



Review Of Islamic Law and Human Rights On Lesbian, Gay, Bisexual, and Transgender

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Abstract

Currently, the phenomenon of lesbian, gay, bisexual, and transgender (LGBT) has become a widely discussed issue in Indonesian society. Phenomenon has become a much-discussed issue among Indonesian society with the rampant promotion or advertisement of LGBT people on social media. The discussion of LGBT invites pros and cons in society, including academics. There are those who think that LGBT is a deviant behavior from the normal human condition, so there needs to be a ban through positive law. But on the contrary, there are also those who think that LGBT is innate since humans are born, so LGBT behavior should be accommodated through positive law as well. Islamic teachings consider that LGBT behavior is considered a fahisyah or something bad, vile, and hated, based on the Qur'an and the saheeh hadiths that support it. Keywords: Human Rights, LGBT, and Islamic Law.

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Abstrak

Pada saat ini fenomena lesbian, gay, biseksual, dan transgender (LGBT) menjadi isu yang banyak diperbincangkan di tengah masyarakat Indonesia dengan maraknya promosi atau iklan kaum LGBT di media sosial. Pembahasan mengenai LGBT mengundang pro dan kontra di dalam tatanan masyarakat, salah satunya akademisi. Ada yang beranggapan bahwa LGBT merupakan perilaku menyimpang dari keadaan normal manusia, sehingga perlu ada pelarangan melalui hukum positif. Namun sebaliknya juga ada yang beranggapan bahwa LGBT merupakan bawaan sejak manusia dilahirkan, sehingga perilaku LGBT sudah selayaknya diakomodasi melalui hukum positif pula. Ajaran Islam menganggap bahwa perilaku LGBT dianggap sebagai sebuah fahisyah atau sesuatu yang buruk, keji, dan dibenci, berdasarkan Al Qur'an beserta hadits-hadits shahih yang mendukungnya

Kata Kunci: HAM, LGBT, Hukum Islam.



Introduction

Currently, the phenomenon of lesbian, gay, bisexual, and transgender (LGBT) has become a widely discussed issues in Indonesian society.¹ Phenomenon has become a muchdiscussed issue among Indonesian people with the rampant promotion or advertisement of LGBT people on social media. The LGBT phenomenon is growing flourish in Indonesia because the freedom more open, so that open campaigns can be open campaigns can be conducted by playing the issue of human rights. Human rights issues. With this openness the LGBT community is closing ranks to influence young people who have not been touched by various modes and more importantly the the existence of activists who are considered heroes to fight for the existance of LGBT.²

Allah SWT. has forbidden all deviant behavior because it holds some wisdom that when comtemplated is very many benefits for humans. However, the attitude and behavior of humans who always make for excuses and reject information from Allah has led to the emergence of various diseases such as AIDS, venereal diseases, and on. However, the attitude and behavior of humans who are always looking for excuses so as to reject information from God causes the emergence of various diseases such as AIDS, venereal diseases, and so on.³

In a legal perspective, LGBT, especially in Indonesia, is not expressly regulated in the legislation, which means that normatively these groups do not have legality, especially to access their right as citizens such as to form a family through legal marriage, as mandated in Article 2B Paragraph (1) of the 1945 Constitutional of the Republic of Indonesia. This is basically a human right (HAM) guaranteed by law and international human rights instruments, but its fulfilment cannot be carried out due to the absence of legality that allows a person to enter into a same-sex marriage. The marriage aspect is only one of several other juridical problems concerning the exitense of LGBT people in society.⁴

LGBT and all deviant sexuality is something unnatural, or can be said to be out of nature. In in this light, it can be understood that LGBT is not a symptom that is made up intentionally, but a psychological problem.⁵ Based on the background of the above

¹ Harahap, "LGBT Di Indonesia: Perspektif Hukum Islam, HAM, Psikologi dan Pendekatan Masalah." *Al-Ahkam*, Vol. 21, No. 2 (2016), h. 224.

² Zaini, "LGBT Dalam Persfektif Hukum Islam," *jurnal Ilmiah Syari'ah*, Vol. 15, No. 1, (2016), h. 65.

³ *Ibid.*, h. 65.

⁴ Sulaiman Tamba, "LGBT Persfektif Hukum Islam dan UU HAM Nomor 39 Tahun 1999," *Jurnal Tausiah FAI UISI*, Vol. 9, No. 2, (2010), h. 33-34.

⁵ *Ibid.*, h. 34.

thoughts, the phenomenon of the LGBT movement has led to dialectical debates in Indonesia that are still multi-interpreted (pros and cons) both from the perspective of human rights and Islamic law. Therefore, this paper seeks to explore the LGBT phenomenon in Indonesia to find solutions from both perspectives.⁶

Method

This research will use a qualitative research method with a literature study approach. Data will be collected through literature study and documentation related to LGBT, Islamic Law, and human rights. The collected data will then be analyzed descriptively and interpretatively to produce research findings and conclusions.

Research Results and Discussion

1. Overview of Lesbian, Gay, Bisexual and Transgender Definitions

A. Lesbian

Lesbian comes from the word lesbos, which is an island in the middle of the Egean sea that in ancient times was inhabited by women. According to Greek mythology, a same-sex love affair took place on the island between the princesses Shappo and Athis. Meanwhile, the Kamus Bahasa Melayu Nusantara gives the definition of lesbian as a woman who has sex or love affair with other women.⁷

B. Gay

The term gay is often used to refer to men who have a tendency to love the same sex. The definition of gay is a man who has a sexual orientation towards men. The use of the term gay is currently more specific than the term homo which was used earlier for male homosexual actors. According to the large Indonesian dictionary, homosexuality is a state of being attracted to people and the same sex.⁸

C. Bisexual

Linguistically from the word "bi" which means two while "sexual" means intercourse between men and women.⁹ So it can be concluded in language, that bisexuals are people who are attracted to both sexes, both men and women.⁹ Bisexuality is a deviant sexual behavior. The sex is performed by and on both men and women at the same time. Male bisexual men are called gays and bisexual women are called lesbians. This sexual orientation is a sexual behavior that is very risky for HIV/AIDS transmission.¹⁰

⁶ Canu dan Tahali, "Fenomena LGBT Di Indonesia Dalam Perspektif Hak Asasi Manusia Dan Hukum Islam." *Jurnal Al-Mashadir*, Vol. 5, No. 2, h. 97.

⁷ Parwanto, Muzayyan, dan Wahyuni, "The Construction of Hadith Understanding on Lesbian, Gay, Bisexual, and Transgender (LGBT): A Review a Maqashid al-Syariah." *Al-Dhikara: Jurnal Studi Qur'an dan Hadis*, Vol. 2, No. 1, (2023), h. 3.

⁸ *Ibid.*, h. 4

⁹ *Ibid.*, h. 4

¹⁰ Cynthia Siregar, "Bisexual Profile In Pekanbaru City." *Jurnal FISIP*, Vol. 2, No. 2, (2015), h. 2-3.

D. Transgender

Etymologically, transgender comes from two words: 'trans' which means moving and 'gender' which means sex (Pius and Dahlan in Nur Fadilatul, 2013: 16). Furthermore, according to Peletz (2006) defines the word trans as a movement across space and boundaries, the same as changing things that are natural, natural. The notion of 'trans' means combining an entity or process or the relationship between two phenomena. Transgender is a person whose way of behaving or appearance does not match the general gender role. Transgender is a person who on various levels 'violates' the cultural norms of how men and women should be.¹¹

2. LGBT In The Perspective of Islamic Law

Islamic law always pays attention to the benefit of humans in dealing with problems in their lives, one of which is related to the substance of their souls which comes from the will of human lust who want to vent sex outside the provisions of Islamic law. Biological deviations that violate human nature such as same-sex marriage in Islamic law are strongly opposed, because they have violated the rules that already exist in the Al-Qur'an and Al-Hadis as the basis of existing Islamic law.¹²

The majority of Islamic scholars agree that LGBT behavior including homosexuality is considered haram (Boellstorff, 2005). They believe that same-sex sexual acts are sinful and such desires should be resisted and rejected by praying, giving alms and seeking refuge with Allah SWT (Zulkffli & Rashid, 2016).¹³

According to Hermawan (2007), based on the religious perspective, Islam does not corner LGBT people as a people who deserve to be insulted, but Islam provides tolerance for LGBT people. This tolerance does not mean that Islam legalizes the sexual activities of LGBT people, but Islam recognizes that LGBT is a reality of life in which these people are still allowed to pray, give and receive alms, and pay or get zakat.

The Qur'anic view on homosexuality can be seen in the story of Prophet Luth about the Sodomites and the Amorites in the land of Sham with the following verse: (QS. An-Naml: 54-55)

وَأُولَٰئِكَ إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ وَأَنْتُمْ تُبْصِرُونَ

¹¹ Jasruddin dan Daud, "Transgender Dalam Persepsi Masyarakat." *Jurnal Equilibrium Pendidikan Sosiologi*, Vol. 3, No. 1, (2015), h. 19-20.

¹² Sulaiman Tamba, Op.,Cit, h. 34.

¹³ Abdusshomad, Kurnianto, dan Kalbuana, "LGBT dalam Perspektif Islam, Sosial Kewarganegaraan dan Kemanusiaan." *Jurnal Intelektualita: Keislaman, Sosial, dan Sains*, Vol. 12, No. 1, (2023), h. 60.

إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ شَهْوَةً مِّن دُونِ النِّسَاءِ ۚ بَلْ أَنْتُمْ قَوْمٌ بِجَهْلُونَ

Meaning:

54. "And (remember the story of) Luṭh, when he said to his people: "Why do you do the abominable deeds, when you have seen them (the abomination of iniquity)?"

55. "Why do you go to men to fulfill your desires, and not to women? Indeed, you are a people who do not know (the consequences of your actions)."¹⁴

Then (QS. Al-Araf: 80-81)

وَلَوْ طَآءَ إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفُحْشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِّنَ الْعَالَمِينَ

إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ شَهْوَةً مِّن دُونِ النِّسَاءِ ۚ بَلْ أَنْتُمْ قَوْمٌ مُّسْرِفُونَ

Meaning:

80. "And (We have also sent) Luth, when he said to his people, "Why do you commit abominable deeds, which no one before you has ever committed (in this world)."

81. "Indeed, you have given vent to your lust for men and not for women. You are indeed a transgressing people."¹⁵

Through this verse, we are told that the people of Prophet Luth practiced homosexuality by having sex with men of the same sex through the rectum (back hole), in today's era such sexual behavior is popularly called sodomy. In fact, according to some versions, the word 'sodom' is taken from the name of the people of Prophet Luth, the sodomites.¹⁶

Textually, the Qur'an does not mention the word homosexuality (liwath) or any sexual orientation. However, the Qur'an responds to the word with the word 'alfakhsha' (an abominable act) in QS. Al-A'raf:80, the word 'al-sayyi'at' in QS. Hud:78, the word 'al-khaba'its' in QS. Al-anbiya':74 and the word 'al-munkar' in QS. AlAnkabut:21. In the Qur'an itself there are no specific words regarding homo, lesbi, gay, or bisexual. The Qur'an mentions these actions with the words (actions) above. However, it should be noted that

¹⁴ Zaini, Op.Cit, hal. 70.

¹⁵ Yanggo, "Penyimpangan Seksual (LGBT) Dalam Pandangan Hukum Islam." Jurnal Misykat, Vol. 3, No. 2, (2018), h. 3.

¹⁶ Sa'dan, "LGBT Dalam perspektif Agama dan HAM." Jurnal Nizham, Vol. 4, No. 1, (2016), h. 20.

the example of the above actions can be done by anyone regardless of whether it is gay or hetero.¹⁷

Regarding the word 'al-fakhsha', in the Qur'an it is repeated seven times. Because of the cruelty of these actions, so Allah sent punishment to the people of the Prophet Luth, which according to history, the punishment is said to be the first apocalypse of the enormity of Allah's punishment. the description of the punishment of the people of the Prophet Luth enshrined in the Qur'an is: (QS. al-A'raf: 83-84 and (QS. Al-Hud: 82-83).¹⁸

In addition to the Qur'an, there are also traditions that show indications of the prohibition of LGBT behavior. These hadiths include:

1. Hadith narrated by Imam Tirmidhi: "Women should not look at each other with lust, because it is like fornication of the eyes for the woman."
2. Hadith narrated by Al. Tirmidhi: "The Messenger of Allah said: "Allah does not look at a man who goes to a man (to have sex with his neighbor) and goes to his wife (through the anus)."¹⁹
3. Hadith narrated by Imam Ahmad: "Allah curses the man who is feminine and the woman who is masculine."²⁰
4. Ibn Abbas reported. From the Prophet. He said: "Allah curses the one who practices the customs of the people of Luth three times." (Hadith narrated by anNasa'ie).²¹

The Qur'anic verse and the Prophet's hadith above are used as the basis for consensus (ijma ulama) to agree that liwath and same-sex sexual activity are haram. The prohibition is based on the ushul fiqh rule 'daarul mafaasid muqaddamu 'ala jalbi al-mashalih' (avoiding evil takes precedence over bringing about maslahat).²²

As for what is related to transgender, or what is widely known as genital surgery, the Indonesian Ulema Council (MUI) in its National Conference II in 1980, has issued a Fatwa on Genital Reassignment Surgery. In the fatwa there are 3 things that were decided, namely: (1) Changing the sex of a man into a woman or vice versa is forbidden because it is contrary to al-Qur'an surat an-Nisā' verse 19 and also contrary to the spirit of Shara'. (2) The person whose sex is changed has the same legal status as his/her original sex before the change. (3) A khunthā (effeminate) whose maleness is more obvious may have his maleness perfected. Vice versa, and the ruling becomes positive (male).²³

¹⁷ *Ibid.*, h. 20-21.

¹⁸ *Ibid.*, h. 21

¹⁹ Hanum, "LGBT Dalam Perspektif Hadis." *Jurnal Ulunnuha*, Vol. 7, No. 2, (2018), h. 46.

²⁰ *Ibid.*, h. 47

²¹ Sa'dan, *Op.,Cit*, h. 22.

²² *Ibid.*, 22.

²³ Canu dan Tahali, *Op.,Cit*, h. 106.

Transgender people are despicable and cursed by Allah. It was narrated from Ibn Abbas: "Indeed, the Messenger of Allah (peace and blessings of Allah be upon him) cursed the man who resembles a woman and the woman who resembles a man."²⁴

From the hadith above, it has been concluded that bisexual and transgender are haram, because they have violated human nature. This is in accordance with MUI Fatwa Number 57 of 2014 concerning lesbians, gays, sodomy, and molestation, MUI explicitly states that the perpetrators of sodomy (*liwāt*) both lesbians and gays are haram and are a form of crime, subject to *ta'zīr* punishment which can be the maximum level of punishment, namely up to the death penalty.²⁵

3. LGBT In Human Rights Law Perspective

Indonesia has various legal instruments that guarantee the protection of human rights, including the 1945 Constitution, Human Rights Law No. 39/1999, and Labor Law No. 13/2003. Indonesia's commitment to human rights is also strengthened by its recognition of the 1948 Universal Declaration of Human Rights (UDHR).

However, in the context of the deviant sexual behavior of LGBT people, the treatment and attitude of the Indonesian nation is still complex and contentious.²⁶

Human rights in French are called 'Droit L'Homme', which means human rights and in English are called 'Human Rights'. Along with the development of the doctrine of the rule of law, where humans or citizens have primary and fundamental rights that must be protected by the government, the term 'Basic Rights' or 'Fundamental Rights' emerged. When translated into Indonesian, these are basic human rights or better known as 'Human Rights'.²⁷

While Meriam Budiardjo, in his book *Basics of Political Science* states that: Human rights are rights owned by humans that have been obtained and carried along with their birth in the life of the community. It is considered that some of these rights are owned without distinction on the basis of nation, race, religion, gender and the arena is universal. The basis of all human rights is that humans get the opportunity to develop in accordance with their dignity and ideals.²⁸

In the view of human rights, LGBT issues occupy a complicated space of professional dialectics and cons. The emergence of LGBT issues in the public sphere is basically identified as the principle of freedom to express oneself, which is part of the provisions of

²⁴ Sifa, "Intertekstualitas Hukuman Bagi LGBT dalam Al Qur'an dan Hadis Perspektif Semiotika Julia Kristeva." *Jurnal Syariat*, Vol. 7, No. 2, (2021), h. 191.

²⁵ Harahap, *Op.,Cit*, h. 25.

²⁶ Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, dan Hukum di Indonesia," *Law Journal*, Vol. 2, No. 1, (2022), h. 216-217.

²⁷ Santos, "LGBT Dalam Perspektif Hak Asasi Manusia." *Social Work Jurnal*, Vol. 6, No. 2, h. 224.

²⁸ *Ibid.*, h. 224-225

human rights. However, the emergence of LGBT and its existence resulted in the birth of two conflicting perceptions, especially in social life. Because LGBT itself has entered the boundaries as a form of sexual deviation. In addition, LGBT is a relationship that involves the same sex, either between men and men, women and women, to a dual sexual orientation where men can still relate to women as well as men and vice versa women relate to men. -Men are also with women.²⁹

LGBT people are actually human beings like ordinary people who are equally alive and have rights and obligations but the difference is that these people have views, abnormalities in their sexual relationships. In this case, LGBT people are considered to have complex health and psychosocial needs. These people are also people who have the opportunity for equal rights and are prohibited from treating them in a discriminatory manner, so from the contra side of the expansion of the meaning of the article in the Criminal Code Bill will have the potential for discriminatory actions where the group has the right to protection to live and be free from coercion, or torture.³⁰

The enforcement of human rights as one of the laws that must be obeyed in Indonesia explains that individuals must respect the human rights of others, the order of community life, provide for ethical requirements, and maintain the safety and security of a democratic country. In the perspective of human rights, lesbian, gay, bisexual and transgender behavior should not be allowed to commit violence, bullying, and discrimination by applying the concept of "Human Rights Extends and Has Its Own Social Structure". The problem of LGBT behavior is increasingly widespread, both in Indonesia itself and in the international scope. Even a wide variety of online stage media or spectacles that can be watched for children's audiences can contain the concept of LGBT. Based on this, the need for re-screening related to what media, information, or news circulating in society.³¹

Legally, human rights are recognized, respected and protected in Indonesia. However, this does not mean that every will can be exercised freely. There are restrictions set by law, moral teachings, community ethics, and religious values that emphasize that every human being in addition to having human rights to be fulfilled, they also have human obligations to respect the human rights of others and the surrounding community where they are. Therefore, the author strongly agrees with the opinion that "Human rights are universal but have their own social structure".³²

In accordance with Article 28I of the 1945 Constitution of the Republic of Indonesia, it reads

²⁹ Wijayanto dan Putri, "LGBT RUU KUHP dan Hak Asasi Manusia Dalam Tinjauan Negara Hukum Pancasila," *Jurnal Ilmu Hukum, Perundang-undangan dan Pranata Sosial*, Vol. 7, No 2 (2022), h. 296.

³⁰ *Ibid.*, h. 296.

³¹ Izza Amalia Putri, "Kedudukan Lesbian, Gay, Bisexual, dan Transgender (LGBT) di Indonesia Ditinjau dari Perspektif Hak Asasi Manusia," *Madai: Jurnal Ilmiah Multidispline*, Vol. 1, No. 8, (2023), h. 390-391.

³² Yansyah dan Rahayu, "Globalisasi Lesbian, Gay, Bisexual dan Transgender (LGBT)," *Jurnal Law Reform*, Vol. 14, No. 1, (2018), h. 142.

1. Everyone must respect the human rights of others in the orderly life of society, nation and state.
2. In exercising their rights and freedoms, everyone must be subject to restrictions stipulated by law with the sole purpose of ensuring recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with moral considerations, religious values, security, and public order in a democratic society.³³

From the above provisions, we can interpret that human rights are not only seen in the perspective of freedom, but the protection of human rights by the state is also towards respect and human dignity itself, so that human rights that ignore human honor and dignity can be restricted by the state, which aims to protect the human rights of everyone.

In connection with the fulfillment of human rights, every citizen must respect and appreciate the human rights of others, so that in the implementation of the fulfillment of rights and freedoms the state imposes restrictions based on the law in accordance with Article 70 of Law No. 39 of 1999 concerning Human Rights, which reads: "In exercising rights and. In exercising their rights and freedoms, everyone shall be subject to the restrictions stipulated by law with a view to ensuring recognition and respect for the rights and freedoms of others and to meet just demands in accordance with considerations of morals, security, and public order in a democratic society". (Law, 1999).³⁴

Human rights are actually rights that humans have because of their humanity. This is also based on the view that human rights themselves have two perspectives, namely from the universal dimension and the particular dimension, which should be carefully understood by every citizen in interpreting human rights. So as to properly understand how human rights actually are in the Indonesian context and the law as a foundation for all citizens in Indonesia.³⁵

Human rights guarantee the human rights of all people, including the rights of LGBT people to live, be free from discrimination, and express themselves. However, discrimination against LGBT people, as is the case in some countries (including Indonesia), can be categorized as a human rights violation. LGBT people are part of a particular society, ethnicity, and religion, and they are entitled to respect and protection of their human rights. Indeed, not all Indonesians reject LGBT people. However, the 'discrimination' felt by LGBT people is an issue that needs to be studied and a solution sought.³⁶

³³ Galuh Candra Purnamasari, "Problematika Penerapan Aturan Pembatasan Hak Asasi Manusia Dalam Konstitusi Indonesia," *Jurnal Hukum Prioris*, Bol. 6, No. 1, (2017), h. 192-193.

³⁴ Dhamayanti, *Op.,Cit*, h. 220

³⁵ Muzakkir, "LGBT Dalam Perspektif HAM Dan Menurut UUDN 1945," *Jurnal Al Mashaadir*, Vol. 2, No. 1, (2021), h. 11.

³⁶ Dhamayanti, *Op.,Cit*, h. 220

CONCLUSION

The Islamic view of LGBT (Lesbian, Gay, Bisexual, and Transgender) in the context of Islamic law and the Islamic religion in general is that LGBT is considered a sexual offense that is prohibited and forbidden, which is considered incompatible with human nature determined by God.

Indonesia is a country that upholds religion and culture, so Indonesia has an obligation to maintain the values and moral standards adopted by the majority public. LGBT is something that can threaten human existence, because if LGBT in Indonesia is legalized, more and more LGBT people will show themselves, and it will cause various problems, one of which is decreasing the birth rate. Indonesia does not legalize LGBT, but that does not mean that the human rights of LGBT people are taken away, but LGBT in Indonesia just do not have the right legality if there is a same-sex marriage then it is considered invalid.

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