

INDONESIA



Population: 262.7 million



Stonewall Global Diversity Champions: 54



THE LEGAL LANDSCAPE

Stonewall uses broad legal zoning to group the differing challenges faced by employers across their global operations.

Indonesia is classified as a Zone 3 country, which means sexual acts between people of the same sex are illegal.

To help put this into context, it is important to note that two further zones exist:

In Zone 1 countries, sexual acts between people of the same sex are legal and clear national employment protections exist on grounds of sexual orientation. In Zone 2 countries sexual acts between people of the same sex are legal but no clear national employment protections exist on grounds of sexual orientation.

FREEDOM OF EXPRESSION, ASSOCIATION AND ASSEMBLY

Article 28 of the Constitution protects the **rights to freedom of expression, association and assembly**.

There are **no LGBT-specific restrictions or additions** to these rights.

Law enforcement has used the Law No. 44 of 2008 on Pornography to **restrict the rights to freedom of expression, association and assembly regarding LGBT people and LGBT topics**. This is done by broadly interpreting “indecent acts” in society and “deviant sexual acts” as pornography.

As of 2018, there were 22 local regulations that **criminalised LGBT people** either at the provincial, regency or city level.

FAMILY AND RELATIONSHIPS

Sexual acts between people of the same sex are **not expressly criminalised on a national level**.

However, Law No. 44 of 2008 on Pornography has been used to **criminalise same-sex relationships** on the grounds of ‘indecent acts’ and ‘deviant sexual acts’. This is punishable with up to six years **imprisonment and a fine** of up to Rp 6’000’000’000.

Article 281 of the Penal Code (Offences Against Dignity) has also been used to **criminalise same-sex relationships**.

In addition, there are 22 local regulations that **criminalise sexual acts between people of the same sex**. Areas with these regulations include South Sumatra, West Sumatra, Aceh, Gorontalo, West Java, Banjar and Tasikmalaya.

In **Aceh**, same-sex sexual acts have been punished with **lashings**.

Same-sex marriage is not legal because Article 1 of Law No. 1 of 1974 on Marriage defines marriage as a union between a man and a woman.

There are **no marriage restrictions specific to trans people**. Trans people who have had their gender legally recognised can enter a different-sex marriage.

Same-sex couples have **no legal right to adopt children**. Only married couples can adopt under Article 13(f) Government Regulation No. 54 of 2007 on Child Adoption.

EQUALITY AND EMPLOYMENT

General discrimination in employment is prohibited under Articles 5 and 6 of Law No. 13 of 2003 on Manpower and Article 28D of the Constitution. Discrimination on the **grounds of sexual orientation and gender identity** are **not explicitly included but may in theory be considered a violation** of this law.

Article 28D of the Constitution provides for **equality before the law** for every person. There is no explicit reference to sexual orientation and gender identity.

As **aggravating circumstances** are **not clearly regulated** in Indonesia, **hate crimes** based on sexual orientation and gender identity **may be considered an aggravating circumstance** in sentencing at the **discretion of the judge**.

GENDER IDENTITY

Trans people **can legally change their gender** by obtaining a court decree under Article 56 of Law No. 24 of 2013, amending Law No. 23 of 2006 on Population Administration and Article 97 paragraph (2) Presidential Regulation No. 25 of 2008 on Requirements and Procedures for Population Registration and Civil Registration.

Legal gender can only be changed to male or female. There is **no option to change legal gender to a third gender**.

The requirements for legal gender change are not regulated by a specific law and are **dependent on the court**. In practice, **legal gender change** can be **subject to medical opinion**, proof of **gender reassignment surgery and family testimony**.

Trans people **can change** their **legal name** under Article 93 Presidential Regulation No. 25 of 2008 on Requirements and Procedures for Population Registration and Civil Registration.

The **requirements for a legal name change** include a **court decree**, a **civil registration deed**, a **marriage certificate** (if married), a **family registration card** and a copy of an **identity card**.

IMMIGRATION

There are **no legal provisions** that specifically support **immigration of same-sex partners**.

CONTEXT

Given the restrictive legislative framework in Indonesia in relation to sexual orientation and gender identity, any LGBT workplace-related activities in the country should be approached with caution. The safety and security of LGBT staff should be paramount at all times.

The [Global Workplace Briefing](#) series seeks to give employers the tools they need to create more equal and inclusive workplaces for their LGBT employees. To inform the content of the briefings and to understand the situation for LGBT people in different countries, Stonewall always consults with local LGBT groups.

In these briefings we usually provide an overview of the context based on the views of a local LGBT civil society organisation willing to be quoted publicly. Unfortunately, due to the restrictive context in Indonesia, Stonewall was unable to effectively consult with local LGBT groups for this briefing.

In the absence of a locally informed perspective, the guidance in this briefing is limited. Nonetheless, this briefing provides employers with tools to support international LGBT staff working in Indonesia.

INTERNATIONAL INSIGHT INTO HUMAN RIGHTS IN INDONESIA

Amnesty International, in its 2017/18 report on the state of the world's human rights, summarised the general human rights situation in Indonesia:

"Indonesia failed to address past human rights violations. The rights to freedom of expression, of peaceful assembly and of association continued to be arbitrarily restricted. Blasphemy provisions were used to imprison those who peacefully exercised their rights to freedom of religion and belief. At least 30 prisoners of conscience remained in detention for peacefully exercising their rights to freedom of expression or of religion and belief. The security forces carried out unlawful killings and used excessive force during protests and security operations. Two men were caned in public in Aceh after being convicted by a local Shari'a court of same-sex consensual sexual relations." *Amnesty International, Amnesty International Report 2017/18: The State of the World's Human Rights*

ILGA World, in its 2019 State-Sponsored Homophobia Report, also addressed the situation for LGBT people in Indonesia:

"The Indonesian Province of Aceh has begun enforcing the Aceh Islamic Criminal Code (Qanun Jinayat), which punishes same-sex sexual acts with 100 lashes. In May 2017, two men were publicly inflicted with 83 lashes each for allegedly engaging in gay sex. In July 2018, another two men were publicly lashed. Separately in January 2018, police officers in North Aceh arrested 12 transgender people, forcefully cutting their hair and shutting down the beauty salons where they worked. They were later released without being charged. Indonesia's Pornography Law, which includes "bodily movements" in its coverage and imposes heavy fines as well as long prison terms, has also been used to target LGBTQ people. In April 2017, 14 men, who were occupying two hotel rooms in Surabaya, were raided for pornographic activities. In May 2017, police raided a club in Jakarta and detained 141 men also for alleged pornographic activities. A small respite came when, in December 2017, the Indonesian Constitutional Court, voting five-to-four, rejected the petition filed by the Family Love Alliance to make gay sex and sex outside marriage illegal. The court held that it was not its role to criminalize private behaviour or to usurp parliament by imposing laws on it." *International Lesbian, Gay, Bisexual, Trans and Intersex Association: Lucas Ramon Mendos, State-Sponsored Homophobia 2019 (Geneva; ILGA, March 2019)*

The Human Dignity Trust, in its 2019 Injustice Exposed report, examining the criminalisation of trans and gender diverse people throughout the world, evaluated the situation for trans people in Indonesia:

"Trans people in Indonesia are also targeted on the basis of their gender expression and identity; notably under Qanun 11/2002, which is among five laws enacted between 2002 and 2004 that criminalise violations of Sharia law and contain Islamic dress requirements. Transgender women have been singled out under these provisions. In 2010, the head of the Wilayatul Hisbah (the Islamic religious police force in Aceh) broadcasted his view on transgender women stating, "we consider them men, and they should dress accordingly". The city of Pariaman passed a broadly-framed regulation in November 2018 banning 'acts that are considered LGBT'. In remarking on the new law, the head of the local legislature stated that 'same-sex LGBT and transgender people will be subject to sanctions and fines if they disturb the public order'." *The Human Dignity Trust, Injustice Exposed: The Criminalisation of Transgender People and its Impacts, 2019*

LGBT INCLUSION IN THE WORKPLACE

Despite a challenging context for LGBT people in Indonesia, there are several steps employers can take to create a more inclusive and supportive workplace environment for their LGBT employees. However, LGBT-inclusive activity that is appropriate elsewhere may put LGBT staff in danger in Indonesia. The safety and security of LGBT staff, both from the Indonesia and elsewhere, should be paramount at all times and will require careful consideration.

CREATING GLOBAL STRUCTURES

It is important that multinational employers work to create a strong global LGBT diversity and inclusion framework. Global policies and structures send a signal to LGBT employees that their needs are taken seriously wherever they are or travel for work. Employers should work to:

-  **Introduce global anti-discrimination and anti-bullying and harassment policies that are explicitly inclusive of sexual orientation and gender identity**
-  **Appoint a global senior champion who addresses the importance of LGBT equality globally**
-  **Build a global LGBT employee network group and a global allies programme**
-  **Have a global diversity and inclusion team or position in place whose remit covers sexual orientation and gender identity**

SUPPORTING MOBILE STAFF

Multinational businesses may send their staff on overseas assignments to Indonesia. It is vital that employers have policies and practices in place to support LGBT people ahead of and during their work travel. Employers should take the following steps:

-  **Have relocation policies in place that address additional considerations for LGBT staff and set out how such issues are to be handled by managers**
-  **When sending employees on a posting to Indonesia, make sure to provide them with information on the legal and cultural situation for LGBT people in the country, and a realistic overview of how your organisation can support LGBT employees during the posting**
-  **Make sure LGBT employees do not suffer a career detriment if they decide not to accept the assignment due to their sexual orientation and gender identity, by providing equivalent alternatives**
-  **Take steps to avoid outing of LGBT employees in Indonesia – this may include change of email address and social media security training**
-  **Have strong security mechanisms in place, digital and otherwise, to ensure confidential access to global employee support mechanisms for mobile and domestic staff. For example, this may include confidential membership lists and privately marked calendar invitations**
-  **Have an emergency evacuation procedure in place that explicitly takes into consideration emergency situations specific to LGBT people**

Stonewall's [Global Workplace Equality Index](#) is the definitive benchmarking tool for global LGBT workplace equality. It's a great way to assess your organisation's progress and navigate the challenges of upholding inclusive values locally. The Global Index provides your organisation with a clear and rigorous action plan for your LGBT inclusion work across the globe.



LEARN FROM STONEWALL'S GLOBAL DIVERSITY CHAMPIONS

In our experience, sharing case studies from employers operating in-country can be highly informative. However, we were unable to secure a case study that an employer could share publicly. Bearing this in mind, we are keen to work with employers and discuss individually any challenges they face because of the restrictive context in Indonesia. To learn about the steps employers are taking to support their LGBT staff in other zone three countries, please refer to Stonewall's [Global Workplace Briefings](#) on Malaysia and the UAE.

If you operate in Indonesia and are taking steps, big or small, to advance LGBT inclusion and would like to be profiled as a best practice case study, please contact global.programmes@stonewall.org.uk



GET INVOLVED



FIND LGBT GROUPS AND COMMUNITIES

While publicly available information from civil society about the situation is for LGBT people in Indonesia is difficult to secure for a host of reasons, there are a number of NGOs connected to LGBT communities. It is very important to consider the methods used to approach them with a focus on their security. The below list of organisations was collated from online sources:

Bali Rainbow Community – a group in Bali providing support in education, outreach and financial assistance to people living with HIV.
www.facebook.com/balirainbow

Yayasan Srikandi Sejati (True Srikandi Foundation) – a local organisation working to empower trans people in Indonesia.
www.srikandisejati.wordpress.com

GAYa Nusantara – a non-governmental organisation conducting research, advocacy and providing services to support the LGBT community.
www.gayanusantara.or.id

GWL-INA – a national centre coordinating HIV control programmes and advocacy relating to the sexual and reproductive health rights of men who have sex with men and Waria (a local trans identity). www.gwl-ina.or.id

Arus Pelangi – a membership association working to promote LGBTI rights in Indonesia. www.aruspelangi.org



STONEWALL'S GLOBAL DIVERSITY CHAMPIONS PROGRAMME WORKS WITH 54 ORGANISATIONS OPERATING IN INDONESIA.

The [Global Diversity Champions](#) programme gives employers the tools they need to take a strategic and structured approach to LGBT equality initiatives globally and provides a network to keep them informed of legal changes and implications for their staff wherever they are in the world. Our team of workplace advisors offer tailored one-to-one advice on how to create LGBT-inclusive workplaces globally and members gain exclusive access to our full library of resources offering step-by-step guidance on different areas of LGBT inclusion. If you would like to receive support or want to be featured as a case study in one of our Global Workplace Briefings, contact memberships@stonewall.org.uk

Stonewall
192 St John Street, London
EC1V 4JY
United Kingdom

Switchboard: +44 (0) 20 7593 1850
Info Line: +44 (0) 800 050 2020
Email: info@stonewall.org.uk
Website: stonewall.org.uk

Legal Partner



Freshfields Bruckhaus Deringer