



Bridging Legal, Religious, and Human Rights Perspectives on LGBT Issue

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Abstract

This study examines the legal, religious, and human rights views of the LGBT community in Indonesia. This study aims to provide a broader understanding of how society's views of LGBT are influenced by legal, religious, and human rights factors. The formulation of the problem in this study focuses on how the legal, Islamic religion, and human rights views of the LGBT community in Indonesia. This study uses a qualitative approach with literature study as the main method, focusing on the analysis of relevant written sources, such as books, articles, reports, laws, interpretations, hadiths, and human rights documents. Despite legal efforts through the Constitutional Court's decision rejecting the criminalization of same-sex activity, discrimination against LGBT individuals continues, both through regional regulations and conservative religious views. The Islamic perspective that views homosexuality as deviant behavior exacerbates social stigma and legal challenges for LGBT individuals.

Keywords: LGBT, law, religion, human rights.

1. Introduction

The LGBT (Lesbian, Gay, Bisexual, and Transgender) issue has become a controversial topic in various parts of the world (Indrawadi et al., 2021), especially in social, cultural, legal, and religious contexts. Despite the progress made in recognizing individual rights, the existence and recognition of the LGBT community often causes heated discussions (Williams, 2020). This debate is mainly related to the norms that apply in society, as well as religious and legal views that play an important role in shaping people's attitudes towards their existence.

Discrimination against LGBT individuals still occurs openly. Society tends to consider LGBT as a deviation from the norms that are embedded in culture and religion. As a country with a Muslim majority, views on LGBT are often influenced by religious teachings that consider homosexuality a sin (Arita, 2023). This creates tension between the acceptance of the rights of LGBT individuals and the understanding of religion and culture that develops in society.

The legal systems in various countries also provide different perspectives regarding the protection of LGBT rights. From a human rights (HAM) perspective, LGBT have the same right to live without discrimination (Purnomo et al., 2023). The universality of human rights emphasizes that every individual, regardless of sexual orientation or gender identity, has the right to be respected, protected, and treated fairly.

This issue becomes more complex when we consider the context of Indonesia, which is the country with the largest Muslim population in the world. Islamic teachings view homosexuality as behavior that is not in accordance with human nature and is contrary to sharia law (Bahar., 2020). This view plays a significant role in shaping societal attitudes towards LGBT. However, there are also those among Muslim scholars and intellectuals who try to interpret Islamic teachings in a more inclusive way and accept the diversity of sexual orientations.

It is important to dig deeper into the three main perspectives that shape attitudes towards LGBT. law, Islamic religious law, and human rights. The legal perspective provides a view on legal protection for LGBT individuals, both in the form of recognition of basic rights and protection from discrimination. Meanwhile, Islam views the LGBT issue from a moral perspective and religious teachings that emphasize the sanctity of marriage between a man and a woman. Finally, human rights emphasize the importance of protecting individual rights regardless of sexual orientation (Fitri et al., 2024).

Through a deeper understanding of these three perspectives, it is hoped that common ground can be found that allows for the recognition of LGBT rights in a fair and humane manner. This is very important, considering the potential for human rights violations that often occur against LGBT individuals, both in private life and in public spaces (Flores et al., 2022). Therefore, this study will examine in depth how law, Islam, and human rights view and society regulate LGBT issues, and how the three interact with each other in forming views.

The existence of these different views, both at the individual, community, and state levels, shows how complex the LGBT problem is. Therefore, this study is expected to make a greater contribution to building a more open and inclusive understanding of LGBT rights, as well as the importance of respecting differences in sexual orientation in a pluralistic society. This is also in line with the basic principles of human rights which emphasize that every individual has the right to live with dignity, without fear of discrimination.

This study aims to provide a broader understanding of how society's views on LGBT are influenced by legal, religious, and human rights factors. Through this understanding, it is hoped that a constructive dialogue can be created between various parties to reduce stigma and discrimination against the LGBT community, as well as create a more inclusive and safe environment for all individuals, without exception.

2. Literature Review

2.1. LGBT Studies

According to Board on the Health of Select Populations et al., (2011) Lesbians, gay men, and bisexual individuals are characterized by their sexual orientation, which is typically understood in terms of sexual attraction, behavior, identity, or a combination of these aspects. What they have in common is that their sexual orientation is not exclusively heterosexual. However, this broad category of "non-heterosexuals" encompasses a diverse range of people, including men and women, those who identify as homosexual or bisexual, individuals who use labels like gay, lesbian, or bisexual and those who do not use such labels but still experience same-sex attraction or engage in same-sex sexual behavior.

LGBT stands for Lesbian, Gay, Bisexual, and Transgender, referring to a diverse group of non-heterosexual, gender-non-conforming individuals. The term signifies a more unified field of psychology that focuses on these identities and their unique experiences (Peel and Rigs, 2016). This acronym has evolved over time, with the addition of "Q" for queer/query, and "IA+" for intersex, asexual, and other identities, reflecting the diversity within this community (Gupta, 2023).

2.2. Legal Views on LGBT

The Indonesian Constitutional Court protected LGBT rights in its 2017 decision (46/PUU-XIV/2016) by rejecting a petition from conservative groups seeking to criminalize same-sex activities through an expanded interpretation of Article 292 of the Indonesian Criminal Code. Although the Court refrained from declaring such criminalization unconstitutional, it emphasized that expanding the scope of criminal law was the legislature's responsibility, not the Court's. Despite its cautious approach, the decision effectively safeguarded LGBT rights by influencing the drafting of the new criminal code, leading to the exclusion of provisions criminalizing LGBT individuals (Satrio, 2020).

According to Tanoko (2022) there is no explanation regarding regulations for LGBT people in Indonesia, only a few regions have issued regional regulations regarding LGBT, one of which is the Musi Banyuasin Regional Regulation which prohibits LGBT. This regulation is contrary to human rights. Where it is not allowed to discriminate against any human being, as long as it does not harm others and everyone has the freedom to choose what they want.

The debate regarding LGBT behavior has become more widespread following the issuance of Constitutional Court Decision Number 46/PUU-XIV/2016 concerning the judicial review of Law Number 1 of 1946 concerning Criminal Law Regulations in conjunction with Law Number 73 of 1958. Groups supporting LGBT interpreted the decision as an attempt to legalize LGBT, while other groups argued that the decision confirmed that the Constitutional Court does not have the authority to create new criminal offenses (Sihombing, 2019).

2.3. Islamic Religious Views on LGBT

According to Aulia (2024) There is no verse in the Quran that explicitly mentions the LGBT (lesbian, gay, bisexual, and transgender) group. The term LGBT is solely based on the analysis of the approach of scholars and munasabah to the verse regarding the word fahisiyah or al-Fahasya. Islamic law in Indonesia LGBT is a deviant act and is clearly prohibited in Islam, as stated in the interpretation book of the Indonesian Ministry of Religion.

Conservative interpretations of Islam in Indonesia reject LGBT identities, leading to significant social stigma and legal challenges for LGBT individuals. Islamic teachings in Indonesia generally view homosexuality as deviant, in line with conservative interpretations of Sharia law (Susanti, 2024).

2.4. Human Rights Perspective on LGBT

According to Zebua and Sharfina (2024) Research shows that the rights of the LGBT community in Indonesia are recognized under human rights principles, as reflected in the Pancasila and the Constitution, allowing for freedom while also requiring compliance with the legal system.

Human rights in Indonesia face limitations related to LGBT issues, as cultural norms and Pancasila principles oppose atypical sexual orientations. The legal framework does not support LGBT rights, resulting in stigmatization and social discrimination against individuals with such orientations (Miskari, 2017).

3. Methodology

This study uses a qualitative approach with literature study as the main method, focusing on the analysis of relevant written sources, such as books, articles, reports, laws, interpretations, hadiths, and human rights documents. The main data sources include legal documents related to the rights of LGBT individuals, Islamic religious literature on homosexuality, and international conventions on human rights. Data collection techniques are carried out through document analysis (content analysis) related to LGBT, law, religion, and human rights. The research procedure involves data collection, literature screening according to relevance, analysis of legal, religious, and human rights views related to LGBT, and compilation of analysis results and comparisons between perspectives.

4. Results and Discussion

4.1. Results

LGBT, which includes lesbian, gay, bisexual, and transgender individuals, is defined in the literature as a group with a non-heterosexual sexual orientation. As explained by the Board on the Health of Select Populations et al. (2011), the sexual orientation of LGBT individuals is usually understood in the context of their non-heterosexual sexual attractions, behaviors, and identities. According to Peel and Rigs (2016), the development of understanding of LGBT also shows a tendency to classify them in a broader category, including people who do not use a particular label but still engage in same-sex sexual behavior. Over time, this term has evolved into LGBTQIA+ which includes more identities, including queer, intersex, and asexual (Gupta, 2023). This shows that the LGBT community is very diverse, both in terms of identity and the experiences they face.

In Indonesia, legal views on LGBT reflect the tension between human rights protections and existing social norms. The Constitutional Court decision in 2017 (46/PUU-XIV/2016) shows that although the Constitutional Court rejected a petition from conservative groups seeking to criminalize same-sex activity, this decision did not directly address the request to repeal all forms of criminalization of LGBT. The Constitutional Court only emphasized that this was the responsibility of the legislature, not a court decision. In other words, this decision had an impact on efforts to protect LGBT rights by influencing the drafting of the new Criminal Code Bill, in which there were no articles that included criminalization of LGBT individuals (Satrio, 2020). However, Tanoko (2022) noted that although this Constitutional Court decision avoided criminalization, several regions in Indonesia still issued regional regulations prohibiting LGBT activities, such as the Musi Banyuasin Regional Regulation which was considered contrary to human rights principles. Furthermore, Sihombing (2019) noted that the Constitutional Court decision sparked a debate between those who supported LGBT rights and those who opposed it, arguing that the Constitutional Court did not have the authority to create new laws that discriminated against this group. This situation reflects the legal tension between human rights protection and conservative views that still influence many policies at the regional and national levels.

The Islamic view of LGBT in Indonesia tends to be conservative, in line with the interpretation of sharia law that considers homosexuality as deviant behavior. According to Aulia (2024), there is no verse in the Qur'an that explicitly mentions LGBT. The term LGBT in the context of Islam comes more from the interpretation of the term "fahisyah" or vile acts, which are seen as being in line with homosexual practices. This view is supported by many Indonesian scholars who consider homosexuality to be an act that is contrary to religious teachings. As expressed by Susanti (2024), conservative views of LGBT in Indonesia have led to a very strong social stigma against LGBT individuals, and often face legal challenges that affect their quality of life.

In fact, in some circles, the interpretation of Islamic teachings can exacerbate discrimination against LGBT, which exacerbates the difficulties faced by LGBT individuals who are Muslim, both in their social and spiritual lives. This view also emphasizes the challenges faced by the LGBT community in the social and legal context in Indonesia.

From a human rights perspective, the rights of LGBT individuals in Indonesia are recognized in the basic principles of Pancasila and the 1945 Constitution, which emphasize freedom and equality. However, as expressed by Zebua and Sharfina (2024), despite these principles, the implementation of these rights faces major obstacles, especially in the context of sexual orientations that are considered inconsistent with prevailing cultural or religious norms. Miskari (2017) highlights that although Pancasila prioritizes human rights, Indonesian society still tends to oppose non-heterosexual sexual orientations, leading to discrimination and inequality against LGBT individuals. Rejection of LGBT is often rooted in conservative cultural and religious views, which in turn influence legal policies and social attitudes toward LGBT individuals. This creates social discrimination, violence, and marginalization that are detrimental to LGBT individuals, both in everyday life and in the context of public policy.

4.2. Discussion

From the literature review above, it can be seen that although there have been several legal and political efforts to protect LGBT rights in Indonesia, major challenges remain in implementing policies that recognize these rights universally. The Constitutional Court's decision to reject the criminalization of same-sex activity is an important step, but regional regulations prohibiting LGBT remain in effect, creating inequality for LGBT individuals in Indonesia. Meanwhile, religious perspectives, especially Islam, provide a more conservative view that considers homosexuality as a deviant act, which exacerbates social stigma and discrimination against LGBT.

On the other hand, the principles of human rights upheld by Pancasila and the 1945 Constitution should be a strong foundation for protecting the rights of LGBT individuals, but strong cultural and religious norms in Indonesia make it difficult to accept these rights. Therefore, it is important to continue dialogue and education to reduce discrimination and increase public understanding of LGBT rights in a broader and more inclusive context.

5. Conclusion

This study shows that despite some legal efforts in Indonesia to protect LGBT rights, major challenges remain. The Constitutional Court ruling that rejected the criminalization of same-sex activity provides hope, but local policies and regulations prohibiting LGBT are still in place in some areas, exacerbating legal inequalities. The dominant conservative views of Islam in Indonesia also exacerbate social stigma and discrimination against LGBT individuals, leading to marginalization in various aspects of life. Although human rights principles should support LGBT rights, social norms influenced by religion and culture remain major barriers to the acceptance of these rights. Therefore, there needs to be continued efforts to educate the public and encourage more inclusive policies towards the LGBT community.

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