

The Enactment of Positive Law against Perpetrators of Sexual Deviancy in Public Space in Indonesia

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Abstract: Problems on Lesbian, Gay, Bisexual, and Transgender (LGBT) in social life seem to be more real currently. Even though religions prohibit the behaviors of LGBT, the positive law, which is Law no.1 of 1946 on Criminal Code, does not regulate legal sanctions on LGBT. This article studies the importance of positive laws that regulate legal sanctions on the actors who practice LGBT in public. Still, as important as others, this article also tries to find out the causes of sexual disorder behaviors of LGBT. This research applies the method of normative law. Still, this research was conducted by studying the literature and collecting secondary data. After gaining the data, they were analyzed to answer the formulated problems. The research results show there must be legal sanctions on LGBT behaviors. The nation should not punish LGBT-infected people, but she must punish the people who practice LGBT in public. There are many factors causing LGBT. They are the influence of environment, childhood trauma, same-sex harassment or abuse, inferior feeling and fear of loving the opposite sex, family problem such as divorced parents, etc.

Keywords: Legal Sanction; Sexual Disorder Behavior; LGBT.

Introduction

Sexual behavior disorder, such as Lesbian, Gay, Bisexual, and Transgender (LGBT) has been a phenomenon in recent social life. And we cannot deny this. LGBT people do not reluctantly show their existence. In 2017, Metro Regional Police of North Jakarta raided a gay prostitute in Kelapa Gading. This raid shows that LGBT exists in society. In 2018, Cianjur Resort Police raided a sex party in its operational territory. The same thing also happened in August 2020 in which The Metro Regional Police raided a sex party by gay community in its operational territory. Even, there were nine of them declared as the suspects (Hamidah et al., 2023).

Generally, the term LGBT is associated with "homosexual", which is a tendency for someone to make others of same-sex as his or her sexual and emotional partner (Muttaqin, 2017). Homosexual' term itself was firstly used by Károly Mária Kertbeny, who is an Austro-Hungarian writer, translator, and journalist on May 6th, 1868 (LGBT Issues Committee) (Prima et al., 2021). Homosexual was frequently interpreted as sexual relation between men by putting the genital into anus (Zaini, 2016). This is why then 'homosexual' made as a term to mock or to look down them (Subekti et al., 2020).

The existence of homosexuals in Indonesia is still controversial in a country that is predominantly Muslim and upholds high moral values. Homosexuality is still considered taboo and scary by most groups in society. However, quite a few Indonesian people have accepted their presence as part of diversity, no longer deviant. No less than 1% of the Indonesian population are deviant sex offenders (gays and lesbians), and this number will continue to increase in line with the development and existence of homosexual associations in Indonesia (Yudiyanto, 2016).

Data from the Ministry of Health for the first quarter of 2012 stated that from January to March 2012, the number of new AIDS cases reported was 551 cases. The ratio of AIDS cases between men and women is 2:1. The highest number of AIDS cases were reported from the provinces of Bali (154), West Java (104), East Java (65), and South Sulawesi (56). Based on the mode of transmission, the highest cumulative AIDS

cases are through unsafe sex among heterosexuals (77%), injecting drug users/IDUs (8.5%), HIV positive mothers to children (5.1%), and homosexual relations (2.7%). As of March 2012, the highest number of AIDS cases were reported from DKI Jakarta (5118), East Java (4669), Papua (4663), West Java (4043), Bali (2582), Central Java (1630), and West Kalimantan (1269) (Wardinna, 2018).

The history shows that the presence of LGBT in Indonesia civilization has been well-documented in both scientific and popular works since 1960s. And it boomed in 2000s (Hamidah et al., 2023). There are at least 2 LGBT organizations with national network in Indonesia and 119 other organizations founded in Indonesia's 28 provinces (Suvianita, 2013). In its continuous presence, their existence has various impacts in social real life. Still, LGBT can also affect health because it may cause various diseases such as anal cancer, oral cancer, meningitis, and even HIV/AIDS (Tribun Batam, 2017). Sexually transmitted diseases are also the health risks (Al-Gburi et al., 2023).

Being affected by LGBT behaviors, LGBT behaviours are later rejected by society. Groups of LGBT are considered to violate their nature as human, to destroy moral, and to destruct social and religious values (Syamila & Nurhadi, 2019). Most people blaspheme on their behaviors and sexual orientation. Majelis Ulama Indonesia (MUI-Indonesian Ulema Council) even issued a fatwa rejecting both same-sex intercourse and marriage (Warsina, 2017).

In his perspective, the Vice Chairman of Majelis Syuro of Partai Keadilan Sejahtera (Religious Council of The Prosperous Justice Party) tells the legal reason why LGBT should be rejected. It is because The 1945 Constitution regulates the human rights honoring the law and religion instead of liberal human rights. Thus, LGBT cannot have themselves protected under the pretense of human rights (Rahmasari, 2018; Wiryani et al., 2021). The perspectives in rejecting the LGBT seem to grow stronger. This can be seen from Circular Letter of Komisi Penyiaran Indonesia (Indonesia Broadcasting Commission) No. 203/ K / KPI / 02/16 2016 prohibiting men acting women, for example the dress, the diction, etc. In education sector, there are universities that have asked the student candidates to sign non-LGBT statement form. Universitas Andalas of West Sumatra is one of them (Aqsa et al., 2017).

Still, LGBT contradicts the Indonesia Marriage Law of 1974 no. 1. This law emphasizes: *first*, marriage can only be committed by a woman and a man. So, if the marriage is committed by the same-sex people, a woman with a woman or a man with a man, it is clearly contrary to the religion (Islamic) law. This means, in Indonesia, same-sex or gay or lesbian marriage is not regulated. *Second*, the nature of law of marriage is the existence of emotional bonding when a man and a woman become husband and wife. This emotional bond is aimed at fostering family within the blessing of the Almighty God (Warman et al., 2023).

Furthermore, in Indonesian positive law, especially the Criminal Code (Criminal Code), LGBT legality itself does not exist. However, in terms of homosexual status, there are regulations in Indonesia criminal regulations regarding same-sex relations contained in Article 292 of the Criminal Code, which reads: "A person of legal age who commits obscene acts with another person of the same sex, who is known or should reasonably be suspected, If you are not old enough, you are threatened with imprisonment for a maximum of five years."

Even though religion does not allow LGBT behaviors, Indonesia's positive law, such as Law no. 1 of 1946 on Criminal Law does not regulate the prohibition of LGBT. From the aspect of criminal law, LGBT people cannot be asked responsibilities. Thus, it is easy for the nation to demand their responsibility when there are legal regulations in the positive laws (Hariri, 2014). This means LGBT behaviors fulfil the provision as the contrary actions to the law when the actions are committed in public places. Combining the elements of actions and elements of the doers, we can say that criminal acts should be combined with the regulations on rendering the sanctions, so the actors can be sentenced primarily based on criminal law or additional criminal sanctions (Djanim, 2006).

In context of social life, LGBT people should be able to control their lust by not openly doing indecency acts, in which the acts can be seen and accessed by the public. Thus, they must be able to control their lust anytime (Kosim, 2016). This is because there are moral and etiquette values everyone should

uphold anytime and anywhere. If moral and etiquette values are ignored, the LGBT is frequently stigmatized as sinner and abnormal.

Based on the explanations above, the researcher will explain some research problems here. First, in Indonesia's positive law, how important is legal sanction over disorder sexual behavior (lesbian, gay, bisexual, and transgender) for the ones who practice it in public? Second, what are the cases of disorder sexual orientation behavior (lesbian, gay, bisexual, and transgender)?

Method

This research applies normative legal research method. This is conducted by studying library materials (secondary data) such as legal principles and legal systems (Efendi, 2018). Besides, this research also examines and analyzes the relevant concepts and laws based on the problems found from relevant researches, books, laws, as well from the opinions of scholars (Bachtiar, 2019). After acquiring the data, legal logic is explained. The explanation is presented in qualitative method, so it can answer the existing problems (Setiawan et al., 2022).

Results and Discussion

LGBT in Countries over the World

In some Europe countries, LGBT began to increase sharply in 1960. The LGBT demanded equality and legal rights regardless their sexual orientation. In 1960s, the "sodomists" and "homosexuals" officially changed their name into LGBT. And in 1988, United States officially opened the LGBT. Later, in 1990s, LGBT also grew in some other countries of Europe. The typical same-sex marriage in some Europe countries, which always uphold long freedom, proves this condition. In 1998, Denmark is the first nation to legalize same-sex marriage. This is followed by Nepal in 2008. In The Netherland and Belgium, same-sex, gay and lesbian marriage have been institutionalized as an alternative form of family. In April 2001, the history records that The Netherland is the first nation to legalize gay and lesbian marriage. One of the requirements is that one of the couple must be the citizen or the permanent resident of The Netherland. The legalization of same-sex marriage was also followed by South Africa (Hamidah et al., 2023).

In Canada, the government permitted special channel for gay television. She even admits the legal right for gay and lesbian to get married. There are two provinces validating gay and lesbian marriage, they are Ontario and British Columbia. Gay reputation in Western countries entered honored places, such as London. Gay people have become the parliament members. The new social theory developed in Western countries do not place gay as minority anymore (Hamidah et al., 2023).

The people in Western have learnt much from their past experiences when they strongly opposed homosexuality. In the past, they were actually more discriminative than people in the East. The Western people have had developed perspectives and treatment on equal right and humanist humanism even though there are still ripples of fighting happening between the homosexual people. In America, especially among the religious society, the homosexual is still considered weird and abnormal. This means America, who is famous for its sexual freedom, still encounters tensions on same-sex relationship. There were only 8 of 52 states giving chance to allow same-sex marriage (Wayhuni, 2012).

The legalization of same-sex in the 8 states was not without foundation. It was started by homosexual marriage which increasingly happened in 1991 in Hawaii. Meanwhile, Hawaii had still implemented the old laws not allowing same-sex marriage. Going through long and harsh debates, The Hawaii Supreme Court recognized same-sex marriage. After that, 7 Supreme Courts follow Hawaii's step. In Thailand, Chai Mongkhon Temple (Pattaya) is one of spot picked by the homosexual couples to celebrate their weddings. The Buddhist monks in Thailand recognized this marriage. Homosexual wedding in Buddhist temple is not a marriage legitimized by religion. This is more likely to be Thailand traditional wedding ceremony. Meanwhile, Vietnam still has grey perspectives on homosexuality. There is no legal formulation explicitly forbidding or allowing homosexuality on laws inherited either by Lee Dynasty or by Nguyen Dynasty.

Their criminal laws only regulate about rape, abusing family members, sexual attack, and adultery (Wayhuni, 2012).

Indonesia is the fifth biggest country contributing the spread of LGBT. This is the survey output by CIA released on magazine.net (Hasnah & Alang, 2019). According to the East culture, which is based on religious values, whatever the reason, same-sex marriage is prohibited. This conduct is contrary to the Laws of Marriage. The Laws of Marriage in Indonesia only legalize heterosexual marriage. The laws do not justify same-sex marriage. Even the society seems to be hard to welcome them when they live and appear in the middle of the society. The rejection is of course acceptable since their acts are morally in contrary with what has God determined. Sexual disorder behaviors of LGBT are of course hard to accept. There are millions of fundamental reasons to reject their presence, especially religious-and-culture-related reasons.

Our Constitution does not confirm whether someone's sexual orientation should be on her or his opposite sex or not, from man to woman or vice versa. However, not confirming does mean LGBT is either allowed or supported. We are tied by religion teachings. Thus, we must prevent when there is an abominable act or sexual disorder abnormality by the LGBT people. This is different from previously mentioned countries, which allow and legalize same-sex marriage. We are living the Eastern Culture, which upholds moral, etiquette, and religion values. Sexual disorder behaviors, especially the acts openly committed in public, are not a phenomenon we can just deal with.

The Concept of Positive Law against Sexually Disturbing Behavior in Public

The results of the National Criminal Law Reform Symposium in Semarang in August 1980 suggested that criminalization policies must consider general criteria, namely whether the act is disliked or hated by society because it is detrimental, or could be detrimental, causing victims or could result in victims (Luthan, 2009). One example of public rejection that can be used is a survey released by the Pew Research Center. Survey results show that around 93 percent of people in Indonesia believe that homosexuality should not be accepted. SMRC surveyed 1,220 people in March 2016, September, and December 2017. The survey's margin of error ranged between 3.1 percent and 3.2 percent. The survey shows that almost everyone in Indonesia considers LGBT as a threat. As many as 87.6% thought so, 10.8% thought otherwise, and the rest did not answer. Survey results can be used to see how society responds to various forms of homosexuality, including lewd acts committed by same-sex couples (Prima et al., 2021).

Then, when establishing criminalization policies, it is necessary to pay attention to whether the costs of doing so are commensurate with the results. This means that the costs of making laws, carrying out supervision and law enforcement, and the responsibilities of criminals must be proportional to the resulting legal stability.

Law Number 11 of 2012 concerning the Formation of Legislative Regulations in Article 2 states that Pancasila is all sources of state law. The formation of statutory regulations, including in the context of statutory regulations containing criminal provisions, can be interpreted as the formation of new norms or improvements to existing norms. A new rule or norm is needed if there is a need for more norms. As stated at the beginning of the background section, the legal problem in this research is the absence of norms. This problem is the absence of criminal law norms that strictly regulate criminal threats for obscene acts committed by same-sex couples whose legal subjects are both adults. Meanwhile, the legal reality is that such acts exist in society, and this blindness disturbs the legal balance.

Be interpreted as a means in law to make an act that was not previously a criminal act into a criminal act to control crime. In this case, Herbert L. Packer stated that efforts to control crime, interpreted as anti-social acts through imposing criminal penalties on people who violate criminal regulations, is an essential legal dimension in social issues or problems. Efforts to control anti-social behavior by imposing criminal penalties on someone guilty of violating criminal regulations is a social problem that has a significant legal dimension (Kenedi, 2017).

The formulation of Article 292 of the Criminal Code in normative form can be described as subjective and objective elements. The Subjective Element is what he knows or should be able to predict. Meanwhile,

there are at least four objective elements. First, an adult. Second, committing an act that violates decency, a minor child of the same gender. Fourth, immaturity. The formulation of this article emphasizes criminal threats for people who commit obscene acts against people of the same gender, and the victim is a child, or at least the victim is not yet an adult. So, the criminal threat in the formulation of Article 292 does not apply to someone who commits obscene acts of the same sex and is both an adult. Not being subject to criminal penalties is also inseparable from the principle of legality that applies in criminal law. The principles outlined in the provisions of Article 1 Paragraph (1) of the Criminal Code require the existence of criminal provisions that state that criminal law norms prohibit an act.

The response by the state to an act that is considered evil is defined as the institutionalization of crime. Crimes that the state has institutionalized can be called *Mala in Prohibita*, namely acts that are not considered harmful because the law defines them as violations or crimes. Meanwhile, there are also crimes that the state has not institutionalized through a legal instrument. This can be interpreted as *Mala in Se* or by Frank E. Hagan in his *Introduction to Criminology*. It is defined as an evil act in itself, a prohibited behavior that is based on a broad agreement or consensus about the rules or norms of behavior for a prohibition of obscene acts committed by same-sex couples. In the consensus view, norms of behavior in Indonesia are considered disgraceful actions. However, of course, the measure of consensus on behavioral norms cannot be fully used to normalize these requirements into legal norms, on criminalization theory, natural law theory, positivism legal theory, and human rights theory.

The theory of criminalization is based on the moral theory put forward by Lord Devlin. This theory states that criminalization stems from the opinion that acts that should be considered criminal are any acts that are destructive or immoral. This is because common morality has an essential role in maintaining society. If the moral bonds that bind society are lost, society will experience disintegration.

Furthermore, from a theoretical perspective, paternalism is a reaction to the basis of criminalization, which cannot protect groups of people who have physical, mental, and mental weaknesses, such as children and drug users. The main task of this theory is protection against harming oneself. Criminal law legitimizes the prohibition of a person's actions that can harm themselves.

Apart from these moral and legal issues, the issue of criminalizing obscene acts committed by same-sex couples is considered a human rights issue. Because obscene acts committed with people of the same sex who are of the age of majority are choices made consciously and do not harm other people, such views can be understood as part of the desire to fulfill human rights. The form of human rights referred to in this case is human rights that are built using a natural rights approach. The theory put forward by Todung Mulya Lubis related to the theory of natural rights, which holds that human rights are rights that all humans own at all times and places based on their destiny as humans (human rights are rights that belong to all times and in all places by being born as human beings) (Nasution, 2018) Or an absolute universal view that interprets human rights as a part that has universal values therefore it does not take into account the socio-cultural identities found in each nation. (Kusniati, 2011)

In relativist cultural theory, we can see human rights as relative particularity; this view interprets human rights issues not only as universal problems but also as national problems for each nation. In this view, the nation's culture must harmonize, balance, and support international provisions or documents. In this way, human rights are adaptively manifested in a nation, because it does not only make each nation's specific perspective defensive but also actively tries to find a formulation of the characteristics of the human rights it adheres to (Kusniati, 2011).

Based on cultural relativist theory and the view of relative particularity, obscene acts committed by same-sex couples cannot be seen as a problem of universal human rights values but rather a problem of national cultural values. In the Indonesian context, homosexual activity is seen as an act that is not in line with the cultural values or spirit of the nation. Therefore, the transplantation of human rights values cannot be separated from the nation's cultural values. One of the measures of cultural values or national spirit can be measured from *Pancasila*, so it can be said that homosexual activity, including obscene acts committed by same-sex couples, is not in line with *Pancasila* values, as explained previously.

Obscene acts committed by same-sex couples can undoubtedly be considered an act that is not in line with the spirit of the nation because this action causes the values contained in Pancasila to be sidelined. Mainly, the value is in the first principle, as explained previously. Such actions will obscure the values that are the spirit of national legal development. This public reaction shows whether sociologically there is a disagreement to accept or an agreement to reject. Public rejection data that can be used is a survey released by the Pew Research Center, which shows data that Indonesia strongly rejects homosexuality based on survey results, which show around 93 percent say that gay people should not be accepted. The survey results can be seen as a form of reaction to society's rejection of forms of homosexuality, including obscene acts committed by same-sex couples.

In order to provide legal legitimacy to the process of dealing with homosexual activity, incredibly obscene acts committed by same-sex couples, so as not to give rise to conflict that leads to violence in society, is to use criminal law as a means. Creating norms or formulating new norms in criminal law that regulate the prohibition of obscene acts committed by same-sex couples can be understood as a rational effort that can be made to avoid conflict in society, which could lead to violence.

The nation's soul in the Indonesian context can also be observed from customary law. Customary law is based on the spirit of custom or community habits, complemented by sanctions. One of the features of customary law is religious, magical, or legal behavior or legal rules related to belief in the unseen and based on the teachings of the Almighty God (Rauf, 2013). This style of customary law is the spirit of the Indonesian people in legal behavior. Therefore, it is natural in a sociological context if there is rejection from society towards homosexual activity, including obscene acts carried out by same-sex couples.

Cause of Disorder Sexual Orientation (LGBT)

The LGBT phenomenon includes mental illness. Some factors contribute to the emergence of LGBT phenomenon. The society tends to understand the existence of LGBT as person with different sexuality compared to other normal people. Life of a married couple, living together and having sexual intercourse, are found in homosexual couple. Homosexual is referred to same-sex or male couple.

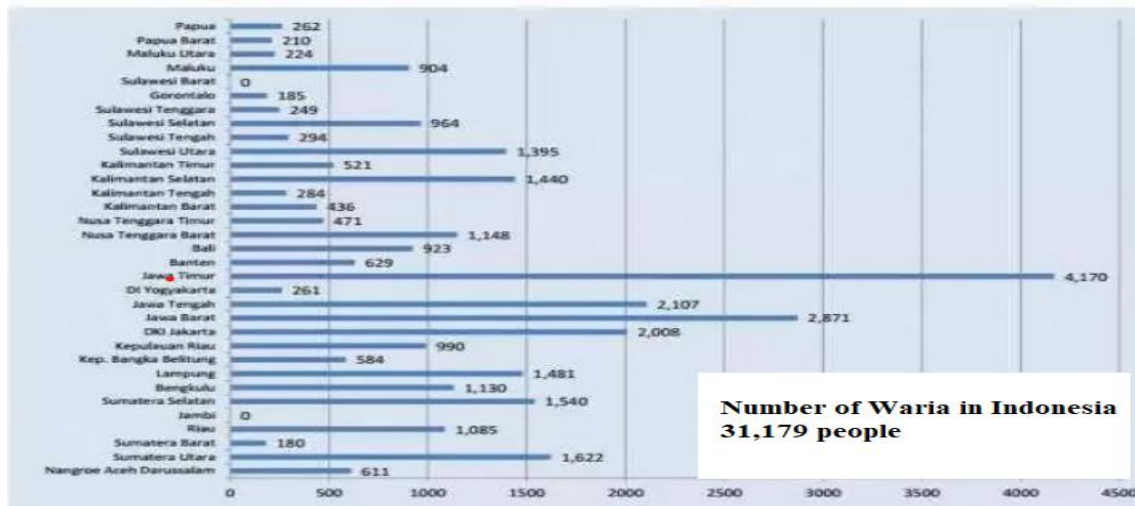
Table 1. Estimates and Projections of the Number of New HIV Infections According to Key Population Groups in Indonesia for 2011-2016 (Ariyanti, 2016).

No.	Population	Number of New HIV Infections					
		2011	2012	2013	2014	2015	2016
1.	Live Sex Working Women	3715	3791	3846	3899	3958	4026
	Indirect Female Sex						
2.	Workers	1478	1504	1522	1542	1563	1589
3.	Direct/indirect customers	14201	14494	14837	15207	15599	16016
4.	Homosexual/LGBT	14532	16883	19499	22352	25412	28640
5.	Injecting Drug Users	1353	1115	1051	1052	1076	1109
6.	shemale	1170	1209	1249	1289	1329	1368
7.	Transvestite Customers	4169	4331	4497	4663	4828	4993
8.	Men are at low risk	5104	5628	6136	6628	7109	7582
9.	low-risk women	22585	22924	23327	23892	24649	25592
	Total	68307	71879	75964	80524	85523	90915

From the table above, homosexuals/LGBT sufferers of HIV/AIDS in 2016 reached 28,640 people. Judging from the numbers, it has increased every year. If we pay attention to from 2011-2012, the figure increased by 2,301 people; in 2012-2013, it increased by 2,616 people; 2013-2014, it increased by 2.8533 in 22,352 population; 2014-2015, boosted by 3,060 people to 25,412 people and in 2015- In 2016 the figure increased by 3,228 people. This figure shows an average increase of around 2,500 people per year. This

figure for the number of homosexuals/LGBT sufferers of HIV-AIDS is the actual condition data that the LGBT group contributes to the highest rate of HIV/ AIDS transmission, and we can also use this figure as a reference in looking at the number of LGBT people in Indonesia each year. Next, what is the estimate put forward by Indonesian LGBT activist Dede Oetomo, who said that LGBT in Indonesia is around 3% of the total population? Look at the 2015 Indonesian population graph (Ariyanti, 2016).

DATA ON THE NUMBER OF TRANSFERS IN 33 PROVINCES IN 2010



From the data in the table above, the number of transgender people in Indonesia in 2010 reached 31,179 people. And we see in the table that the number of LGBT people affected by HIV/ AIDS in 2015 reached 25,412 people. If we subtract this number to find the difference, then we assume that there are 5,767 Homosexuals/LGBT people who are not affected by HIV/ AIDS. We know that there is also a safe sex campaign for LGBT. We consider this figure relevant to their campaign programs (USAID/UNPD), even though this figure is also quite scary. Next, we prove the data, which says the number of Indonesian LGBT people is 3% of the total population. Of course, we take data from 2015 according to this research. In 2015, the total population of Indonesia was 258.2 million people. The figure is 3% of the total population of Indonesia, which is assumed to be a group of 7,746 people. This figure is an increase from the UN prediction 2011, which reached only 3 million (Ariyanti, 2016).

Homosexuality can happen to anybody regardless his or her education and economy. It is true that attracted to same-sex may happen because of biological factor. However, inferior feeling over the opposite-sex may also cause someone fearing to approach that opposite sex person (Junaedi, 2016). And this is, however, is also an important factor. Meanwhile, lesbian is referred to same-female couple. In other words, lesbian can be categorized as female who physically, sexually, and even emotionally loves another female. These lesbians live together, just like husband and wife. In western countries, these couples are legalized based on the laws in their nations.

Meanwhile, in psychology study, there are two reasons someone becomes a gay. *First*, childhood trauma in which he or she suffers same-sex harassment or abuse. This condition can finally affect psychology and relate to the mindset and sexual orientation once they grow up. *Second*, as important as the first, being gay is probably an escape over a problem. For example, when a man is rejected by a girl or even some girls, the man slowly turns into a gay. He later feels comfort and happiness. Later, he totally decides to be a gay (Sahadat, 1997).

Referring to previous data, the UN stated that in 2011 the number of LGBT people in Indonesia reached 3 million people, the number of LGBT people reached 3% of Indonesia's population of 7.5 million people (Russell & Fish, 2016). In 2012, there were 1,095,970 LGBT people in Indonesia, both visible and invisible, more than 5% (66,180) had HIV (Health & Firm), 2012). In 2022, the existence of LGBT people in Indonesia is still controversial, where LGBT people are considered deviant sexual orientation. However,

there are hundreds of thousands of gay people in Indonesia. It is estimated that 3% of the Indonesian population are LGBT people (Santoso, 2016).

The issue of the right to fulfill human rights that has recently emerged is the question of expressing human rights for Lesbian, Gay, Bisexual, Transgender people (hereinafter referred to as LGBT). Referring to various existing developments, it is true that LGBT exists in Indonesia. Based on research conducted by the Central Intelligence Agency (CIA), it is a United States (US) government agency tasked with providing objective observations about foreign countries and global issues to the US President, the US National Security Council and other policy makers to help them. made decisions related to national security in 2015 which was quoted by Meilanny Budiarti Santoso in her article, stating that the LGBT population in Indonesia was ranked fifth in the world, after China, India, Europe and America (Santoso, 2016). In percentage terms, the LGBT population in Indonesia is 3%. In other words, if the number of people in Indonesia is 250 million, then the LGBT population in Indonesia is around 7.5 million (Santoso, 2016).

In contrast to this, there are parties who choose to oppose the existence of LGBT in Indonesia postulates that LGBT is a form of deviation which by therefore it is not accommodated in human rights from any spectrum. For groups who disagree and reject the existence of LGBT in Indonesia are trying to campaign prevention or preventive action against symptoms that can initiate LGBT and threatens the Indonesian nation in the future (Putri, 2022). For him, the State has authority who is very strong in terms of handling conflicts regarding LGBT so that it does not cause problems a division of the Indonesian nation (Yasa, 2023).

In her research R. Herlina Ajeng Wellyanthi Kusumah, Herri S. Sastramihardja, and Mia Yasmina Andarini mentioned that the risk of HIV transmission is based on age the characteristics of male patients of productive age suffering from HIV / AIDS at Dr. Slamet Hospital, Garut Regency based on age groups:

Table 2. Characteristics of male patients of productive age with HIV/AIDS

Age Range	Sum	%
20-23	83	40
30-39	65	31.2
40-49	60	28.8

Based on the table above, most of the HIV / AIDS sufferers in men of productive age at Dr. Slamet Hospital, Garut Regency are aged 20-29 years with a percentage of 40% (83 people), while the least occurs in the age range of 40-49 years with a percentage of 28.8% (40-49 people) (Ajeng et al., 2023). The characteristics of patients based on risk factors in the form of heterosexual, homosexual, blood transfusion, IDU (User), and perinatal are as follows:

Table 3. Characteristics of male patients of productive age with HIV/AIDS based on factors

Risk Factors	Sum	%
Heterosexual	27	13
Gay	171	82.2
Blood transfusion	0	0
IDU (<i>Injecting Drug User</i>)	5	2.4
perinatal	5	2.4
Total	208	100

From the table above, it was found that male patients of productive age with HIV/AIDS at Dr. Slamet Hospital, Garut Regency had the most homosexual risk factors of 82.2% (171 people) and there were no patients with risk factors from blood transfusions (Ajeng et al., 2023).

There is also caused by past trauma. This refers to people who underwent sexual abuse. The victims are usually interested to commit same-sex relationship. Family can also be the cause. For example, a boy

in a family is treated as a girl and vice versa. Still, another important cause is the influence of environment where she or he lives in. The last one, which is also as important as others, is the rapid technological development. Technology can actually be utilized for positive things, but when it is misused, sexual orientation disorder may happen (Russell & Fish, 2016). Even, people who become LGBT is probably caused by mingling in a group which has LGBT label or signal (Goode, 1983).

People of LGBT always strive for the rights they want. Thus, continuous rejection is directly proportional with their acts to spread their group. We recognize Prinsip Yogyakarta. Prinsip Yogyakarta is the guidance for all LGBT activists in all over the world. Prinsip Yogyakarta's content is that everybody has the freedom and is equal. Sexual orientation and gender cannot be made as the ground for discrimination or violence (Husaini, 2015; Muhsin et al., 2021).

The guarantee on human rights is an integral part of nation of laws (Magnis-Suseno, 1987; Mujib & Muchlas, 2023). But, the existence of human rights does not mean the nation lets and tolerates LGBT behaviors. The nation should; *first*, help the LGBT people to live back the normal life, which is to pick the opposite-sex partner to marry. There are many can be done, for example is religious approach. *Second*, the nation cannot or may not tolerate or even legalize LGBT behaviors as what is applied and what exists in other nations who have resulted laws legalizing the LGBT. This, however, is going to damage the moral and endanger this nation in the future. This is particularly for the young generation who are going to take over the national leadership. Furthermore, LGBT has been firmly opposed and identified as crime by Indonesia Ulema Council (MUI). Many behaviors caused by LGBT end up as crime. This may remind us on murder case shocking people in Jombang some years ago. Still, LGBT is also a main cause for people infected by AIDS because of HIV (*Human Immunodeficiency Virus*). Those people suffering from AIDS lost their immunity.

Conclusion

Criminal Code (KUHP) has not regulated legal sanctions for the actors of sexual disorder behaviors (lesbian, gay, bisexual, and transgender). This means, there are no rules ensnaring LGBT actors, except when it is committed by an adult to a kid. The nation should not punish people whose traits are infected by LGBT. Instead, the nation should punish them who openly practice LGBT in public, or throw LGBT party at a certain place and time. For this reason, Criminal Code (KUHP) is essentially amended. Thus, the actors of disorder LGBT mentioned above can be punished and legally sanctioned by upholding human rights.

There are many causes of LGBT. They are the influence of environment, domicile, and milieu. It is also probably caused by biological appearance, which make someone tends to like the same-sex. Next, there is also social cultural condition. They may feel inferior and are afraid to approach and to love the opposite-sex. LGBT can also be caused by culture, environment, childhood trauma, milieu where there are groups within LGBT marks and signals. LGBT can also happen because of family problem, such as divorced parents. The last, LGBT may also happen because a man is rejected by a girl or some girls.

Conflict of Interest

This article has not a conflict of interest.

References

- Ajeng, R. H., Sastramihardja, H. S., & Andarini, M. Y. (2023). Tingginya Kejadian HIV/ AIDS dengan Faktor Risiko Homoseksual di RSUD Dr. Slamet Kab. Garut. *Bandung Conference Series: Medical Science*, 3(1), 149–153.
- Al-Gburi, G., Al-Shakarchi, A., Al-Dabagh, J. D., & Lami, F. (2023). Assessing knowledge, attitudes, and practices toward sexually transmitted infections among Baghdad undergraduate students for research-guided sexual health education. *Frontiers in Public Health*, 11, 1017300.

- Aqsa, A., Febry, P., Maulana, A., Yunita, Ngazizah, E. R., Simamora, N. N., Januardy, A. F., Lenggu, M. M., Siagian, O. W., Tiara, A. E., Referandum, C., Tengker, A. L., Sirait, Y. S. S., Purnomo, C. A. J., Kotan, R. B. P., Ridha, M. R., Sinurat, R. I., Fitri, N. R. Al, Ishaq, M., ... Komara, A. (2017). *Catatan Akhir Tahun LBH Jakarta 2017*. 1-160.
- Ariyanti, D. N. (2016). FENOMENA GLOBALISASI TERHADAP PERKEMBANGAN GERAKAN LGBT DI INDONESIA (2011-2016). *Revista CENIC. Ciencias Biológicas*, 152(3), 28.
- Bachtiar. (2019). *Metode Penelitian Hukum*. Unpam Press.
- Djanim, R. (2006). *Korporasi dan Pertanggungjawaban Pidana*. Badan Penerbit Univ. Diponogoro, Semarang.
- Efendi, J. (2018). *Rekonstruksi Dasar Pertimbangan Hukum Hakim Berbasis Nilai-Nilai Hukum dan Rasa Keadilan yang Hidup dalam Masyarakat*. Prenadamedia Group.
- Goode, W. J. (1983). *Sosiologi keluarga*. Bina Aksara.
- Hamidah, R., Wulan, T. R., & Mutahir, A. (2023). Representasi kelompok lesbian, gay, biseksual, dan transgender (LGBT) dalam pemberitaan Detik.com. *Yinyang: Jurnal Studi Islam Gender Dan Anak*, 18(1), 59-84. <https://doi.org/10.24090/yinyang.v18i1.7196>
- Hariri, W. M. (2014). *Pengantar Ilmu Hukum*. Pustaka Setia.
- Hasnah, H., & Alang, S. (2019). Lesbian, Gay, Biseksual Dan Transgender (Lgbt) Versus Kesehatan: Studi Etnografi. *Jurnal Kesehatan*, 12(1), 63-72. <https://doi.org/10.24252/kesehatan.v12i1.9219>
- Health, U. M. of, & (Firm), I. C. F. I. (2012). *Uganda AIDS indicator survey 2011*. ICF International.
- Husaini, A. (2015). *LGBT di Indonesia: Perkembangan dan Solusinya*. Insists.
- Junaedi, D. (2016). *Penyimpangan Seksual yang Dilarang Al Quran*. Elex Media Komputindo.
- Kenedi, J. (2017). *Kebijakan Hukum Pidana (Penal Policy) dalam Sistem Penegakan Hukum di Indonesia*. Pustaka Pelajar.
- Kosim, M. N. (2016). Konsep Kebahagiaan Ki Ageng Suryomentaram dan Relevansinya dengan Kehidupan Modern. *Revista CENIC. Ciencias Biológicas*, 152(3), 28.
- Kusniati, R. (2011). Sejarah Perlindungan Hak Hak Asasi Manusia Dalam Kaitannya Dengan Konsepsi Negara Hukum. *Inovatif: Jurnal Ilmu Hukum*, 4(5), 79-91.
- Luthan, S. (2009). Asas Dan Kriteria Kriminalisasi. *Jurnal Hukum Ius Quia Iustum*, 16(1), 1-17. <https://doi.org/10.20885/iustum.vol16.iss1.art1>
- Magnis-Suseno, F. (1987). *Etika politik: prinsip-prinsip moral dasar kenegaraan modern*. Institusi.
- Muhsin, I., Ma'mun, S., & Nuroniyah, W. (2021). Sexual Violence in an Islamic Higher Education Institution of Indonesian: A Maqasid Al-Shariah and Foucauldian Perspective. *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam*, 5(1), 127. <https://doi.org/10.22373/sjhk.v5i1.9144>
- Mujib, M. M., & Muchlas, M. K. (2023). Achievements and Challenges of Human Rights Protection Policy in Realizing Good Governance in Indonesia and China. *Journal of Human Rights, Culture and Legal System*, 3(2), 328-360. <https://doi.org/10.53955/jhcls.v3i2.98>
- Muttaqin, I. (2017). Membaca Strategi Eksistensi LGBT di Indonesia. *Raheema*, 3(1), 78-86. <https://doi.org/10.24260/raheema.v3i1.562>
- Nasution, A. R. (2018). Penyelesaian Kasus Pelanggaran HAM Berat melalui Pengadilan Nasional dan Internasional serta Komisi Kebenaran dan Rekonsiliasi. *Jurnal Mercatoria*, 11(1), 90. <https://doi.org/10.31289/mercatoria.v11i1.1509>
- Prima, K., Usman, U., & Liyus, H. (2021). Pengaturan Homoseksual dalam Hukum Pidana Indonesia. *PAMPAS: Journal of Criminal Law*, 1(3), 92-105. <https://doi.org/10.22437/pampas.v1i3.11099>
- Putri, D. W. D. (2022). LGBT Dalam Kajian Hak Asasi Manusia di Indonesia. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2(1), 88-100. <https://doi.org/10.15294/ipmhi.v2i1.53739>
- Rahmasari, D. (2018). *Homofobia dalam Film Indonesia (Analisis Semiotika Dalam Film Suka Ma Suka dan Film Lovely Man)*. Universitas Islam Indonesia.
- Rauf, A. (2013). Kedudukan hukum adat dan hukum Islam. *Tahkim*, 9(1), 20-34.

- Russell, S. T., & Fish, J. N. (2016). Mental health in lesbian, gay, bisexual, and transgender (LGBT) youth. *Annual Review of Clinical Psychology*, 12, 465–487.
- Sahadat, J. (1997). Islamic Education. *American Journal of Islam and Society*, 14(4), 19–34. <https://doi.org/10.35632/ajis.v14i4.2231>
- Santoso, M. B. (2016). LGBT dalam Perspektif Hak Asasi Manusia. *Share: Social Work Journal*, 6(2), 220.
- Setiawan, E. B., Mustofa, L. C., Febrianti, T. R., & Pratama, L. (2022). The Indonesian Criminal Law System's Progression in Sexual Assaults Regulation. *Volkgeist: Jurnal Ilmu Hukum Dan Konstitusi*, 5(2), 161–177. <https://doi.org/10.24090/volkgeist.v5i2.6690>
- Subekti, H. D., Triwijati, E., & Mulya, T. W. (2020). Penerimaan dan Penolakan Homoseksual Berbasis Pengalaman Pribadi Teologi Kekristenan dari Sisi Pendetaan Agama Kristen. *KELUWIH: Jurnal Sosial Dan Humaniora*, 1(1), 30–40. <https://doi.org/10.24123/soshum.v1i1.2847>
- Suvianita, K. (2013). Human rights and the lgbt movement in indonesia. *Asian Journal of Women's Studies*, 19(1), 127–138. <https://doi.org/10.1080/12259276.2013.11666145>
- Syamila, A. R., & Nurhadi, J. (2019). Strategi Eksklusi dalam Pemberitaan Lesbian, Gay, Biseksual dan Transgender (LGBT) di Media Daring tirto.id. *Jurnal Politikom Indonesiana*, 4(2), 126–135. <https://doi.org/10.35706/jpi.v4i2.3238>
- Wardinna, S. (2018). Reproduksi Terhadap Perilaku Kesehatan Wanita Lesbian. *Journal of Education, Psychology, and Counseling*, V(II), 5–17.
- Warman, A. B., Jafar, W. A., Asmara, M., Kirin, A. bin, & Usmani, S. A. A. (2023). Reforming Marriage Registration Policies in Malaysia and Indonesia. *Bestuur*, 11(1), 61–74. <https://doi.org/10.20961/bestuur.v11i1.66320>
- Warsina, W. W. (2017). Gambaran Persepsi Remaja Terhadap Perilaku Lesbian, gay, Biseksual dan Transgender (LGBT) di SMAN 1 Tamansari Kabupaten Bogor. *Jurnal Riset Kesehatan Poltekkes Depkes Bandung*, 9(2), 19–25. <https://doi.org/10.34011/juriskesbdg.v9i2.237>
- Wayhuni, S. (2012). *Kekerasan pada Gay di Kota Surakarta: Bentuk dan Usaha-Usaha Gay dalam Menghadapinya (Violence Against Gay Men in Surakarta and the Efforts They Made to Deal with It)*. Uinversitas Sebelas Maret.
- Wiryani, F., Ummah, N., Najih, M., Nasser, M., & Yunus, N. R. (2021). Transgender viewed from the perspective of positive law, health, and cultures in Indonesia. *Legality: Jurnal Ilmiah Hukum*, 29(2), 256–268. <https://doi.org/10.22219/ljih.v29i2.16916>
- Yasa, A. P. (2023). Dimensi Filosofis Hak Asasi Lesbian, Gay, Biseksual, Dan Transgender (Lgbt) Di Indonesia: Rivalitas Naturalisme Dan Positivisme. *Journal Transformation of Mandalika*, 4(6), 338–347.
- Yudiyanto. (2016). FENOMENA LESBIAN, GAY, BISEKSUAL DAN TRANSGENDER (LGBT) DI INDONESIA SERTA UPAYA PENCEGAHANNYA. *Nizham: Jurnal Studi Keislaman*, 4(1), 62–72.
- Zaini, H. (2016). LGBT dalam Perspektif Islam. *Juris: Jurnal Ilmiah Syariah*, 15(1), 65–73.