

STORY OF CHANGE: INDONESIA

Towards a KP Inclusive Penal Code: Engagement of Key Populations in the Penal Code Law Revision Process

The Problem

Indonesia's national criminal code (KUHP/Kitab Undang-undang Hukum Pidana) has been in place since Indonesia declared its independence in 1945. The KUHP as it exists now is a slightly modified version of the *Wetboek van Strafrecht voor Nederlandsch-Indie*, which was the criminal code put into law during the Dutch colonial era in 1918. There are articles within the KUHP which criminalize and stigmatize members of key populations, including women, Adolescent Girls and Young Women, People Who Use Drugs, Sex Workers, and youth, as well as Lesbian, Gay, Bisexual, and Transgender (LGBT) people. These articles are as follows:

1. Criminalization of all forms of consensual extramarital sex;
2. Criminalization of the promotion of contraceptives for adolescents;
3. Criminalization of all forms of abortion (including safe abortion);
4. Criminalization of any forms of cohabitation (can be reported by a third party, including village heads);
5. The word "same sex" was included in the formulation of obscene act criminalization;
6. Drug offences are included in the KUHP, implying a stigmatization of any drug problem as a criminal matter.

These six articles became the focus for Rumah Cemara, ICJR and the wider PITCH partnership working to advocate the revision process of penal code. Revisions to the KUHP were first proposed in 1958, but in reality, the process has never taken place. The revised draft bill of the criminal code is known as the RKUHP. Based on this interest, PITCH partners joined the National Alliance for Criminal Code Reform (Aliansi Nasional Reformasi KUHP - the Alliance) and put the focus of their work there. The Alliance was established in 2005 by several civil society organizations (CSOs) who were concerned with criminal law reform, with the purpose of engaging in the process of revising the KUHP. Initially, the main focus of the Alliance's work was to advocate for criminal law reform policies. The Institute for Criminal Justice Reform (ICJR), a PITCH partner since 2017, has been the coordinator of the Alliance since 2015. Other PITCH partners have also been involved. Rumah Cemara joined the Alliance in 2017 and both Indonesian Positive Women Association (IPPI) and Indonesia's national sex worker network (OPSI) joined in 2018.

In 2016, ICJR worked with Rumah Cemara to conduct research related to the 2009 Narcotics Law No. 35. It became clear for ICJR that the focus of the discussion also involved issues related to HIV/AIDS. At that time, while there was relatively little discussion related to the RKUHP at the government level, a lot of discussion was taking place among CSOs, including Rumah Cemara and Puzzle Indonesia. ICJR, Rumah Cemara, and Puzzle Indonesia jointly developed an agenda which advocated for the RKUHP to be implemented in 2018.



The Change Process

Beginning in February 2018, the Alliance organized a mass mobilization involving a women's rights coalition, university students, and the Indonesian Labour Organisation Network. This happened in collaboration with other alliances, including the Civil Society Alliance to Reject RKUHP, coordinated by YLBHI (Yayasan Lembaga bantuan Hukum, a Legal Aid foundation). The mass mobilization occurred at not only the national level but also at the provincial level, throughout the Alliance networks and the involving student organization such as GEBER (Gebrak Demokrasi).

In early May 2018, Rumah Cemara and ICJR organized a national consultation meeting to discuss the latest status of RKUHP. Since then, the Alliance has focused its advocacy towards the Government of Indonesia (GoI) on the RKUHP, centering its advocacy on the criminalization of risky behavior related to HIV/AIDS prevention in prisons. In addition to this national consultation, the Alliance carried out joint advocacy with the Civil Society Alliance to Reject RKUHP, with each partner organization advocating for the reform of specific articles in the Penal Code. For example, while IPPI focused on the article concerning criminalization of all forms of abortion (including safe abortion) and the promotion of contraception, OPSI focused its advocacy on the article in the Penal Code that criminalizes all forms of consensual extramarital sex, while Rumah Cemara focused its advocacy on reforming the Penal Code's articles that criminalise drug users and unmarried cohabitating couples from the LGBT community.

In mid-2018, the Government of Indonesia revised the article related to the criminalization of adultery. The article was modified so that only parents, spouses, or children can report adultery. In July 2018, the Government of Indonesia suspended the articles related to the criminalization of homosexuals. There was previously an article on the prevention of risky behavior related to sexual relations in which the "same sex" element was included in the formulation of the criminalization of obscene acts. In the same month, the Government of Indonesia changed the article related to the criminalization of narcotics users, which had previously stated that the rehabilitation of drug users was considered a criminal act. However, a letter was sent to the Alliance from the constitutional court of Indonesia which highlighted the importance of drug users entering into rehabilitation, and this helped to persuade the government of the importance of reforming this article. By comparison, in the 2009 Narcotics Law, the rehabilitation of drug users was not presented as a cause for criminalization, and instead presented it from a medical perspective. In mid-2019, the Government of Indonesia changed the article which prohibited the promotion of contraceptives and the article on the criminalization of all forms of abortion.

The changes mentioned above have had a direct impact on the work of PITCH partners. For example, Inti Muda Indonesia—who work with the AGYW on educating young people on SRHR— had difficulties in promoting contraception due to restrictions which stipulate that only those authorized by the government – including health workers - and competent volunteers assigned by authorized officials can conduct such promotion. The Indonesian government’s position is that contraception should only be promoted by health workers or others who are authorized by the government, meaning that CSOs such as PITCH partners IPPI and Inti Muda are not authorized by the government to promote contraception. For IPPI—who work with women who live with and are affected by HIV—the original article on abortion would pose challenges as it does not take into account pregnant women who live with HIV or even rape victims who are pregnant and decide to abort their pregnancy due to health or other psychological issues.

In mid-September 2019, the Government of Indonesia started discussions on the RKUHP again where, in the end, the RKUHP Working Committee (Panitia Kerja - Panja) approved the draft RKUHP. On 15 September 2019, a parliamentary task force finalized the 628-article RKUHP bill. The problem was that the RKUHP was discussed exclusively by Panja members and, thus, the public was unable to provide input regarding its content. In addition, many articles that had been suspended in 2018 (see above) were reintroduced into the RKUHP in 2019. Soon after the approval of the draft RKUHP, on September 15, 2019, the Alliance received the latest draft of the RKUHP and since then there have been intensive discussions among and advocacy by the Alliance members on the new articles within the RKUHP. Five days later, on 20 September 2019, the President of the Republic of Indonesia declared a postponement of the discussion of the RKUHP, stating that the RKUHP should be open for discussion for the public. This was largely in response to large protests in many districts across Indonesia but in Jakarta in particular, while President Joko Widodo received significant pressure from the international level, in particular from the European Union.

However, the House of Representatives (DPR) continues to conduct discussions on RKUHP. In response to the decision of the DPR, on September 23, 2019, the Alliance – alongside the Coalition of Women’s Rights, university students, and the Indonesian Labour Organisation Network - carried out further demonstrations in Jakarta and other provinces in Indonesia, rejecting the ratification of the RKUHP.

The demonstration led to the Chairman of the Indonesian Parliament, Bambang Soesatyo, stating on September 24, 2019, that discussion of the RKUHP was again to be postponed, to reduce public anger and to review the articles that were considered problematic. This postponement meant that the RKUHP would not be deliberated or passed during the plenary meeting of the last session of the DPR's 2014–2019 term, which occurred on September 30, 2019. It also implied that deliberations of the RKUHP would be continued by a new cohort of lawmakers (including those who were re-elected) who were due to take their seats in the DPR starting October 1, 2019 for a term spanning until 2024. This meant that there would be opportunities (more time) for the DPR and the public, including members of key populations, to discuss the six issues mentioned in the problem section.

As of mid-2020, there have been no substantial discussions on the RKUHP known to the CSOs or the public. However, the following progress was observed in the latest version of the RKUHP that was made public in July 2019, namely:

1. Articles on complaints of consensual sex criminalization by village heads have been removed in the draft; this was one of the advocacy asks developed by Rumah Cemara and ICJR while working as members of the Alliance. Advocacy was also carried out by the Alliance in 10 districts since October 2020 with the support of the Global Fund, with the objective of raising awareness among Key Populations at the community level. The PITCH Indonesia Country Focal Person has served as the facilitator of this work
2. Safe abortion was legally allowed for up to the first forty days of pregnancy, but has now been increased to up to the first 120 days. This has been a key message of PITCH partner IPPI, to ensure the provision of safe abortion for women living with HIV

The main success of the Alliance has been to keep public consultation and discussion on the criminal code on the agenda and to ensure the government continues to consult civil society, while also playing a role in the government deciding to delay the finalization and legislation of the draft criminal code.

Lessons learned

PITCH partners were able to use the opportunity to engage in the process of the RKUHP and take advantage of the momentum to do so by, for example, capitalizing on the opportunity to promote issues related to RKUHP and key populations at various levels. The engagement of PITCH partners in the Alliance successfully made this advocacy coalition more inclusive. This movement teaches us that in order to achieve significant breakthroughs, collaboration with CSOs beyond Key Population communities is essential. This should include academics and university students, helping to make our voice stronger. A key lesson from this experience relates to the effectiveness of stakeholder mapping and the development of issue-specific advocacy strategies for the Alliance members as part of the wider advocacy strategy in relation to the penal code revision process.

“Diversity is having a seat at the table, inclusion is having a voice and belonging is having that voice be heard” – Liz Fosslien

The story was prepared as part of the End Term Evaluation of the PITCH Programme in 2020, conducted by ResultsInHealth team: Aryanti Radyowijati, Conny Hoitink, Zaire van Arkel, Maurizia Mezza, Lingga Tri Utama, and Gita Meidita (national consultant).

