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The Dichotomy of Religion and Sexualities within ASEAN Member States

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ABSTRACT

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Despite the ASEAN region being religiously diverse, those of differing sexualities have generally faced conservative interpretations of religious doctrines that cloak aspects of sexuality within a discourse of immorality and sin. Based upon an in-depth literature review of secondary data, this article focuses on the region's principle religions (Islam, Buddhism and Christianity) and explores the generally polarising nature of their relationship with sexuality. By examining the constructions of sexuality within the region the paper illustrates how theology, legal frameworks and juridical corpuses have been used to justify the prohibition – and in some cases criminalization – of same-sex practices. Detailing how these structures, systems and patterns deprive LGBTQ persons from full enjoyment of their human rights it is shown how in many cases these may act as justification for various forms of discrimination, violence and abuse. The paper concludes by suggesting that theoretical frameworks for understanding such conflict can be researched and used to identify conflict resolution strategies that build upon religious values such as tolerance, compassion and nonviolence.

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Introduction

Sexuality can be defined as ‘the quality or state of being sexual, or identification with behaviours and norms distinctive of a particular biological sex’ (Marddent, 2007). Sexuality is socially and culturally constructed through various domains such as marriage, religion and law. In essence, sexuality is therefore not solely a biological fact, but it is informed by the experiences and structures of the world in which we live.

Religion is also a product of society and it fulfils a number of our social and psychological needs. It provides meaning and order to people’s lives and through inspiring a set of common values and morals, it has the potential to strengthen harmony and cohesion within a community. Religion thus addresses the concepts of what is right and wrong, good or bad and provides moral guidance in relation to human behaviour. As such, religions have traditionally set strong standards and regulations concerning human sexuality. Furthermore, religion is a source of sanctions for those who transgress those moral codes. By and large, religion has tended to cloak aspects of sexuality, such as homosexuality, within a discourse of immorality and sin. The consequence of this is that those of different sexualities (whether because of gender identity or sexual orientation) can face an overwhelming sense of alienation from their family, society and religion resulting from various forms of oppression and within certain legal frameworks, criminality.

For the ASEAN region, Islam is the dominant religion (being the majority religion in Indonesia, Malaysia and Brunei)² and is often associated with being particularly repressive of homosexuality (Rehman & Polymenopoulou, 2013). In contrast, Buddhism the second main religion found in the region (the majority spiritual faith in Cambodia, Thailand, Myanmar and Laos) appears to have placed no special stigma on same sex relations (De Sila, 2012). Christianity, being the third major religion in the region (in particular, the Philippines and Timor-Leste), has traditionally denounced homosexuality because of its perceived ‘unnaturalness’ and a belief that it is condemned in the Bible (Subhi & Geelan, 2012).

² With an estimated 240 million adherents (See: Cornell University Library, n.d.).

ASEAN is thus religiously diverse³ which means as the region grapples with far-reaching social and economic changes, it is also testing religious tolerance. The lesbian, gay, bisexual, transgender and questioning (LGBTQ) community is at the forefront of challenging some of the more traditional and conservative interpretations of religious doctrines and approaches to sexuality found within the ASEAN region. Several countries still criminalise same-sex relations whilst in most countries there are varying degrees of discrimination, hostility and violence against LGBTQ persons. Religious laws and theology and accompanying cultural and family pressures are usually identified as the greatest obstacles to respecting the human rights of persons of differing sexuality (United Nations Human Rights Council [UNHRC], 2017).

This article focuses on the region's principal religions (Islam, Buddhism and Christianity) in order to explore their teaching on sexuality and its impact on the LGBTQ community within the ASEAN region. From a review of the literature the article identifies key trends concerning the generally polarising nature of the relationship between religion and sexuality. The first half of the paper examines constructions of sexuality within the region and how by and large, an anti-sexuality discourse is embedded within certain religions. By examining some specific theology and the nature of recognition given to sexuality within various religious laws (and its relationship with criminal and civil law), the paper next gives a concise overview of the legal framework on this issue within the ASEAN member states. The predominantly negative impact of religion on the lives of LGBTQ in ASEAN is then discussed, including by identifying where religion, law and sexuality are starkly in tension.

Recognising the negative impact of religion on sexuality, the article concludes by reflecting upon Galtung's theory of violence. As religion can be used to legitimize various forms of violence (i.e. direct, cultural and structural) against those of non-conforming sexualities, the paper tries to identify human rights and peace building approaches and opportunities within ASEAN for acceptance and engagement on LGBTQ human rights which could be further enhanced.

³ Note: There is also the presence of a small number of believers in Hinduism found in Thailand and some small islands in the Andaman Sea.

Constructions of Sexuality in ASEAN and the Call for Equality of Rights

When researching or dealing with the issue of sexuality within the ASEAN context, the question of universality or relativism is inevitable in a region which often sees both sexuality and the international human rights framework as a historical and western imposition.

The construction of contemporary sexuality within Southeast Asia can basically be viewed as a mix of life styles, sexual identities and strong patriarchal societies that is being buffeted by the impact of globalisation (Rahman, 2014). As such, there is complex negotiation at play between local culture, traditional family structures and values, the global influence of human rights interpretations and the role of religion. Two contrasting representations of sexuality appear to coexist in the region: one representation that is religious and based on interpretations of sacred text; while the other reflects the reality of the daily lives of LGBTQ individuals and their desire to enjoy full human rights.

Across the region, certain religious doctrines continue to reinforce the idea that same sex behaviours are sinful and unnatural. This despite the fact that in 1975, the American Psychiatric Association (APA) declared that homosexual behaviours and different sexual orientations was not an illness or psychological disorder (APA, n.d.). Whilst this helped the decriminalisation of same-sex acts in a number of western countries, the former British colonies have not followed suit and for Brunei, Malaysia, Myanmar and Singapore, they each retain British colonial era criminal laws prohibiting homosexual acts (Sanders, 2009).

The attention of the international human rights regime to sexuality issues is fairly recent and some may argue latent. At the time of the adoption of the Universal Declaration of Human Rights in 1948, half of the world had criminal laws against same sex sexual activity. Whilst most of the emerging core international human rights conventions that followed prohibited discrimination and promoted equality on the grounds of race and sex, LGBTQ was never specifically included in the lists. Indeed, provisions in various treaties and declarations allowed limitations on rights, including measures to support ‘morality’. To break the deadlock within the political bodies of the UN, in 2006, a group of human rights experts met on the campus of Gadhah Mada University in Yogyakarta and formulated the “Yogyakarta Principles on the

Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.” The aim of the principles was to improve the interpretation of human rights treaties, but as yet, they have not become part of international human rights law (Cviklova, 2012). Resolutions at least recognising human rights for SOGI passed in the UN Human Rights Council in 2011, 2014 and 2016 (the latter resolution, which was challenged in four separate votes, authorising an independent expert on SOGI issues).⁴ But voting on these resolutions was always close with active opposition from ex-colonial and Christian Sub-Saharan African states as well as countries that were members of the Organisation of Islamic Cooperation.

Whilst the identification of sexuality rights as human rights has garnered some, albeit minimal traction at the level of the UN, progress has been even slower at the regional and state levels in ASEAN. The last decade saw the establishment of the ASEAN Intergovernmental Commission on Human Rights (AICHR) and the adoption of the ASEAN Human Rights Declaration (2012), yet sexual orientation and gender identity were excluded from the latter (Outreach International, 2012). ASEAN though claims to be ‘people orientated’ and ‘people centred’ (Collins, 2008) but this has not made a positive difference for LGBTQ people in the region (Wilkinson et al., 2017). The ASEAN LGBTQ Caucus has extensively documented through reports and campaigns the violence and discrimination that persons of different sexualities face in the region. Concrete examples are given of abuse and denial of access to basic services. Rallying behind the slogan ‘I am ASEAN too’, LGBTQ persons have called for: the recognition of the discrimination they face; the repealing of laws that directly or indirectly criminalise same sex relations; the banning of laws that see lesbianism, homosexuality and cross-dressing as deviant acts; and equal access to health, social services and other civil rights (Langlois et al., 2017). The sticking point it seems remains the ASEAN interpretation of ‘traditional values’ and the centrality of religion for maintaining morality in society.

⁴ Professor Vittit Muntarbhorn, a renowned human rights academic from Thailand and a leader in drafting the Yogyakarta Principles was appointed in September 2016.

Sexuality and Religious Laws within ASEAN States

Some specific theology and the nature of recognition

Christianity, Islam and even Buddhism have long viewed sex as strictly for reproductive reasons. Whilst Buddhism teaches that “sensual enjoyment and desire in general, and sexual pleasure in particular, are hindrances to enlightenment” (Coleman, 2002), as homosexuality is not explicitly mentioned in any of the Buddha's discourses (more than 20 volumes in the Pali Text Society's English translation), it is assumed to be neutral on the issue and is thus evaluated in the same way that heterosexuality is (Bikshu, n.d.). However, many Muslims and Christians though have long held major opposition to the issue of differing sexualities stemming from interpretations of the Quran and Bible and various arguments on both theological and juridical corpuses for both religions have been used to justify the prohibition of same-sex practices.

For Islam, referring analogically to the Quran (Sūra IV: An-Nissa, verses 22, 26, 31): Homosexuality (*liwat*) brings the strongest denunciation being identified along with *zina* (unlawful sexual intercourse) and is assigned the harshest punishments (Rehman & Polymenopoulou, 2013). The most quoted Quranic verses are that of the Prophet Loth⁵ who was sent to preach to the people of Sodom about their lustful activities; as they did not listen, they were punished by Allah for their conduct (Human Rights Working & ASEAN SOGIE Caucus, 2019). These various sacred texts have been turned into ‘Muslim legal tradition’ or what some refer to as ‘Islamic Law’. Towards the end of the twentieth century, the rise of political Islam has seen the re-emergence of ‘Sharia law’⁶ as the essence of justice. Whilst Sharia varies across regions and different countries, *fatwas* (a juridical opinion given by an expert in Islamic law) on the issue have become common and localised and have further fed into the belief

⁵ The story of the Prophet Lot is actually common to the Judaic, Christian and Islamic theology whereby Lot was sent to the people of Sodoma to warn them about the illicit acts (including sodomy) they were committing; as they did not listen to him, the city was subsequently destroyed.

⁶ Note: Sharia is the fundamental religious concept of Islam—namely, its law. The term Sharia is generally used over the more redundant term Sharia law.

that homosexuality is against innate nature, is a grave sin and deserves the most serious punishment.

Those Christians who also see homosexuality as sinful and unnatural, similarly find legitimacy in various passages in the Hebrew Bible (Genesis 19:1-29; Leviticus 18:22 and 20:13) and in the New Testament (Romans 1:26-27; I Corinthians 6:9 and I Timothy 1:9-10). Whilst these passages do indeed condemn homosexuality, there are plenty of other scriptures that most Christians would not agree with (e.g. those that work on the Sabbath should be executed!) arguing that the Bible is not the infallible word of God (Moon, 2014). Nevertheless, Christianity has always been heavily influenced by its major prophets who sternly denounced what they considered to be immoral and although Christianity is not meant to turn away LGBTQ persons, homosexuality is perceived as ‘a struggle God gives to a person’. More recently, the Roman Catholic Church has recognised that homosexuality can be a ‘fixed disposition’ in some people, but it still sees same-sex behaviour as sinful and therefore to be avoided.

Although Buddhist monks are celibate, Buddhism is often perceived as being at most ‘sex negative’ or more commonly ‘sex neutral’. Homosexuality is not singled out for specific condemnation by the monastic order but as with other sexual behaviours is mentioned as contravening the rules for monks and nuns (De Sila, 2012). In general, Buddhism does not appear to have placed any particular stigma on same-sex relations, and across Asia, the Buddhist attitude towards homosexuality is characterized as ranging from ‘neutrality to mild aversion’ (Coleman, 2002).

There is limited academic work on the subject of sexuality and Buddhism although one particular article by Langenberg (2015) is pertinent. Langenberg examines various Buddhist traditions to answer the question, ‘Do Buddhists have a sexuality?’. She concludes that as Buddhism is neither ‘sex-negative nor sex positive’, then the issue of sexuality is therefore not an issue of moral identity nor moral concern. There is certainly no Buddhist or monastic law that would contradict such an assessment.

Sexuality and religion therefore becomes particularly problematic for gender variant and sexually diverse persons when the more traditional and conservative views of Islam and Christianity combine with specific state laws or policy that either criminalise or discriminate against LGBTQ.

Legal and policy overview for ASEAN member states

The landscape for the legal and policy framework around same-sex behaviour and sexualities in Southeast Asia has been shifting in recent years – and not always for the better. Where positive changes by some ASEAN member states have taken place, it is generally the result of national advocacy by civil society and political will from within the government itself. Where back-sliding has occurred, conservative elements at local or national level and the issuance of new religious edicts have played a significant part. Several countries in the region still criminalise same-sex relations although the penal codes of Brunei, Malaysia, Myanmar and Singapore (section 377) have similarities that are remnants from being British colonies.⁷ A lot of international media coverage has recently been seen on the plans and/or use of Sharia in Brunei and parts of Indonesia to punish those convicted of same sex sexual relations.

The brief country overviews presented below, are by no means exhaustive as they focus primarily on where laws criminalise or don't support the rights of LGBTQ persons and where religiosity is identified as a factor that contributes to the legal, policy and social environment.

(i) *Brunei*

Being a former British colony, Brunei's legal system is based on British common law, with a parallel Sharia system for Muslims. New regulations directed at repressing same-sex practices were formalized into Islamic Criminal Law in 2014. Plans to implement the Sharia Penal Code were meant to be gradual with its Procedural Law being adopted in early 2019

⁷ These laws had been originally imposed on the colonies and reflected the Judeo-Christian morality of the time.

(Human Rights Working Group & ASEAN SOGI Caucus, 2019). When punishments such as death by stoning for offences including sodomy and adultery came into effect⁸ it caused widespread criticism and outrage from the international community. Under the new laws, individuals accused of certain acts could be convicted if they confess or if there were witnesses present (BBC, 2019).

Following reproach by the UN (the UN High Commissioner on Human Rights Michelle Bachelet described the laws as "draconian" and a setback for human rights), the Minister of Foreign Affairs of Brunei sent a statement explaining that the implementation of Sharia "focuses more on prevention than punishment. Its aim is to educate, deter, rehabilitate and nurture rather than to punish" and that the criminalisation of "adultery and sodomy is to safeguard the sanctity of family lineage and marriage of individual Muslims, particularly women". Noting that the maximum punishments of amputation or death required at least two men of "high moral standing and piety" as witnesses, he concluded the statement by saying that to find men who live up to such "extremely high" standards, was "difficult to find in this day and age" (Ibid.). As international criticism intensified, the Sultan of Brunei finally extended a moratorium on capital punishment to Sharia laws that included stoning to death for same-sex activities and adultery. In a televised speech ahead of the Muslim holy month of Ramadan, the sultan said: "I am aware that there are many questions and misperceptions with regard to the implementation of the (sharia penal code)." "There should not be any concern on the Sharia law as it is full of Allah's mercy and blessings" (The ASEAN Post, 2019). The sultan, however, continued to stand by the laws, saying they were part of Brunei's "religious obligation to God as an Islamic country" adding "We are sure that once these misconceptions have been clarified, the merit of the law will be evident" (Mahtani, 2019).

(ii) Cambodia

In complete contrast, Cambodia's legal system is relatively neutral in relation to sexualities. Same-sex activities are not criminalised although it is silent on the discrimination

⁸ Lesbian sex carried a different penalty of 40 strokes of the cane and/or a maximum of 10 years in jail.

of LGBTQ people and those who violate their rights. However, there have been reports of local authorities and police using various laws to forcefully separate same-sex couples (at parents' requests) and to link LGBTQ people with social ills such as substance abuse and prostitution (United States Agency for International Development [USAID] & United Nations Development Programme [UNDP], 2014a).

Whilst there is no legal recognition of same-sex partnerships, same-sex couples are not prohibited from adopting children. In 2015, a Council of Ministers spokesman expressed support for same-sex marriage in Cambodia and it is known that King Norodom Sihamoni supports such legalisation (Power, 2017). In July 2019, the Cambodian Government accepted recommendations to legalise same-sex marriage from Iceland, the Netherlands and Canada during the country's third Universal Periodic Review (Universal Periodic Review [UPR], 2019).

(iii) *Indonesia*

Same-sex sexual relations between consenting adults are not prohibited under the Indonesian Penal Code (which has a historical link to the Netherlands Indies Penal Code). However, at the provincial level, there are areas and municipalities that criminalise same sex sexual relations through local Ordinances, in particular, the provinces of Aceh and South and West Sumatra.

Aceh Regulation No. 6/2014 [Provincial Ordinance] on criminal offenses under Sharia, 2014 (which came into effect in October 2015) stipulates a punishment (for either local residents or foreigners) of 100 lashes and/or up to approximately eight years in prison for the crime of *Liwat* (male penetration) and *Musahaqah* (female same-sex sexual activity) in article 63 and 64. The Provincial Ordinance No. 13/2002 of South Sumatra on the Eradication of Immoral Behaviour classifies and penalises same sex relations as "immoral behaviour" (Mendos, 2019). In November 2018, the city council of Pariaman in West Sumatra passed a regulation that banned "acts that are considered LGBT" on the basis that such behaviour could "disturb public order."

In 2019, draft revisions to the National Criminal Code were released which mirrored

elements of Sharia and included measures to criminalise extramarital sex, same-sex relations, and co-habitation. Following protests and opposition in Jakarta by students, rights activists, women's groups, legal experts and other Indonesians, the President of Indonesia, Joko Widodo, pulled back on the bill, days before it was expected to be passed. The President pushed the legislation to the new parliament which began sitting in October 2019 (Paddock & Suhartono, 2019). For conservative Islamists in Indonesia, passing the bill remains a priority (Chew, 2019).

(iv) *Lao PDR*

Homosexuality is not illegal in the Lao PDR. As a majority Buddhist country and a former French colony, Laos has never had any anti-gay laws. Nevertheless, Laos does not recognize same-sex marriages nor does it have any laws prohibiting discrimination of LGBTQ persons. Whilst it may be difficult to assess the current state of acceptance and discrimination that LGBTQ persons may face in Laos, the community is fairly visible and the country is said to be one of the more tolerant within ASEAN (US Department of State, 2019).

(v) *Malaysia*

Sodomy (as well as oral sex) is a crime in Malaysia, as per old British colonial era laws, although it is rarely enforced - aside from the high-profile case of Malaysian politician Anwar Ibrahim (Doherty, 2015). The relevant articles of the Penal Code are Section 377: Carnal intercourse against the order of nature; Section 377B: Punishment for committing carnal intercourse against the order of nature; and Section 377D: Outrages on decency (Mendos, 2019). In addition to the secular law, Malaysian Muslims may also be charged in special Islamic courts as several states in Malaysia have Sharia law, criminalising same-sex sexual acts with up to three years imprisonment and whipping. Human Rights Watch reports that state-level Sharia also prohibits cross-dressing, and transgender people "face arbitrary arrest, physical and sexual assault, imprisonment, discriminatory denial of health care and employment, and other abuses" (Human Rights Watch, 2015).

The Malaysian government's Islamic Development Department (JAKIM) released a video in 2017 detailing how Muslims can "help" LGBTQ people change their sexual orientation stating that non-heterosexual orientation is a "test of Allah" and people must "face the test appropriate with what Islam demands." Later in the year, the Ministry of Health was criticized for endorsing 'conversion therapy' (Mendos, 2019). The current Malaysian Prime Minister, Mahathir Mohammed, is on record in 2018 for rejecting "LGBT and same-sex marriage" as "things only meant for the West."⁹

(vi) *Myanmar*

In Myanmar, also once a British colony, Section 377 of the Penal Code prohibits sodomy and oral sex regardless of whether it is a heterosexual or homosexual activity.¹⁰ Theoretically, the punishment can include fines and ten years to life imprisonment, but the law has not been strictly enforced - although a prominent gay activist was arrested in November 2018 under the sodomy law (Muang, 2018). Gender identity for transgender persons is not recognised by the state (Nickerson, 2016). LGBTQ people, especially transgender people, are targeted under Section 35c of the Police Act, also known as the "Darkness Law," which allows authorities to detain someone they 'consider behaving suspiciously after sunset' (Mendos, 2019). Myanmar does not recognise same-sex marriages.

In 2013, then-Opposition Leader Aung San Suu Kyi called on the country to decriminalise homosexuality, as an effort to help combat HIV. However, after her party came to power in 2015, it has not changed the laws (Roberts, 2013).

These laws are left over from the British colonial era and are not related to the majority Buddhist religion of the country.

(vii) *Singapore*

As another former British colony, Singapore had long prohibited sodomy regardless of

⁹ See: "LGBT or same-sex marriage" (2018).

¹⁰ See: "Penal Code 1861" in Burma Code (1861).

sex. Section 377 criminalising “carnal knowledge against the order of nature” was repealed by the Penal Code (Amendment) Act 2007, No. 51, which came into force on 1 February 2008 which legalised such activity for heterosexuals and lesbians, but not for gay men.¹¹ Homosexual men can still be targeted under Section 377A Outrages on decency (Gross indecency, committing abetting or attempting) and Section 294 (Obscene acts). While convictions of Section 377A criminalizing homosexual practices between men are rare, its presence still creates social stigma and discrimination for LGBT individuals (Yulius, 2018). Whilst in 2018, several prominent public figures in the country advocated for the repeal of Section 377A (a petition garnered around 45,000 signatories) the Singapore government said that there was no plan to repeal the law (Mendos, 2019).

Same-sex relationships are also not recognized under the law, and adoption of children by same-sex couples is illegal. No anti-discrimination protections exist for LGBT people.

Singapore is home to a number of religions - reportedly the most religiously diverse nation in the world (Cooperman & Lipka, 2014), with Buddhism/Taoism, Islam, Hinduism and Christianity as its principal religions. Perhaps due to a wide variety of religious beliefs and practice plus a relatively large percentage of Singaporeans with no religious affiliation, issues related to sexuality are more influenced by the fact that Singaporean society is generally regarded as conservative. As an illustration of this, in 2018, the Education Minister Ong Ye Kung claimed that “on the issue of LGBTQ, it is also an issue of social mores and societal values” (Mendos, 2019).

(viii) The Philippines

Despite its strong religious base, the Philippines is reported to be one of the most ‘gay-friendly’ nations in Asia according to a survey carried out by the Pew Research Centre in 2013. A key reason for the strong LGBTQ acceptance in the Philippines could be a historic portrayal of gender-shifting and non-based gender amongst indigenous cultures (such as the ‘babylan’)

¹¹ See: “Singapore reforms sex laws” (2007).

that pre-dates the 12th century and the spread of Islamization and Christianization.¹² However, during Spanish colonization, Roman Catholicism spread among the archipelagic people and the deep Catholic roots in the country now influence how the LGBT community is treated today.

Nevertheless, same-sex activities between consenting adults is not a crime in the Philippines although in light of the strong Catholic influence, the country does not offer any legal recognition to same-sex marriage or civil unions (attempts to introduce such a bill in 2016 met with strong opposition from conservative senators). The 2015 Catholic Bishops' Conference of the Philippines also concluded that "A homosexual union is not and can never be a marriage as properly understood and so-called" although they added that "being a homosexual is not a sin. It is a state of a person" (Panganiban, 2015). In June 2018, the Philippine Supreme Court heard oral arguments over a petition to legalize same-sex marriage but the petition is still unresolved (Mendos, 2019). Challenges from the Catholic Church remain strong and support for same-sex marriage is met with robust resistance. President Rodrigo Duterte's regular flip-flopping on the issue is also said to be influenced by the fraught relationship between him and the Church (Yulius, 2018). A civil union bill was introduced by The Speaker of the House in May 2019 and is still pending.

(ix) *Thailand*

Thailand is another country in ASEAN that appears to have greater acceptance of homosexuality and higher visibility of transgender persons. As with the Philippines, there is also a long history of gender non-conformity and differing sexuality that in Thailand pre-dates the 14th century. Although never colonized, colonial Western norms of behavior and thinking did start to influence Thailand, including the criminalization of homosexuality — although sodomy was then decriminalized in 1956 (USAID and UNDP, 2014b). Whilst religion — specifically Buddhism — is definitely an important factor that contributes to Thai society's perceptions of sexual orientation, tolerance is generally the norm provided LGBTQ persons

¹² See: Ngu (2020)

remain within certain social parameters. Approximately five percent of the Thai population are Muslim (particularly in the southern provinces) and attitudes towards same-sex relationships there are more unfavourable (USAID and UNDP, 2014c).

The 2015 Thailand Gender Equality Act is currently the strongest legal instrument for advocating for legal gender recognition. The purpose of this law is to protect people from discrimination and provide legal recourse regardless of whether the person is male, female or a member of a “sexual diversity group.”¹³ Section 3 of the Act explicitly defines “gender discrimination” and states that it also applies to persons who have “a different appearance from his/her own sex by birth” (United Nations Development Programme Thailand [UNDP] & Ministry of Social Development and Human Security [MSDHS], 2018).

A previously halted 2014 Civil Partnership Bill was endorsed by the Thai cabinet in December 2018 and has very recently been revived. The bill is intended to guarantee to registered same-sex couples the same safeguards over inheritance, medical decision-making, insurance benefits, pensions, tax status, and other rights as married couples enjoy (Horatanakun, 2013). Whilst some LGBTQ activists argue that the bill still does not give the same equal rights as married couples, others are more positive saying amendments could be brought later. The bill was expected to reach Parliament for final approval towards the end of 2020.

(x) *Vietnam*

Same-sex sexual acts are not criminalised in Vietnam and historical reviews suggests that homosexuality has never been a feature of the country’s Criminal Code.¹⁴ The age of consent in Vietnam is 16 years regardless of gender or sexual orientation (International Centre for Missing & Exploited Children [ICMEC], 2018). Officially, the communist government of the

¹³ See: Thailand Gender Equality Act (2015).

¹⁴ See: Vietnam Penal Code (1999).

Socialist Republic of Vietnam declared the country an atheist state.¹⁵ As such, religion in Vietnam does not appear to influence the political and legal landscape for LGBTQ persons in the country. Whilst challenges around discrimination and stigma still exist for the LGBTQ community there have been recent legal developments. In January 2015, amendments to the *Law on Marriage and Family* officially came into effect allowing same-sex weddings, although not yet offering legal recognition to unions between people of the same sex (Stowe Family Law, 2014).

To conclude this section on legal and policy overview of ASEAN member states, it is clear that in many countries in the region there is a high level of religiosity with negative contexts and perceptions concerning LGBTQ persons, including criminalisation. Religion is a very significant factor that contributes to a states' structural approach, understanding and acceptance of sexual orientation and gender diversity. This is particularly true in the majority Muslim countries (Brunei, Indonesia and Malaysia) and to a certain extent in the strongly Catholic country of The Philippines. Whilst Buddhism appears not to contribute to negative responses to differing sexualities, cultural and social attitudes in nearly all the Buddhist majority countries, homosexuality is still not fully accepted, and where it is, there is an expectation of certain stereotypes and behaviours. Few, if any laws and policies exist within the region that promote the rights of LGBTQ people. Interestingly, Vietnam - an atheist state - is seen as having made notable progress in recent years around issues of LGBTQ rights.

Religion, Society and Sexuality in Tension

The Impact of Religion on Sexuality within ASEAN

As is clear, religion can be used to criminalise, discriminate and ostracize those of differing sexualities and gender diversity. Building upon religious doctrine that portrays same-sex

¹⁵ Indeed, most Vietnamese describe themselves as having no religious affiliation, although Vietnamese folk religion is said to be structured around Confucianism and Taoism. A relatively small percentage of the population are either Buddhist or Catholics.

behaviours as sinful, this can manifest into structures, systems and patterns that deprive LGBTQ persons from full enjoyment of their human rights. As both Islam and Christianity have an inherent conflict with homosexuality, this creates particular challenges for LGBTQ persons not only in living their lives as they so wish, but in reconciling the spiritual and sexual aspects of their identities (Scull & Mousa, 2017). It can inhibit or suppress their response to these forms of violence and it offers justifications for these practices that are done in the name of religion.

Aside from where structural and criminal sanctions exist, expressing their sexual identities openly or living in fear of having their sexual identity exposed is generally identified as the largest risk for LGBTQ persons. Research has identified that individuals often wish to keep their gender non-conformity secret for fear of bringing shame, being judged, tarnishing their families' reputation or even being disowned (Sida, 2014). In Southeast Asia, families traditionally are quite collectivistic and the family is seen as a close and important unit of support. In some contexts in the region, disclosing one's sexual orientation can come with serious personal risk and recrimination, sometimes exposing them to blackmail and extortion (*Ibid.*). And whilst more visibility is now being given to LGBTQ issues regionally, in certain countries this is creating a backlash where governments, particularly in more conservative Muslim states, are more strictly enforcing laws and policing LGBTQ activities.

Where disapproval exists for sexual diversity and gender variance, this can create challenges in accessing health, education, and social services, as well as cause discrimination in the workplace (APCOM, 2016). LGBTQ spiritual believers can feel isolated and rejected by their religion leading to low self-esteem and depression (Siraj, 2012). For children in Southeast Asia, due to different sexual orientations and gender identities, they face online and offline bullying (including shaming and intimidation) and constant pressure from their families, schools and religious institutions that reinforce gender stereotypes and stigma against LGBTQ persons (ASEAN SOGIE Caucus et al., 2018).

Importantly though, accessing comprehensive data about the impact of religion on sexuality is not easy as many LGBTQ remain secretive about their sexuality. This is particularly true in countries where more conservative and traditional beliefs are held. In these cases,

religion can become so embedded in a culture and society that the norms and violence against non-conforming sexualities are so embedded that they are perceived by many as ‘natural’ or ‘right’.

Challenging the orthodoxy of Sharia

It can be argued that the Quran does not actually specifically address the issue of sexuality as it views sexual activities as relationship between a man and a wife and anything outside lawful marriage is considered as *zina* (unlawful sex) and a serious offense.¹⁶ However, most major Islamic doctrines would be clear that homosexual relations (*liwath*) are analogous to heterosexual *zina*, so is a sin (Rehman & Polymenopoulou, 2013). Counter arguments to how Islam behaves towards sexuality are generally suppressed although a scholarly discourse is emerging suggesting that it is better to examine sexual orientation based upon the pure Islamic teachings of the Quran rather than rehashing theological interpretations that have existed historically (Kugle, n.d.). Arguing that the Quran presents important examples of valuing human diversity, the Quran notes, “Everyone works in accordance with his belief, and your Lord knows best which ones are guided in the right path.”¹⁷ *Sūra Al-‘Isrā’* (The Night Journey), verse 84, of the Quran could therefore be interpreted as accepting human diversity which by default, would include diversity around sexual orientation (Rehman & Polymenopoulou, 2013). The Quran also recognised that there are men “who have no desires for women” as women’s modesty is not restricted towards these groups - potentially meaning either eunuchs, men with no sexual drive or who are impotent, or homosexuals.

Nevertheless, it is the Quranic verses around the story of the Prophet Loth that are most quoted to support Islam’s prohibition towards homosexuality. Accepting that the people of Sodom practiced forced sodomy, it could be argued that *liwath* (sodomy – i.e. not vaginal

¹⁶ The Quran 24:2 is clear that ‘The [unmarried] woman or [unmarried] man found guilty of sexual intercourse – lash each one of them with a hundred lashes, and do not be taken by pity for them in the religion of Allah, if you should believe in Allah and the Last Day. And let a group of the believers witness their punishment.’

¹⁷ QURAN, *Sūra XVII: Al-‘Isrā’*, verse 84

intercourse) is not necessarily synonymous to homosexuality which is more to do with same-sex attraction (Hendriuks, 2010).

Undoubtedly though, the dominant view of Islam sees homosexuality as a serious sin; the major doctrines of Sunna and Shi'a agree with this. Sharia also prioritises punishment over rehabilitation for crimes deemed a danger to society (although the bar for proof of the crime is deliberately set high, e.g. four male eye witnesses for *zina*). Punishments within Islamic Criminal Law are also often severe. Here the argument is the principle of *Qishash* (the law of equality) which is meant to ensure justice to all offenders — particularly for those crimes deemed the most serious or heinous (Afifin, 2015). A further justification is that under Islamic law, “all members of any particular society are expected to adhere to certain rules of conduct acceptable to the community... the penalty sanctions depend on the wishes of the society which then decides on the kind of penal sanctions to be adopted and applied” (Azia, 2015, p.84). In Brunei, a renowned Mufti, in relation to the Syariah Procedure Code Order (SPCO) for offenses such as homosexuality, stated that harsh punishments were warranted as such acts were “damaging and despicable, dirty, not civilised” (Borneo Bulletin, 2014).

Regardless of how sexuality is interpreted within Islam, there is discrimination between male and female sexuality and the dominant norm is heterosexuality and masculinity. Yet whilst Sharia is traditionally considered as ‘divine’ law, legal thinking does not need to be set in stone (e.g. slavery has been abandoned and not all states require Muslim women to cover up) leading some to believe that Sharia can change to be more accommodating towards LGBTQ persons (Cervantes-Altamirano, 2013).

Theorising violence against LGBTQ persons and the link to religion

The Norwegian sociologist, Johan Galtung, has provided a useful three-way typology (Galtung, 1969) which can be used to discern the complex role that religions can play in promulgating the various forms of discrimination, abuse and violence affecting people of different sexualities.

The most obvious depiction of violence is clearly the direct form experienced by LGBTQ persons whether this is through killing, bullying, assault or verbal abuse. However, Galtung's theory of violence understands violence as not only physical or psychological harm but also that which 'prevents the full realisation of human potentials' (Galtung, 1969, p.168). Recognising that LGBTQ persons do not enjoy equally the same human rights and freedoms as heterosexual persons, Galtung's theory goes beyond direct violence to examine cases where abuse and discrimination exists but no specific actor is identified as committing the direct harm. In this case, what Galtung calls 'in-direct structural violence' is manifested through unequal power and uneven life chances (Galtung, 1969, p. 171). Applying this logic to the ideology religion assigns to sexuality, then structural violence occurs where the dogma of sexual perversion directed towards persons of differing sexuality results in discriminatory policies, laws and detrimental religious doctrine.

In 1990, Galtung expanded his theory, proposing a triangular framework to understanding violence. By introducing the concept of cultural violence, he explained how it can legitimise direct and structural violence by making it seem justified, or at least 'not wrong' (Galtung, 1990, p. 291). Galtung identified six aspects of culture that can be used to rationalise direct or structural violence one of which is religion.¹⁸ In the context of LGBTQ persons, Amoroto (2016), looking at the Philippines and the influence of the Catholic church, suggested that the strong patriarchal ideology and heteronormativity found within certain religious creed promotes a strict gender binary. In essence, patriarchal religious ideology acts as an unwavering conservative force, cementing the status quo of what is seen as appropriate moral and sexual behaviour of a man and a woman and demonising those who fall outside. The heteronormativity and religious bias against same-sex relations embedded within religious doctrine also describes what it sees as the appropriate physical and spiritual complementarity between the biological sexes. Where same sex relations are seen as wrong, unnatural and even sinful, then these ideologies can be interpreted as justifying structural violence as well

¹⁸ The six aspects of culture that Galtung says can legitimize the direct and structural violence are religion and ideology, language and art, empirical science and formal science.

as leading to an array of direct forms of abuse as experienced by LGBTQ people in the Philippines.

Using Galtung's theory of violence and framework it is possible to situate the discrimination, disdain and violence that exists towards some people of differing sexualities as being systemic, structural and cultural. To what extent patriarchal ideologies and heteronormativity within religious doctrine leads to discrimination on the basis of SOGI within specific contexts is a key area for further research.

Conclusion: Unpacking the dichotomy of “born gay” versus “being gay as the pathway to eternal damnation.”

LGBT persons can face tremendous challenges living in religious societies that view homosexuality as deviant or sinful. Unless these religious beliefs and assumptions are contested, then those with non-conforming sexualities may never be treated as proper functioning members of society who deserve equal and full rights. Instead, they are accused of committing a sin, immoral acts or a crime and suffer a barrage of social and legal discrimination. Clearly there are a complex array of contributing influences that go beyond religious doctrine or beliefs (e.g. state law, culture, social and political motivations) and whilst it is easier to lump everything together, it is also apparent that there are no clear divisions between them. What is undeniable is that gender variant and sexually diverse persons experience are at odds with the traditional and conservative interpretations of religious doctrine.

Referring to Galtung's theory of violence, this article has made the link to how discrimination and violence against people of different sexualities is a mix of direct, structural and cultural harm. Structural violence represents the formal, legal or systemic ways that individuals are punished or hindered from accessing services whilst cultural violence — implicitly expressed through religion — justifies the behaviour and response.

Importantly, Galtung's triangle of violence can also be used to identify peaceful and

conflict resolution strategies that are found in the religious values of empathy, tolerance, love, compassion and nonviolence. Indeed, Galtung's 'Transcend Method' uses six basic premises for conflict transformation drawn specifically from these values found in Hindu, Buddhist, Christian, Daoist, Islamic and Judaic doctrine (Galtung, 2000). Building upon Galtung's theories and models, there is clearly an opportunity for research into peace building and conflict transformation approaches to see how lessons learnt could be applied to resolving religious differences towards LGBTQ persons.

Furthermore, could not sexual diversity actually be part of God's plan bearing in mind it exists of human beings' free will? Kugle (2010) argues that in the Quran, Surat al-Rum (Quran 30:22) says "God has created human beings with different *alwan*, a word that can mean both 'colours' and 'tastes'. Human beings certainly have different tastes in many things – including sexuality. It seems clear that sexual diversity must also be a type of human diversity that was created by God's divine wisdom" (albeit as a test in adversity which weakens the strength of the argument). Religious institutions really need to be encouraged to value diversity, promote plurality within religions and re-evaluate religious texts and interpretations. Clearly for example, different interpretations of 'modesty' for women between different predominantly Muslim countries exist (e.g. wearing of a headscarf or 'hijab' that loosely covers the hair and/or shoulders as opposed to niqabs and burquas that are total body coverings) and this could be used to leverage perceptions of sexuality and 'illegal sexual behaviours'.

Valuing diversity and identifying homosexuality in religion requires the need to re-evaluate religious texts and interpretations. For example, reading the Quran and Bible can be done either: (i) literally (word for word and literally all true); (ii) semantically (thinking about a word's context in relation to other teachings in the holy book); or (iii) thematically (finding meaning of a whole passage). All too often, religious jurists, conservatives and zealots have taken what they like from religious text, rather than having to contextualise religious doctrine. Similarly, the issue of sexualities in ASEAN is so often entangled with religious and political interests meant to polarise camps and garner popular appeal. Civil society movements therefore have a key role to play in advocating on issues of sexual diversity and gender

variance and in persuading religious and political hierarchies to address misperceptions and sexual negativity. Public forums, seminars, research, reports and capacity building are all strategies that can be used to highlight the links between human rights, religiosity and LGBTQ issues.

Empirical research on sexualities and religion centred within the ASEAN region also has a role to play but as yet is scarce, particularly studies focusing on processes of resolving conflict between the two. Other suggestions for future research could include: understanding theologies in relation to transgender populations and other gender variants; sexuality and the impact of religious upbringing; how LGBTQ persons in ASEAN navigate their religious beliefs; and LGBTQ-friendly religious institutions found in the region.

All religions are grounded in a basis of respect, diversity, tolerance and peace. These are principles also echoed within ASEAN Community Vision 2025¹⁹ and its promotion of being people-centred and human rights for *all* ASEAN people. As such, ASEAN Member States need to do more to honour their international legal obligations and ensure equality before the law without discrimination and including sexual orientations. This would have significant influence on religious and cultural views, misconceptions and stigma around the issues of persons with different sexualities. By continually re-examining religious doctrine, especially where it is misinformed through prejudice and bigotry, it can be possible to properly respect the human rights for LGBTQ persons in ASEAN.

¹⁹ See: Association of Southeast Asian Nations (2015).

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