

## LGBT IN THE PERSPECTIVE OF ISLAMIC LAW AND HUMAN RIGHTS

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### ABSTRACT

Lesbian, Gay, Bisexual, and Transgender or abbreviated with the term "LGBT" is a contemporary phenomenon that gains lots of community attention. As already known, LGBT is contradictory with God-designed human nature. A man should only engage in a sexual relationship with one from the opposite gender. Article 1 of Law No.1 of 1974 concerning Marriage states that marriage is "a physical, soulful bond between a man and a woman as husband and wife with the purpose to build a happy and eternal family based on faith in the one Almighty God," which implies that marriage should only take place between a man and woman. Islamic law is undoubtedly very much against LGBT behavior since it overrides the God-given nature and is not in accordance with the existing provisions in the Qur'an and Hadith. Apart from that, refusal to embrace LGBT groups is considered a violation against basic human rights with the discriminatory treatment they often receive from society. Therefore, government intervention is needed in providing clarity and solution for this problem. In addition, the society can also contribute to the effort by socializing and actualizing religious knowledge of LGBT practices.

**Keywords :** LGBT, Islamic Law, Human Rights

### 1. PREFACE

Islamic law is universal, which regulates the whole aspect of human life, both in his relationship with God, as well as with fellow humankind and nature. Islamic law will resort to firm actions against perpetrators who violate the set provisions and regulations based on the Qur'an and Hadith. Islam forbids all forms of sexual relations outside a wedlock since the forbidden deeds will only cause harms against morality, *aqidah*, behavior, and social life. Marriage in the view of Islam does more than simply regulating biological relationships, but is also considered a way to maintain human nature. In addition, Islam also regulates the obligations and rights of husband and wife, as well as the relationship between parents and their children and vice versa. Thereupon, a family which is the basic unit in societal life is formed.

However, sexual deviations have become common practice in this modern life. This occurs as the consequences of the growing trend of acknowledgment and platform given to LGBT (Lesbian, Gay, Bisexual, Transgender) groups by the more liberal countries. LGBT practices are considered part of the modern lifestyle which views heterosexual perspective as not being applicable for everyone.

Therefore, many members of the LGBT groups are currently fighting for their rights to be acknowledged, effectively removing resistance against them in their social life, productive activities, personal growth, and contribution to development. Not few people hold certain stigma against LGBT, in particular its negative, worrisome impacts, such as HIV/AIDS transmission, sexual crimes against underage children, and divisive/discriminatory thoughts and hostile actions based on religious beliefs.

LGBT remains to date a topic for national debate. This issue generates varying opinions from many groups in the society. Some who are supporters say that the State should uphold basic

human rights so as to allow no more discriminatory acts against LGBT groups. They believe that the sexual orientation of the LGBT group is normal and is part of the basic human rights.

Those who are against LGBT perceive it as a form of sexual deviation and is not a part of basic human rights. In Indonesia and according to Islamic Law, LGBT practices have been prohibited and the Indonesian Ulama Council (MUI) has declared it to be illegal. MUI chairman Ma'ruf Amin emphasized in a press conference on February 17<sup>th</sup> 2016 at the MUI Office, that LGBT practices are forbidden in Islam, even contradictory with the first and second precepts of Pancasila and the 1945 Constitution, in particular Article 29 paragraph 1 and Article 28. Apart from that, LGBT activities are against the Law No. 1 of 1974 concerning Marriage. MUI itself has issued Fatwa MUI Number 57 of 2014 concerning Lesbians, Gays, Sodomy, and Obscenities. In the Fatwa MUI, LGBT activities are forbidden as they are a form of crime, potentially cause dangerous diseases, and are sources of infectious disease such as HIV/AIDS.

From a religious perspective in accordance with the principle of Godliness embodied in the preamble of the 1945 Constitution, LGBT and every other sexual deviations are not reasonable since by nature humans are created to worship and reproduce, functions which are hindered in some by abnormalities in sexual orientation. God strictly forbids LGBT practices, even curses those who commit such practices. This view could be learnt from the story of the Prophet Lut, whose majority of kinsmen were homophiles. They committed the practices flagrantly, ignoring the words of warning and prohibition from the Prophet Lut. In the end, God got angry with the vile deeds of Prophet Lut's people, doomed them with disastrous landslide, mighty earthquake, wind and hail storm that destroyed their land along with all the occupants.

Those in support of LGBT groups claim that their choice to become a member of the group is one of their basic human rights the government must protect. Basic human rights are the rights owned and inherent in human nature that are universal and last a long time so that they should be protected, respected, upheld in high regards, and cannot be ignored and robbed by anyone. According to the Preamble of Universal Declaration of Basic Human Rights issued by the United Nations, "Human rights need protection by the legal regulations, so that people will not be forced to choose the road of rebellion as the final attempt to confront tyranny and colonialism".

In Indonesia, there are only two official types of gender, that are male and female. This could be concluded from the Law No. 1 of 1974 concerning Marriage, which explicitly mentions that only men and women can enter into marriage. Discussing basic human rights can never be secluded from the laws and living principles of a particular country. Indonesia, for one, bases its laws on the Constitution and Pancasila, hence the State will value the basic rights of its every citizen insofar as it is in accordance with the values and living principles prevailing in Indonesia. The aim of this study is to know and understand how Islamic Law and basic human rights principles apply in facing the LGBT phenomenon.

## **2. RESEARCH METHODS**

This study uses juridical-normative approach with descriptive nature. Type of data used is secondary data, which ranges from primary, secondary, and tertiary legal materials. This study uses data collection techniques in the form of literature studies, carried out through researching books, laws and legislation, law journals, and others that supported this study. The approach used is data analysis in the form of qualitative data that has been obtained.

### 3. RESULTS AND DISCUSSION

#### LGBT in the View of Islamic Law

Islam regulates and pays attention to the benefits generated by the life of human in facing life on earth, one of them related to the lusts vented out of the designated human nature. This sort of sexual deviation is indeed strictly opposed by Allah since it violates the rules that have been set out in the Qur'an and Hadith as the guiding view for the Muslim people in undergoing their lives.

The Compilation of Islamic Law (Indonesian *Kompilasi Hukum Islam/KHI*) has emphasized prohibitions related to LGBT, which is embedded in the terms of a legal marriage, namely a soulful and biological bond between male and female in accordance with Article 1 letter a, Article 1 letter d, Article 29 paragraph 3 and Article 30 of the Compilation of Islamic Law. In other words, said articles imply a prohibition against same-sex marriage. There is a verse that tells the story of the heinous practices committed by the people of Prophet Lut, as contained in the QS Al-A'raf verses 80-84:

لُوطًا إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ أَلَّا أَحَدٌ الْعَالَمِينَ ﴿٨٠﴾  
. إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ النَّسَاءَ لَنْ أَنْتُمْ

“And (we have also sent) Lut (to his people). (Remember) when He said to them: "Why did you do that *faahisyah* deed, which no one on earth has ever done before you? Truly, you approach other men for release your lust (to them), not to a woman, then you are a people who crossed the line.”[3]

The claim that strengthens the ban against LGBT practices is Allah's very curse on the perpetrators. As Ahmad (1995:83) narrated:

لَعَنَ اللَّهُ لَنْ لُوطٍ لَعَنَ اللَّهُ عَمِلَ لَنْ لُوطٍ لِأَنَّ

“Allah curses those who commit the deeds of Lut’s people, Allah curses those who commit the deeds of Lut’s people, and Allah curses those who commit the deeds of Lut’s people.’ As much as three times”.

Besides, fiqh scholars have also agreed to declare as unclean LGBT practices based on the Hadith of the Prophet SAW as narrated by a Muslim from Abi Said:

“Let no man look at the nakedness of another man and let no woman look at the nakedness of another woman, and let no man touch another man under a blanket/cloth, and let no woman touch another woman under a blanket/ fabric.”

Some ulamas such as Imam Alusy weigh as equal between *shahaq* (*lesbi*) with the practices of Lut’s people (*gay*) since both have the same underlying *illah* (reason) for actions, that is the sexual deviation cursed by the religion.[5] The scholars have agreed that lesbianism is absolutely illegal, and towards this problem there exists no leeway for the lost of control; such practice was even dubbed as women adultery (النِّسَاءِ). The Prophet Muhammad SAW said

“ الْمَرْأَةُ الْمَرْأَةُ أَلَّا نَبِيَّتَانِ ”

“When a woman sleeps together with a woman, both of them have committed adultery.”[6]

In light of the above, it could be concluded that gay and lesbian *practices are* unlawful. LGBT practices do not only damage the glory and dignity of humankind, but also generate negative

impacts. Likewise, transgender people who undergo an operation to change their sexual organs from (initially) male into female with the help of medical advancement would remain under the category of gay or homosexual practice, because the male characters cannot be medically changed despite the alteration of sexual organs into that of a female.

The Quran strictly forbids all manners of sexual relations except within the bond of marriage between a man and a woman. LGBT people proclaim that they were born with such sexual deviation, that it is a gift from God. Indeed all things originated from God, but some of His doings are also resultants from human efforts. The case of a man who resembles a woman or vice versa, for one, can be formed by nurture (i.e., upbringing environment).

### **LGBT in the Perspective of Basic Human Rights**

Some LGBT supporters demand that the government legalize such practices based on basic human rights as a shield. Evenmore, the Second Amendment of 1945 Constitution in Article 28 (e) paragraph (2) stipulates that every person has the right to freely embrace his faith, to express his thoughts and attitudes in accordance with his conscience.

If LGBT supporters remain in their stance to legalize such practice, then we should bear in mind and consider the fact that basic human rights shall be expected to require a proportional amount of obligations that must be fulfilled on the other end. Then, everyone will be liberated and entitled to their respective rights, albeit they too should consider the rights of others. In order to overcome this issue, the role of government is truly needed in seeking the solution and finding clarity about LGBT in Indonesia.

As has been alluded to in Article 28 J paragraph (2), the practice of human rights in this country needs to consider the existing limitations, which are that no contradiction is to be allowed against religious values, morality, security, and public order. Even though Indonesia is not a State established based on religion, this country owns a set of living principles in the form of Pancasila, which has clearly expressed in the first principle that the people uphold Godliness, leading to religious values becoming an important element in realizing a democratic national life for Indonesia. Likewise, it is also emphasized in Law No. 39 of 1999 concerning Basic Human Rights Article 70, which states the following:

“In fulfilling his rights and freedoms, everyone is obliged to adhere to the limitations set by laws intended to ensure recognition and respect towards the rights and freedoms of others, and to fulfill fair demands in accordance with considerations of morality, security, and public order in a democratic society.”

Besides, the limitations of basic human rights have also been set out in Article 73(c) of the Law No. 39 of 1999, which states that:

"The rights and freedoms as regulated in this Law could only be limited by and based on the law, solely to ensure recognition and respect towards basic human rights as well as the basic freedom of others, morality, public order, and national interests.”

As such, the government is obliged to set the boundaries in the interest of the State. No human rights of one person can be made to serve as a ground to disturb or rob other people's rights. However, gay, lesbian, and transgender practices are not human nature but mental illness, so it is not possible to realize their wish to legalize same-sex marriage. LGBT supporters always bring up equality of rights in society. Equality, however, is applied in the services provided to people with differences such as in ethnicity, race, and so on.

Indonesia's legal regime is heavily influenced not only by legal principles, but also the rule of customs and decency. Religious beliefs themselves are embedded first through the first tenet of Pancasila, the five living principles of the Indonesian nation constituted by the founding fathers. It infuses and sets ground for all following legal provisions enacted in the country. Legally speaking, marriage itself is always seen through its both sides: as both a religious and State affairs. The State abides by the first tenet of Pancasila, which is the adherence to the one and only God. That said, marriages in Indonesia are acknowledged and registered by the State following their religious ceremonies. When certain couples failed to carry out the latter, including by reason of contradiction against certain religious principles, the State cannot acknowledge let alone register said marriage.

Per most religious beliefs acknowledged in Indonesia, the right to enter into marriage and establish a family is not intended for same-sex marriage; marriage is "a soul bond between a man and a woman as husband and wife to establish a happy and eternal family based on the belief in the one and only God." This is stipulated in Law No. 1 of 1974 concerning Marriage. The sexual practices or relationships allowed in this country are between men and women who have been married. So any sexual relationship committed out of wedlock is unlawful. Allowing LGBT to be acknowledged as acceptable sexual orientations means readiness to change the legal definition of marriage, yet not only the legal provisions, but also the living customs of the nation. In a few years, the future generation living in a community legally viewing LGBT as a common occurrence will be more prone to normalizing the practice as neutral.

All in all, the first step to decide whether or not said line of actions shall be taken with regards to Indonesian marriage laws regime is to juxtapose the above view against the Pancasila as the nationally acknowledged and accepted way of living. Apparently, such practices are viewed as not in accordance with the values of Godliness inherent in the first precept of Pancasila. Those who lives within Indonesian territory are after all bound in the so-called social contract, and insofar no consensus is found among the legislative, executive, and judicative bodies as the lawmakers to change the long-upheld national view of heterosexual marriage, then the social contract will remain as it is today; LGBT practices, infidelity, and sexual relationships out of wedlock would receive no place or support in Indonesian legal regime.

The right to embrace and choose a certain belief system is itself part of human rights. This right however is very personal, and when said right to embrace religious principle is extended to secular life and projected to one's surrounding communities, it could create contradictions and, in the extreme, hostility towards people of other religious beliefs or those without. This is not an environment desirable in a democratic country which appreciates diversity of the people. Therefore the protection and fulfillment of one's right shall not hinder other people to enjoy their rights

Some example cases for example could be drawn from the United States. The U.S. as a nation has acknowledged the right to embrace and celebrate LGBTQ+ as new development, the liberty inherent in said right is not without limit. In the U.S. case, the acknowledgement and execution of this right in full would breach the right of another to exercise his rights to embrace certain religious values, the example of the Supreme Court ruled in favor of a baker who refused to supply wedding cake to a homosexual couple, arguing that the baker's right to embrace and practice certain religion could be threatened by the client's insistence that homosexual couples shall be treated in equality, that is to be supplied with the wedding cake as they would be had they been heterosexual.

### **Islamic Law's Perspective on LGBT and Its Relevance with Human Rights**

Islam regulates the sexual relationship between male and female as a legal marriage. Islam allows sexual relationships only after a marriage in order to guard the honor and dignity of a person.

In Islamic Law, the issues concerning LGBT have yet to be regulated in a comprehensive and detailed manner, that, however, does not mean the perpetrator of LGBT practices will not receive any penalty for his deeds. To determine the fitting punishment for perpetrator according to Imam Abu Hanifa, the act shall be differentiated with adultery and therefore no *hadd* punishment can be imposed on the perpetrator except *ta'zir*. This is different from Imam Malik, who argues that *hadd* could be imposed when the perpetrator has been married or otherwise. This could be found in the following Hadith:

Imam Shafi'i, Abu Yusuf, and Prophet Muhammad have said:

“Abu Hurairah narrated that the Prophet Muhammad SAW had proclaimed that if the violator has married, the punishment *hadd* of being stoned to death will be imposed upon him: but if the violator has not yet been married, then *ta'zir* would be enough punishment for him.”[9]

According to Imam Shafi'i, homosexual practices cannot be categorized as adultery, although there is similarity, that is that both of them are forbidden sexual relationships in Islam. Punishment designated for a male homosexual (gay), if he is a *muhsan* (already married), is stoning. If the perpetrator is a *gair muhsan* (virgin), he will be punishable with 100 (one hundred) times of whiplash and be exiled for 1 (one) year.[10] For female perpetrator of *sisaq* (lesbian) the applicable punishment is *ta'zir*; where the government holds the authority to determine the most appropriate punishment, so as to produce deterrent effect for the perpetrators of this illegal practice.

Hence, the punishment applicable for gay and lesbianism is *ta'zir*; that is a punishment which does not go as far as killing the perpetrators, in contrast with the punishment of stoning adulterous men and women (to death). It remains, however, that gay and lesbian are vile practices. Sexual relationship is a biological need for husband and wife who have been legitimately married. In undergoing life, humans will always be inevitably met with temptations which potentially drive them to commit actions that displease Allah, among others sexual deviations.

Islam always orders its people to avoid immoral deeds which only generate losses and harms. Its efforts in preventing devious practices is by imposing punishment in the form of *Ta'zir*, as agreed upon by some ulamas. In addition to said punishment, Islam recommends his people to marry as a measure of prevention from sexual deviations and to strengthen the bond of fraternity among mankind. Therefore, every religion regulates marriage provisions to guard the people's own dignity so that no casual sex occurs for mere temporary enjoyment. Therefore, Islam views LGBT practices as sexual deviation with bad impacts for the continuity of society life. Islam strictly guards human dignity by forbidding these vile practices.

Basic human rights is a form of freedom which consists of the rights for liberty, rights to equal treatment, and rights to live. The urge to experience sexual relations is natural and is in fact one of the God-given human natures, which nobody can prohibit because it is a basic human rights. However the God-given freedom only applies in correspondence with God's provisions. The fulfillment of sexual drives by LGBT groups is by no means in accordance with any religious teachings, especially Islam, and at the same time is not well-balanced with the basic human obligations.

Said obligation should be obeyed by everyone. including the LGBT group which in this case should submit to every limitation that has been set. Islam gives freedom as human nature and such freedom shall be practiced through truthful religious path. This sort of freedom is what differentiate humans from other living creatures.

#### 4. CONCLUSION AND RECOMMENDATIONS

##### Conclusion

The teaching of Islam has firmly forbidden LGBT practices, which are vile deeds, even the culprit could be sanctioned by the penalty *ta'zir*. Sexual activity committed by this LGBT group will only cause losses and damages. The only sexual relationship approved in Islam is one that entails the value of worship as well as generating benefits such as in a marriage and the efforts for reproduction to ensure the continuity of mankind. In Law No. 39 of 1999 concerning Basic Humans Rights, religious values are pivotal for the Constitution to realize democracy in Indonesia. This is strengthened with Article 70 of the Law No. 39 of 1999 concerning Basic Human Rights, which stipulates that: "In fulfilling his rights and freedoms, each persons are obliged to adhere to the restrictions set by the laws in order to acknowledgments and respect for the rights and freedom of others as well as to fulfill fair demands in accordance with the considerations of morality, safety, and public order within a democratic society. In the lift of the above, we could conclude that LGBT behavior, as in the cases of rape, infidelity, and sexual relationships out of wedlock, has no place and support in Indonesian laws. The deed is not only harmful against one's self, instead it could also impact many people and eliminate the civilized humanity side of human beings. Therefore, based on the above explanations it could be confirmed that LGBT practices violate human rights.

##### Suggestions

The existence of LGBT in Indonesia must be given limitations to ensure that there will be no discriminatory treatment and actions contrary to religious values and values prevailing in the society. Besides, an authorized agency is required to help this LGBT group return to the right path through religious and medical therapy. It is hoped that the interested stakeholders could develop policies that provide clear boundaries for LGBT group in accordance with the applicable laws in Indonesia.

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