



LESBIAN GAY BISEXUAL TRANSGENDER (LGBT) IN INDONESIA'S POSITIVE SOCIAL AND LEGAL PARADIGM

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Abstract

The issue of sexual deviation has been the object of debate for quite a long time in human civilization. Social norms and societal norms that condemn various kinds of sexual deviations are challenged by groups who feel disadvantaged by these norms. This research is a normative juridical research method which aims to find out the positive legal perspective of Indonesia regarding the existence of individuals and the LGBT group itself.

Keywords: LGBT, Positive Law, Social Rules.

I. INTRODUCTION

I.1 Background Of The Problem

Relationship is a continuous phase between individual interactions with each other, relationships occur during a continuous life process. Relationships are broadly divided into two, namely blood relations and emotional relationships. Blood relations are relationships that occur as a result of the existence of the same biological lineage, such as the relationship between parents and children, or siblings, while emotional relationships occur due to bonds of mutual love, respect, and nurturing without biological ties such as

friendship, courtship, husband and wife and other colleagues,

Various relationships occur in society, relationships can determine the level of closeness and comfort of individuals who interact with each other, the closer the relationship, the more it leads the relationship to a deeper stage. One of them is the feeling of liking and sexual attraction that is built as a result of the closeness itself and establishing a relationship on the basis of consensual which is called love and affection. Love grows and develops generally in individual men and women which then gives rise to sexual desire, usually a

relationship like this will culminate in a marriage. The purpose of marriage is not only limited to things that are biological in nature that justifies sexual relations between the two parties, but more broadly, covering all aspects of domestic life, both outwardly and inwardly. On the basis of guaranteeing these human rights, it is also regulated in the constitution, especially in Article 28B of the UUD 1945 Constitution after the amendment, namely:

“Everyone has the right to form a family and continue their offspring through legal marriage”.

The meaning is that every citizen in establishing family relations is determined by law to be carried out through a legal marriage. Meanwhile, the definition of marriage is described in Article 1 of Law Number 1 of 1974 concerning Marriage which states that:

“Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the One Godhead.”.

Based on this description, it is also understood that marriage is a legal institution for men and women to have natural intimate relationships to have children.

Along with the development of time, love is growing so fast, it doesn't even only appear in individuals who are

male and female but also of the same gender (LGBT), according to Law Number 18 of 2014 concerning Mental Health and Guidelines for Classifying Mental Disorders Diagnosis, LGBT (Lesbian) , Gay, Transgender, and Transsexual) is a term that develops in society and is not known in psychiatry as a psychiatric disorder. While sexual orientation includes heterosexual, homosexual and bisexual.

Homosexuality is a tendency to be sexually attracted to the same sex which includes lesbians and gays. Bisexuality is a tendency to be sexually attracted to both sexes. Regardless of how a person becomes LGBT whether genetic, social, traumatic childhood and other factors, LGBT is a very controversial topic, not only from an academic point of view, but also from a pragmatic reality in society. LGBT is often underestimated and considered as an unimportant subject in the scientific treasures, especially in the religious community which has absolutely declared that LGBT is haram. The reason is simple, LGBT is a form of oddity and an effort to fight God's destiny.

In general, LGBT groups under the word "Human Rights" ask the community and the State to recognize

the existence of this community. When viewed from the provisions of the Indonesian Constitution, namely Article 28 J of the 1945 Constitution which said:

Everyone is obliged to respect the human rights of others in the orderly life of society, nation and state.

- 1) In exercising his rights and freedoms, everyone is obliged to comply with the restrictions established by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands in accordance with considerations of morality, values, religion, security, and public order in a democratic society

On the basis of this article, the LGBT community seems to have legality in actualizing and developing their community. In addition, the LGBT community tends to ask the wider community and the state in particular to respect their existence so that they can interact with public properly.

Departing from the desire of LGBT people to get recognition of their sexual orientation, it has led to debate and rejection from religious groups, considering this is considered a

violation of nature but in some understandings by humanitarian activists, LGBT is considered as part of human rights. This then becomes an attraction for the author to examine the phenomenon of the existence of LGBT in the eyes of Indonesian positive law.

I.2 Research Problem

- 1) How is LGBT in the Perspective of Indonesian Social Rules?
- 2) How is LGBT in Indonesia's Positive Legal Perspective?

I.3 Research Method

This study uses a normative method to seek knowledge or understanding of various interrelated relationships behind a reality in the era of social media. The materials needed in this research are normative materials as primary data. Researchers will focus more on analyzing normative data because it involves activities and dynamics that occur within a virtual culture. This research is not intended to obtain external validity, but rather aims to gain an understanding of a reality in a specific context. This gives the researcher breadth and flexibility in interpreting and analyzing the data obtained. This research also uses documentation and literature study techniques.

II. DISCUSSION

II.1 LGBT in the Perspective of Indonesian Social Rules

There are forms of sexual orientation such as lesbian, gay, and others. Individuals who are homosexual oriented and have gender identities that are not in accordance with the gender identity that society expects to experience various forms of rejection are very diverse. The rejections themselves can be in the form of verbal violence, psychological violence, physical violence, discrimination and even sexual violence that can threaten the lives of homosexual individuals. There are pros and cons to looking at homosexuals. Some see it as a choice for the right to life. But there are also those who see it as deviant and immoral behavior. This negative attitude towards homosexuals gives birth to rules that can punish homosexuals. This prejudice and discrimination against homosexuals is increasingly spreading. In Indonesia, there are still several legal products at the national and regional levels that discriminate against LGBT people. Some of the discriminatory products, such as the Regional Regulation of the Province of South Sumatra No. 13 of 2001 concerning the Eradication of Immorality in the Province of South

Sumatra. This Regional Regulation criminalizes LGBT groups by categorizing LGBT as acts of prostitution. In addition, the Regional Regulation of Palembang City No. 2 of 2004 concerning the Eradication of Prostitution. This Regional Regulation criminalizes the LGBT group by categorizing the LGBT group as part of the act of prostitution. Some of these legal products are discriminatory against LGBT people that regulate their sexual activities. However, it is important to note that the existence of these discriminatory legal products can have an impact on the Indonesian people, who still do not understand human rights well, do not understand in depth the gender identity and sexual orientation of LGBT people

Pancasila as the basis of the Indonesian state, in the 5th sila that "keadilan bagi seluruh rakyat Indonesia". This is a guarantee that the state guarantees social justice for all people and implements human rights for all people without exception. In addition, the recognition of human rights has also been ratified by the Law of the Republic of Indonesia Number 39 of 1999 concerning Human Rights. However, the LGBT people who

incidentally are Indonesian people have not yet received the human rights they deserve, such as the right to equality and non-discrimination, the right to life, the right to security, the right to privacy, the right to humane treatment, the right to education, and the right to work. It is evident that there are many cases of violence and discrimination against LGBT people. The perpetrators of violence and discrimination are families, communities, and government officials who are supposed to protect the rights of their citizens. LGBT people have historically experienced repression in the form of harassment and violence, discrimination in areas such as employment, housing, access to education and human services, and laws that have actively discriminated against them or failed to protect their basic human rights. At the same time, there are gender stereotypes about LGBT people, giving rise to homophobia and heterosexism. Homophobia is the fear of being close to, interacting with and dealing with homosexuals because they are considered to have a bad influence, while heterosexism is an assumption that everyone should be heterosexual so that a form of social pressure arises against gays, lesbians, and bisexual

people because they are a group minority. Sociocultural factors will always influence people's views regarding gender identity. Homophobia also often raises prejudices about gays such as disease spreaders, promiscuous sex offenders, possessiveness, murderers, which in fact this kind of behavior is also often carried out by heterosexuals but seems ordinary while being very extraordinary when the case occurs in gay couples and then assumes everyone who has a sexual orientation will end up as a sex offender or murderer. Banci and Bencong are insults aimed at men who do not behave masculine in accordance with the demands of society, this is an allusion to men who have a feminism spirit. Because for the Indonesian people, masculinity is a revered value that is always associated with men, while femininity is a secondary value that is always pinned on those who are lower than men. Therefore, men who act feminism will be considered low and demeaned.

Indonesia is a country with social values that are transformed from cultural and religious values, regarding the values that have been embraced by its people and have become ingrained

into a culture for the life of this nation, this has an impact on the behavior of accepting social facts that are not in accordance with the values that have been established. become entrenched, there will be disintegration in society. Thus, inevitably these entrenched values will influence social behavior itself. Human acceptance behavior is not formed just like that but is formed gradually in line with the development of life and the experiences encountered including the social environment. Therefore, LGBT is considered to violate religious values and decency.

3.2 II.2 LGBT in Indonesia's Positive Legal Perspective

If viewed in the context of the State of Indonesia, the existence of LGBT groups in Indonesia is absolutely an Indonesian citizen. As a country founded on the basis of Pancasila, all the life systems of the Indonesian people must be based on the values contained in the five precepts. The first precept, namely Belief in One God, according to Muhammad Hatta, is a precept that must animate and be inspired by the other four precepts. This means

that the position of the first precept is the main key of the entire character of the Indonesian nation itself. At this level, it is clear that all religions consider that LGBT is contrary to human nature and places the existence of LGBT people as an aberration. In the Indonesian constitution, human rights have limitations, where the limitations are that they must not conflict with morals, religious values, security and public order; Indonesia is not a country based on religion, but Pancasila clearly states in its first Sila "Ketuhanan yang Maha Esa" so that religious values become the guardians of the constitutional joints in realizing the democratic life of the Indonesian nation.

As an overview of LGBT human rights in Indonesia, national law in a broad sense does not provide support for LGBT people even though homosexuality itself is not defined as a crime. Neither marriage nor adoption by LGBT couples is allowed, there are no anti-discrimination laws that explicitly relate to sexual orientation or gender identity. Indonesian law only recognizes

the existence of male and female genders, so transgender people who do not choose to undergo sex change surgery may experience problems in processing identity documents and other related matters.

Whether based on law, religion, and human rights, everyone must have the same rights for these things and be treated fairly, without having to first confirm whether the subject is LGBT or not. However, regarding freedom of expression, there must still be reasonable limits, as to what form of expression is carried out, and whether the right to free expression violates the rights of others, religious norms, culture, and local public order. The thing that becomes the focus of the problem is how the treatment and attitude of the Indonesian people towards the deviant sexual behavior of the LGBT people who commit these acts is based on the principle of human rights freedom. As previously explained, Indonesia is a country that is still thick with religious, moral, and ethical teachings that have developed and taken root in all levels of society. We can observe this in the Constitution of the Republic of Indonesia Article 27 paragraph 1:

“That every citizen has the same position in law and government”

Article 28 G paragraph 1:

“that everyone has the right to personal protection, honor and dignity”

This provision can be interpreted that the act of humiliating a person's honor and dignity due to gender discrimination is a violation of the 1945 Constitution, this means that protection against harassment of a person's honor and dignity is a constitutional right of Indonesian citizens. Therefore, respect for each other's rights must be carried out for the realization of peace and order and harmony in people's lives.

III. CLOSING

III.1 Conclusion

Basically, LGBT is a human social phenomenon, considering that sexual orientation is not just black and white but has many colors because it includes the diversity of sexual interests of each individual, some people think this is natural because it is a life choice and some people reject it because it is considered as an immoral act. However, in accordance with Indonesian customs and culture that form social views on a value of LGBT behavior that is considered deviant from the teachings

of ethical behavior, this is also reflected in the value of the first precept of Pancasila which comes from the teachings of God.

Legally, LGBT is a community group whose rights must also be guaranteed, being LGBT is not part of a criminal act in general as long as it does not violate the applicable provisions. It must be understood that everyone has human rights including the LGBT group. The refusal of deviant sexual behavior is legally carried out based on the principle of the Divinity of the Indonesian State, and religious norms and laws that protect the diversity of the Indonesian people. However, it should be limited that the refusal does not necessarily legalize discriminatory acts that violate the law and human rights of the LGBT group in general matters (health, education, work, etc.), including verbal and physical violence..

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