2001) for further discussion of the relation between *adat* and Islam.
8. The two stories appeared in *Tempo*, 23 April 1981 and 30 April 1981.
9. My research has focused primarily on *lesbi* in Indonesia, particularly in West Sumatra. Due to dominant gender norms men's and women's sexualities are viewed differently; the experiences of *lesbi*, *gay* and *waria* consequently are also quite different. For that reason, I maintain a focus here on *lesbi*. See Boellstorff (2005) for more information on *gay* men in Indonesia.
10. These interviews were part of my larger study on *lesbi* in Indonesia.
11. Wahid is a highly respected Muslim cleric who was the third president of Indonesia (1999–2001).
12. From the Swara Srikandi mission statement, 2000.
13. The terms 'minority sexual orientation' and 'lesbian' are used by Sector 15 in their English-language writings.
14. These draft revisions are referred to as Rancangan Undang-Undang KUHP (RUU KUHP).
15. Rancangan Undang-Undang KUHP, Book II, 2005. Available at: <http://www.legalitas.org> (accessed 3 August 2006).
16. The current law states 'An adult who commits indecent acts with another person of the same sex who is not yet an adult shall be sentenced to up to five years' (KUHP, Chapter 14, Article 292). Article 493 in Draft II contains the same provisions as Article 427 in Draft I.
17. Due to space limitations, this paper does not discuss the changes between Draft I and Draft II. Note, however, that Article 421 (Draft I), which punishes a man who promises marriage to a woman and then breaks his promise, or who gets a woman pregnant and then does not marry her, was withdrawn in Draft II.
18. See for instance Diani 2005.
19. See BBC News 2005; Boellstorff 2004.
20. Email from Indonesian Women's Coalition for Justice and Democracy, dated 17 February 2005.
21. See also Peletz (2002, 2006) who makes a similar argument re male transgender behaviour in Malaysia and Southeast Asia, but in most cases that behaviour was the target of increasing stigmatisation and explicit criminalisation.

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