

# Lesbian, Gay, Bisexual and Transgender ( LGBT ) Behaviour from the Perspective of National Human Right and International Human Right

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**ABSTRACT.** Lesbian, gay, bisexual, and transgender behavior, or commonly known as LGBT, is a social phenomenon that is highlighted by many people at national and international levels. The problem is if the Indonesian people do not reach the same agreement on the position of LGBT people in this country for human rights reasons (HAM). Human rights are essentially aimed at developing conditions conducive to the implementation of human rights under Pancasila, the 1945 Constitution and the United Nations Charter on Human Rights. The purpose of this study is to provide answers and describe how LGBT behavior is troubling for the Indonesian people and the international community in general. In addition, it will also be examined how national human rights and international human rights regarding LGBT behavior are reviewed. The method used in this study is sociological legal research, in which law is viewed as an empirical social phenomenon, using primary data from interviews with MUI, ICMI and Komnas HAM as well as secondary data from the Human Rights Act number 39 from 1999, Komnas HAM Handbook, Human Rights Declaration and UNDP Handbook (United Nations Development Program). In this way, LGBT behavior cannot be justified because there is no legality, violates decency norms and has the potential to cause unrest in society. This meant that what was prescribed in the constitution of the Republic of Indonesia in 1945 could not be achieved, namely to create order and security for the Indonesian people. And according to the International Human Rights itself, LGBT behavior is not recognized because there is no legalization of LGBT in the Declaration of Human Rights and only men and women are mentioned as partners.

**Keywords:** *National Human Rights, International Human Rights, UNDP.*

## 1. INTRODUCTION

Deviating sexual behavior is still taboo for Indonesians. The society is still dense and contains so-called moral, ethical and religious teachings. Sexually deviant behavior is certainly not a phenomenon that can be taken for granted. Deviating sexual behavior itself arises from a deviating sexual orientation. Sexual orientation is the tendency to channel feelings of attraction, romance, emotions, and sex towards men, women, or a combination of both. [1] (Douglas, Markus, 2015). Sexually deviant behavior is carried out by groups of people with different sexual orientations or better known as LGBT (lesbian, gay, bisexual and (transgender / transsexual)) groups. LBTBT is a term that has been used since the 1990s to replace the term "gay community" because this term is believed to represent the group that "populates" the term in greater detail. LGBT consists of: 1) Lesbi: A group of women who are physically, emotionally and / or mentally attracted to other women; 2) gay: a group of men who are physically, emotionally and / or mentally attracted to other men; 3) Bisexual: a group of people who are physically, emotionally and / or spiritually attracted to the opposite and same sex; 4) Transgender: A group of people who feel that their gender identity is different from genital anatomy.

Therefore, the selection / non-selection of genital surgery adapts to the desired gender identity. [2] (APA: American Psychological Association, 2015). LGBT is not really new in this country. Previously, many important meetings were held to consider the interests of the LGBT community, particularly to respond to violations of their rights as a community of sexual minorities. In 2006 a meeting took place in Yogyakarta at which the meeting "The Yogyakarta Principles for the Implementation of International Human Rights Laws Regarding Sexual Orientation and Gender Identity" was born. These principles emphasize the protection of the rights of communities of sexual minorities and create a framework for international human rights standards for people with a particular sexual orientation and gender identity [3]. Scientists and human rights activists have carried out extensive research that has polarized attitudes towards LGBT people. Many parties oppose this deviant sexual behavior and many are ready to accept it. The debate over opinion between the two became hotter and expanded with arguments from a human rights perspective and arguments from a religious perspective. Those who commit to deviant sexual behavior are often human rights as a shield to protect the interests of LGBT people. That they are people

who have equal rights and opportunities and should not be treated in a discriminatory manner (criminalizing their sexual orientation). Indonesia, on the other hand, is a god-centered country. As a country that recognizes God, its citizens have the freedom to carry out God's commandments as stated in the scriptures and teachings of their respective religions. Based on recognized religious teachings in Indonesia, there is no justification that can be used as an argument to justify sexually deviant behavior by LGBT people.

Indonesian law only recognizes the existence of gender for both men and women, so transgender people who do not undergo sex reassignment surgery may have problems managing ID documents and other related matters. A number of local regulations prohibit homosexuality as a crime because it is viewed as immoral, although four out of five related laws do not provide for explicit punishment. Indonesian laws and regulations only define two genders, male and female. This can be interpreted from the explicit inclusion of men and women in The Marriage Act (Act No. 1/1974) [4] and similar provisions regarding the content of the residence card are regulated in the Administrative Act. Population (Law No. 23/2006) [5].

International human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). brought about significant changes in the struggle to make all people aware of the importance of humanity. Human rights depend on generally accepted values, traditions and norms, although not all countries have these customs or norms. In 1977, City Warden Harvey Milk in San Francisco, USA, became the first gay civilian [6]. Harvey Milk has been very open about equality for LGBT people. Because of Harvey Milk's active involvement in enforcing the protection of LGBT rights, the Canadian province of Quebec was the first province to prohibit discrimination based on sexual orientation.

Milk's fight, however, yielded bitter results as a year after Harvey Milk and then-Mayor of San Francisco George Moscone was killed for promoting LGBT rights in the San Francisco area. After the Harvey Milk era, LGBT acceptance still had pros and cons. In several countries around the world, the existence of LGBT people is strictly prohibited under applicable law in that country. In Iran and Afghanistan, citizens who are involved in same-sex relationships are subject to the death penalty [7]. In Zimbabwe, President Robert Mugabe made statements about the presence of LGBT people in his country that "the animals in the forest are better than these people" (the animals in the forest are better than these people)

and "homosexuals are worse than dogs and Pig" (homosexuals are worse than dogs and pigs). At the end of 2012, the Kremlin or the Russian legislature passed a law banning "homosexual propaganda". These regulations have already been implemented in nine Russian provinces. Any form of pro-homosexual activity, such as the rainbow flag or logos, is considered "propaganda" in violation of Russian national regulations. This ordinance sparked protests by LGBT activists in Russia who later organized demonstrations in central Petersburg, the Russian capital. However, these demonstrations were rejected by the local government and some activists who participated in the demonstrations were suppressed by government officials who later arrested them. Even as the author finalized this thesis, the Indian state again enacted laws criminalizing homosexuals, and the Ugandan state enacted a law criminalizing LGBT people called the Anti-Homosexuality Act 2014, which provides for activities to promote, support, or engage in same-sex sex with Prison and even punishment are punished. to die.

The importance of the international community's acceptance of the existence and protection of LGBT rights needs to be highlighted, given international human rights instruments to human rights and fundamental freedoms such as the right not to have the right to freedom of expression [8] and the right not to be arbitrarily detained will guarantee [9] and the right to be free from torture [10]. Almost all countries in the world have signed and ratified human rights conventions that regulate rights and freedoms, as mentioned earlier. These are of course the basic rights of everyone, including LGBT people.

## 2. RESEARCH METHOD

The approach method used is sociological law (socio-legal research), which regards law as an empirical social phenomenon [11], the descriptive form aims to explain LGBT in terms of national and international human rights as well as the influence of LGBT behavior on Indonesian society. The data were qualitatively and empirically analyzed, researched and interpreted in order to answer research problems. Qualitative analysis method based on secondary data in the form of theory, meaning and substance from various literatures, laws and regulations. While the primary data is being obtained, the results of on-site interviews (interviews).

## 3. RESULT AND DISCUSSION

Manfred Nowak mentions four principles of human rights: universal (universality), indivisibility, interdependence, interrelation [12]. The universal principle basically states that all people in the world have the same rights as human beings themselves. The

principle of indivisibility in relation to the Human rights cannot be shared with specific rights, and all human rights are equally important. In the meantime, the principle of interdependence and interrelation is that one right always depends on the fulfillment of other rights and cannot be separated from others. In this way every right needs restrictions on other human rights if it has the potential to cause upheaval and public order. Likewise with LGBT behavior. In Indonesia there are advantages and disadvantages to looking at LGBT behavior. When people associate LGBT with religion, LGBT behavior automatically contradicts all recognized religious norms in Indonesia. There is not a single religion in Indonesia that expresses approval and support for LGBT behavior. We can see this in the Indonesian Ulama Council (MUI) fatwa No. 57 of 2014 on lesbian, gay, sodomy and profanity [13]. This fatwa affirms that LGBT activities and behavior are prohibited because of some form of crime. The existence of the MUI Fatwa, which incidentally is a representative of the state in the religious field, strengthens the prohibition and non-recognition of LGBT in Indonesia.

Of course, this is not necessarily agreed and agreed upon by the Indonesian people, especially human rights activists. When we look at the concept of human rights, which defends human ideas and values and is universally applied, it seems that human rights in this regard resonate in all cultures and traditions [14].

Therefore, human rights are a crucial call for those who continually seek justice and peace in the world. Human rights in Indonesia are regulated in Law No. 39/1999. This law contains several provisions that restrict human rights. Among them is Article 73 (c) of Law No. 39 of 1999, which allows human rights restrictions to be implemented for the sake of respect for morality, public order and the interests of the nation. Article 28J, paragraph 2, letter c of the Constitution of the Republic of Indonesia of 1945 then states that the restriction of human rights can be carried out on the basis of the fulfillment of fair demands, taking into account moral, religious values, security and public order in a democratic society.

The National Human Rights Commission (Komnas HAM) argues that sexual orientation is a person's human right. Komnas HAM therefore believes that LGBT people have the right to exercise freedom of sexual orientation. Of course, Komnas HAM's opinion contradicts the 1945 constitution and the values contained in the Pancasila Principles. The sexual orientation that should and is usually sexual orientation between men and women, not sexual orientation towards the same sex. When a person of the same gender is sexually oriented, it can create unrest in society. This includes violations of religious and moral values as described in Article 28J,

paragraph 2, letter c of the 1945 Constitution of the Republic of Indonesia.

The existence of the LGBT movement in Indonesia is a dynamic of a diverse lifestyle. There are two things that LGBT abusers and activists demand, namely freedom from discrimination (including the legality of same-sex marriage). The violence that still occurs against LGBT people is due to the fact that government law enforcement is viewed as weak. Indeed, every citizen should be protected by the government according to the making of the regulations. On the other hand, LGBT actors who want to legalize marriage are violating the laws in force in Indonesia. The large number of crimes committed by LGBT offenders and the large number of HIV cases are, of course, very worrying for the community. Parents certainly don't want their children to become LGBT abusers, and of course they try to develop good characters for their growth and development. Based on the APA formula, which leaves the classification of LGBT to the local culture, LGBT is considered abnormal behavior in Indonesia. Hence, the state structure cannot take into account the presence of LGBT behavior [15].

Komnas HAM also believes that there are still many LGBT people who face discrimination in terms of employment, health services, public services, etc. However, according to the author, this is completely unfounded [16]. This can be seen in the education of LGBT people, which remains widespread in public and private educational institutions. Even in jobs and public services, they are given the same rights as the general public. Indeed, the human rights of LGBT people are still recognized in relation to the necessities of life, except for their sexual orientation, which is harmful to themselves, disrupts order and can lead to the destruction of human offspring [17].

Bassam Tibi explained that human rights are individual rights that emerge from modern European thinking about natural law. These rights are adopted by European countries as standards for legal institutions. From there, the United Nations Universal Declaration of Human Rights (UDHR) emerged in 1948, and human rights became international law [18]. In June 2011, South Africa, which had a representative on the UN Council, offered a UN resolution for the first time as a special human rights Gender identity and sexual orientation aligned. It received the approval of a small majority and the support of councilors from all regions. This resolution was the beginning to pave the way for related problems.

Many Islamic countries still find it difficult to understand the problem. In the view of the states of the Islamic organization, such a topic should not have the status of a topic in international human rights. These problems show how difficult it is to develop a universal and harmonious law for a supranational body

when values and customs become ambiguous through cultures.

According to the author, the United Nations, as the representative of the countries of the world, should also take into account the objections of the majority of the UN Council from other countries, which fundamentally rejected the resolution more than those who accepted it. However, this would not be possible if decision-making were more strongly influenced by international political issues. This includes the United Nations Development Program (UNDP), an international United Nations organization that clearly supports the LGBT (LGBT) movement with both moral and material support.

UNDP is affiliated with several countries that support the LGBT movement. There is also a forum for the Indonesian LGBT community (LGBTI) in Indonesia, under the auspices of the UNDP organization for Southeast Asia. LGBT Indonesians have also received support from UNDP in collaboration with the Swedish embassies in Bangkok, Thailand and USAID. Four countries, Indonesia, the Philippines, Thailand and China received disbursements of USD 8 million (around IDR 108 billion). UNDP stated that this was a collaboration with civil society, in which national and regional institutions were certainly involved in the enforcement of laws and human resources.

The author deeply regrets why the Indonesian government, although expressly not recognizing and legalizing the LGBT movement, remains silent and does not enforce the law which, in the interests of religious and moral norms set in the Law of the Republic of Indonesia of 1945, should be done.

In principle, LGBT itself has no international legality. According to the author, the LGBT movement is only an international effort to maintain its international political existence. We can look at Brazil, which is actually a symbolic country for Christians, marked by the largest statue of Jesus, which has had a very strong religious tradition for decades, which eventually collapsed and the LGBT movement could not withstand [19]. This shows how strong the expansion and influence of The LGBT Movement. If we look at the 30 human rights set out in the Universal Declaration of Human Rights, none of them specifically mention LGBT people. In fact, the 16th Universal Declaration of Human Rights states the right to marry and have a family. Every adult has the right to marry and have a family if they so choose. Men and women have equal rights when they marry and when they are separated [20].

When we refer to international human rights, we can understand that LGBT, when recognized and legal, mentions not only men and women as partners, but same-sex partners as well, in 1948, when international human rights were born. According to

the author, this can be used as an international legal argument for rejecting and banning the LGBT movement.

#### 4. CONCLUSION

National human rights and positive Indonesian law neither clearly support or legalize the LGBT movement. In fact, it is clear in the Law of the Republic of Indonesia of 1945 and Law No. 39 of 1999 on Human Rights that a person's human rights must not cross borders, which means that they have restrictions that are not contrary to morality, religious norms and national order violated. Even including international human rights law, none of them have declared the support and legalization of the LGBT movement. Recognition of the sexual orientation of LGBT people is only done by UNDP, an international political organization under the United Nations. And in the Universal Declaration of International Human Rights, which is a recognition of human rights as a whole, same-sex relationships are not mentioned, only relationships between men and women. suggestion According to the author, the advantages and disadvantages of the LGBT movement do not need to be discussed. Because normatively it can be seen in the rules of national human rights and international human rights. In order to uphold the rule of law and achieve national and international order, it is time for both the Indonesian government and the United Nations to address the LGBT issue in the Law of the Republic of Indonesia of 1945 and the Universal Declaration of Human Rights agreed principles.

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