

# The LGBTIQ in Perspective of Criminal Law and Christian Doctrine: The Problem of Law and Morality

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**Abstract**—LGBTIQ behavior raises pros and cons in society. The purpose of this study is to analyze LGBTIQ behavior from the perspective of Criminal Law and Christian Doctrine related to the issue of law and morality. The research method used is juridical legal research using a statute approach and a conceptual approach. The data source used is secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials related to writing. Data collection techniques through literature study and analyzed qualitatively. The results and discussion show that in the Criminal Code (KUHP) and the new Draft Bill (RUU) the KUHP only regulates the behavior of obscene adults to adults who are the same sex (both men and men or women with women. While other behaviors are not regulated. In addition, this LGBTIQ issue also entered into church life, including the Maluku Protestant Church (GPM). There are GPM residents who are included in LGBTIQ people. Whose existence raises the pros and cons of church members. Therefore, GPM as a religious institution, also takes part in addressing this issue in terms of the teachings of the Christian faith. This GPM attitude was stated in the Teachings of the Maluku Protestant Churches (GPM) which were the products of the *Persidangan Sinode GPM of 2016*. It is expected that there are strict and clear regulations in Criminal Law related to LGBTIQ sexual behavior and sustainable pastoral guidance in order to restore LGBTIQ people as whole people. Because LGBTIQ behavior is contrary to Indonesian law and morality

**Keywords**—LGBTIQ; Criminal Law; Christian Doctrine

## I. INTRODUCTION

The issue of LGBTIQ (Lesbian, Gay, Bisexual, Transgender, Intersexual, Queer) in recent years has become an issue that raises pros and cons. For those who contradict, LGBTIQ is considered a social deviation and disease that must be addressed immediately so as not to disrupt the orderliness of the community, as in the writings of [14], Menristekdikti Mohammad Nasir and Chair of the Indonesian Ulema Council (MUI) KH Makruf Amin, assessing the group LGBTIQ is a community that has no benefits and should be stopped and eliminated

But for the pros, the behavior is not a social deviation or disease. Instead LGBT (IQ) often accept negative views, prejudices, and hatred from the environment. Like other marginalized groups, LGBTIQs have been denied rejection, violence and discrimination in various areas of life, according to research conducted by [9].

As citizens, LGBTIQ people must obey the applicable law, including the law that regulates behavior that is prohibited in social life. As explained by [1] that behavior that is not in accordance with the norm can

usually cause problems in the legal field and harm society. Behavior that can be called fraud can actually cause disruption of order and peace in society. Likewise, as religious people who believe and believe in the teachings of their religion, LGBTIQ people must submit and obey the teachings of their religion. As stated by [3] that almost all Indonesian people are determined in their attitudes in depth by their faith, and that faith depends on their religion.

According [13], LGBTIQ phenomenon in Indonesia is classified into two different entities, namely: LGBTIQ first entity, is that LGBTIQ includes "illness" mental disorders, or sexual orientation deviations, which are inherent (owned) by someone as an individual. At the level of this first entity, LGBTIQ is divided into two identities: first are those who cover themselves (hide) their identity as LGBTIQ people so that no one else (outside of themselves) knows their identity; the second, are those who dare to come out (open their identity) to others and expect the help of others (outside themselves) to help heal them. The second LGBT entity is LGBTIQ as a community or group, or it can also be called an Organization, which has certain Vision, Mission, and

activities or movements. At the level of this second entity, which is now rife in the debate among Indonesian people, whether this LGBTIQ group movement can be legalized or not.

According to [5] symptoms of homosexuality is sexual relations with the same sex or a sense of interest and love the same sex, for example, men interested in men (Gay) or women interested in women (Lesbians). While writing James Danadjaja in [8], he describes the group Transsexual or Transgender, namely homosexuals change his body shape to be similar with the opposite example, men who change the chest with plastic surgery or injections, remove the penis and testicles and form a vaginal opening. Reference [12], explains that most transsexual is a man who identifies himself as a woman, which arise when childhood and see the genitals and the appearance of virility with disgust. While Bisexual is a sexual orientation of a man or woman who likes two sexes both male and female. Along with the time additional terms also appear such as I for Intersex and Q for Queer which is intended for people who still question their sexual identity. Of all the terms above, there are similarities that LGBTIQ sexual orientation and behavior are not only with the opposite sex but also with the same sex.

Movement of the LGBTIQ identity struggle in Indonesia precisely starting on March 1, 1982 with the establishment of Lambda Indonesia (LI), which publishes a bulletin *G: Lifestyle Cheers*, until the end of 1984. Early in 1985 appeared Brotherhood Gay Yogyakarta (PGY). In November 1987 a Lesbian and Gay Nusantara Working Group (KKLGN) emerged. In 1992 and 1993, began to appear a variety of gay and lesbian organizations in Jakarta, Bandung, Semarang, Solo, Malang, Denpasar and Makassar (Joshua B. Seyawan, et al, 2017: 357-358). In the Indonesian LGBT National Report, note:

Towards the end of 1993, there were quite a number of individual organizations and activists that were able to hold the first Indonesian Lesbian and Gay Congress (KLG I) in Kaliurang, near Yogyakarta. More and more organizations are established in various parts of Indonesia, namely: Medan, Batam, Ambon and so on. Two more congresses were held: KLG II in Lembang, near Bandung (1995) and KLG III in Denpasar (1997).

This report reveals that in Ambon there has been an LGBT (IQ) organization since the end of 1993. Based on research that has been conducted it was found that among Ambonese citizens, especially those who are members of the Maluku Protestant Church (GPM), there are also those who have sexual orientation as LGBTIQ [18]. From this study, LGBTIQ people who as individuals, do not dare to express their sexual orientation (coming out) because they are not ready to accept the fact that they are oriented as one of LGBTIQ, or because they are afraid of social sanctions from the community. From the research conducted by Redjo (2016) of several LGBTIQ people in Ambon City, it was found that they had only been in clandestine relationships, because according to them this relationship was still prohibited. One informant said "actually I hope this relationship comes to marriage, but it

is impossible for the church to affirm and bless marriage for this type of partner." So, he underwent a closed relationship because his existence as an LGBTIQ person had not been accepted by the community, especially church.

On the other hand, those who are members of organized or group entities, are generally transgender people, especially transvestites (male women - humans are female but have male genitals). They are more daring because they feel there is support from their peers who are members of their group or from other groups that are similar in their orientation.

Based on the description above, this paper will examine and analyze LGBTIQ behavior from the perspective of Criminal Law and Christian Doctrine, as a matter of law and morality.

## II. RESEARCH METHOD

This research is normative juridical with the approach used is the concept approach and statute approach. Data sources used in this study are secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials relating to writing. Data collection techniques are carried out through library studies or documentary studies, then data analysis techniques are carried out qualitatively.

## III. RESULTS AND DISCUSSION

### A. *LGBTIQ Behavior in the Criminal Law Perspective*

LGBTIQ behavior in the perspective of criminal law raises debate. In fact, all factions in the DPR-RI have not been one voice over the proposal of criminalization of LGBT obscene acts against people over the age of 18 [10]. LGBTIQ behavior is not explicitly and clearly regulated in the Criminal Code Criminal Code (KUHP) or Criminal Code Bill (KUHP). Article 292 of the Indonesian Criminal Code only regulates obscene acts committed by adults / old enough to have not yet grown up / not enough of the same sex. This act is threatened with a maximum imprisonment of 5 (five) years. R. Soesilo [6] uses the terms adult and immature, while Moeljatno uses the term quite old and not old enough.

Whereas in Article 495 of the Draft Law on the Criminal Code regulates the prohibition of every person who commits an obscene act with another person of the same sex who is not yet 18 years old. Criminal threats to Article 495 of the Draft Penal Code are imprisonment for a maximum of 9 (nine) years. This criminal threat is exacerbated by one third if the obscene acts as referred to in paragraph (1) are carried out by oral sex or anal sex or all forms of non-sex organ meetings with genitals carried out homosexually. The provisions in Article 495 paragraph (2) of the Draft Penal Code are also known as sodomy. So, implicitly, Article 292 of the Criminal Code and Article 495 of the Draft Penal Code only regulate Gay or Lesbian acts. Even then if it is done by adults / old enough to people who are not yet mature / not old enough. So it does

not regulate Gay or Lesbian obscene acts that are both adults / quite old.

There is a new development in the discussion in the DPR-RI in early 2018 for the criminalization of LGBTIQ obscene acts for over 18 years of age (both adults / sufficient age). According to [10], if referring to moral theory, the LGBT (IQ) obscene expansion in the Criminal Code Bill fulfills what criteria are in the criminalization policy, which is immoral and harmful to individuals and society. In addition, the LGBTIQ obscene acts are not only contrary to legislation but also cultural and religious norms of the Indonesian people.

Therefore, the criminalization of LGBTIQ obscene acts can be considered as an attempt by the state to prioritize the function of criminal law, namely to maintain morality and maintain public order. Likewise, relationships like husband and wife (adultery) committed by LGBTIQ people are not regulated in the Criminal Code or the Criminal Code Bill. Whereas according to [11] in Islamic Criminal Law, LGBTIQ behavior is the same as adultery or sexual intercourse because of mahram, so LGBTIQ is a prohibited prohibition. LGBTIQ is a sexual orientation deviation that is contrary to the human nature, religion and customs of the Indonesian people. It is different with the regulation of criminal acts of violence, especially sexual violence against children which is regulated in Law Number 23 of 2002 as amended and supplemented by Law Number 35 of 2014, regardless of whether the perpetrators are gay, lesbian and others, who clearly the main element of the provisions of the law is that the victims are children (Yuliana Surya Galih, 2016: 103).

#### *B. LGBTIQ Behavior according to the Teachings of the Maluku Protestant Church (GPM)*

Some of the LGBTIQ people are also residents of the Maluku Protestant Church (GPM). There are even those who are also servants to the organizations that are within the scope of GPM. Therefore, GPM needs to provide answers to phenomena that also face pros and cons or debate within the community and church members. Those who refuse, always use written texts in the Bible such as Genesis 19: 1-13 (the story of Sodom and Gomorrah), Judges 19 (Deeds of stain in Gibeah), Leviticus 18:22 and 20:13 (prohibition of sleeping with men men in love with women), Romans 1: 18-32 about the decline of society in the time of the Apostle Paul, 1 Corinthians 6: 9-10 (list of people who did not share in the kingdom of God) and 1 Timothy 1: 8- 10 which presents a list of untrue people who must do the Law as stated by [4].

But on the other hand, those who accept also argue based on the verses in the Bible too. They counter understanding of views that reject LGBTIQ through the hidden agenda. On a national scale, the Alliance of Churches in Indonesia (PGI) has issued a Pastoral Statement about LGBT with a cover letter number 360 / PGI-XVI / 2016 dated June 17, 2016. Indeed, the PGI statement is not a fatwa or ecclesiastical dogma. Written in the introduction: But on the other hand, those who accept also argue based on the verses in the Bible too. They

counter understanding of views that reject LGBTIQ through the hidden agenda. On a national scale, the Alliance of Churches in Indonesia (PGI) has issued a Pastoral Statement about LGBT with a cover letter number 360 / PGI-XVI / 2016 dated June 17, 2016. Indeed, the PGI statement is not a fatwa or ecclesiastical dogma. Written in the introduction:

It is realized that the attitudes and teachings of the church regarding this matter are very diverse, and these considerations (in the points of the statement) are not intended to homogenize them. These considerations are precisely an invitation to the churches to explore this issue further

In the introductory points of the pastoral statement it was revealed that God created man with his various diversity. Church residents should also view LGBTIQ people openly as fellow creatures of God who have diversity. In the recommendations section of pastoral statements, church residents are invited to consider the results of recent research in the field of medicine and psychiatry that view LGBT (IQ) not as a disease, as a mental disorder, or as a form of crime. The Church - as an inclusive fellowship - is invited to accept the existence of LGBTIQ people in communion as the body of Christ, according to [7] in their book *Ketegangan Antara Iman dan Homoseksualitas*.

A few months before the PGI issued this Pastoral Statement, the Maluku Protestant Church (GPM) - as one of the PGI members - had already made its Church Teachings which also loudly stated GPM's attitude towards LGBTIQ. In the Church-GPM Teachings, precisely in the teachings number 435 and 436, note:

"They (LGBTIQ) are God's creations that have dignity as human beings. Therefore the church must recognize, accept and respect them as human beings. The church's attitude towards sexual orientation (LGBTIQ) needs to be adjusted to three categories of sexual orientation. First, sexual orientation as part of God's creation work that has existed since he was born. In this case, the church must recognize and accept them as they are. Second, sexual orientation caused by traumatic experiences. In this case, the church must accompany it by conducting intensive holistic pastoral care. Third, sexual orientation motivated by self-commercialization. In this case, the church rejects this behavior because it is an immoral act that is contrary to the Christian faith. The Church needs to make transformative pastoral assistance to them (Gen. 19; Lev. 18:22, 20:13; Rom. 1: 26-27; 1 Cor. 6: 9-10, 1 Tim. 1: 9-10, and Jud 1: 7, Luke 5:32; John 8: 7-11; 9: 3.)

Based on the contents of the GPM teachings stated in Keputusan Sinode GPM Tahun 2016, the Maluku Protestant Church (GPM) continues to provide assistance to LGBT people based on their background to become LGBT. As with the research conducted by reference [15], that society rejects the existence of LGBT in Indonesia because it contradicts various values and norms in society. LGBT actors should not be known but must be supported

and fostered to recover and return to normal as humans in general.

#### IV. CONCLUSION

From the description above, it can be concluded that LGBTIQ behavior from the perspective of criminal law has not been clearly and clearly regulated. Christian doctrine in this case the teachings of the Maluku Protestant Church (GPM) is softer in addressing the LGBTIQ problem with the argument that LGBTIQ people are also God's creatures. In terms of criminal law there must be a number of things that need to be reformulated in the Criminal Code Bill, for example the issue of fornication, adultery and commercialization of sex among LGBTIQ people. Whereas in terms of the teachings of the Maluku Protestant Church (GPM) LGBTIQ people must be provided with assistance or pastoral care on an ongoing basis. Because the LGBTIQ problem is a matter of law and morality that must be maintained and maintained for the better survival of the community.

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