

Legal Regulations for Lesbian, Gay, Bisexual and Transgender (LGBT) in the Perspective of Positive Law Reform in Indonesia

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Abstract. Indonesia is a state based on law as referred to in Article 1 paragraph (3) of the 1945 Constitution, therefore all state life is based on law. In addition, Article 28A to Article 28J of the 1945 Constitution serves as the foundation for human rights that must be protected. The existence of LGBT that has existed for a long time cannot be demonstrated, although the regulations are not yet clear. Various perspectives provide their views, although until now they often create pros and cons. Based on this, this study aims to determine whether LGBT is a crime and how LGBT is regulated in Indonesian positive law. This research used normative juridical method. Based on the results of the research, it shows that LGBT is not a crime but LGBT behavior is a form of deviation that must be criminalized because it is against the constitution and is not in accordance with the spirit of the Indonesian nation, religion, customs and values that live in society and related to its current regulation LGBT behavior is regulated. in Article 284 KUHP, Article 285 KUHP and 292 KUHP even though these provisions do not explicitly determine LGBT crime. So there is a legal vacuum. Therefore, the DPR must immediately regulate LGBT behavior considering the impact it causes. Articles 285 of the Criminal Code and 292 of the Criminal Code even though these provisions do not explicitly define LGBT crimes. So there is a legal vacuum. Therefore, the DPR must immediately regulate LGBT behavior considering the impact it causes. Articles 285 of the Criminal Code and 292 of the Criminal Code even though these provisions do not explicitly define LGBT crimes. So there is a legal vacuum. Therefore, the DPR must immediately regulate LGBT behavior considering the impact it causes.

1. Introduction

The phenomenon of LGBT cannot be demonstrated in all countries in the world, including one in the Republic of Indonesia itself. Indonesia, which is a constitutional state as referred to in Article 1 paragraph (3) of the 1945 Constitution, in which the legal system of Continental Europe always prioritizes legal certainty through written regulations. However, if we pay attention to the regulations in all the laws and regulations, none of them regulate LGBT. However, in fact this LGBT behavior is subject to Article 284 KUHP, Article 285 KUHP and Article 292 KUHP. If we relate it to the legality principle where an act cannot be punished unless it has been regulated in advance in a statutory regulation as referred to in Article 1 paragraph (1) of the Criminal Code. The LGBT conflict in Indonesia creates conflict of opinion for and against. For those who agree with LGBT, make human rights as the basis, where the state and society must campaign for the principle of non-discrimination, namely sexual orientation is a human right for LGBT

perpetrators. On the other hand, LGBT is considered a form of deviation and is not part of the concept of human rights and can endanger the future generations of the Indonesian nation.[1]

The discussion about LGBT is not a new topic. Previous research has conducted a lot of research related to LGBT, including:

1. Hasan Zaini, IAIN Batusangkar in 2016 with the journal title: LGBT in Islamic Law Perspective;
2. Gunawan Saleh, Muhammad Arif, Abdurrahman University, in 2017 with the title: LGBT Behavior in Social Review.
3. Rustam Dahar Karnadi Apollo Harahap, Walisongo State Islamic University (UIN) Semarang, in 2016 with the title: LGBT in Indonesia: Islamic Law, Human Rights, Psychology and Mashlahah's Approach Perspective.
4. Fitri Wahyuni, Indragiri Islamic University, in 2018 with the title: Sanctions for LGBT Perpetrators in the Aspects of Islamic Criminal Law and Its Relation to Human Rights.
5. Zusy Aryanti, Metro State Islamic Institute, in 2017 with the title: Risk Factors for LGBT Occurrence in Children and Adolescents.

The first research discusses the view of Islamic law on LGBT behavior. The second study discusses LGBT behavior in a social review. The third research discusses the LGBT phenomenon in Indonesia from various scientific perspectives such as Islamic law, human rights, psychology and mashlahah approaches. The fourth research discusses sanctions for LGBT perpetrators in terms of Islamic criminal law and from a human rights perspective. The fifth study discusses the impact of LGBT behavior on children and adolescents. Meanwhile, the research conducted by the author is to find out whether LGBT is a crime and how LGBT is regulated in Indonesian positive law.

Based on this, the author's research is different from previous studies where the research conducted by the author is a study that responds to pro and contra reactions related to LGBT behavior in Indonesia. Where the author describes what is the basis for those who are pros and also those who are against behavior, then the authors link it to legal theories then make a view of LGBT behavior so that they can find out steps or legal solutions in addressing LGBT behavior. This research is very important considering the growing number of LGBT actors in Indonesia continues to increase. In the period between 2009 and 2012 it is estimated to have increased by 37%. This increase was also followed by an increase in internet access, pornography,[2] Therefore, regulating LGBT behavior is very important for the sake of realizing legal certainty.

This research was conducted with the aim of knowing whether LGBT behavior is a crime and how this LGBT behavior is regulated in Indonesian positive law. In this study, the normative juridical method is used, namely the problem approach by observing, analyzing and interpreting theoretical matters concerning legal principles in the form of conceptions, statutory regulations, views, legal doctrine and related legal systems. So that we get a complete concept in looking at LGBT behavior and implementing the principles and norms that live in society as a concrete solution.

2. Research methods

This paper uses the normative legal research method because the focus of the study departs from norms, regulations, legal theories, therefore it has a duty to systematize positive law,[3] using a statute approach, conceptual approach, and analytical approach. The technique of tracing legal materials uses document study techniques and the analysis of studies uses qualitative analysis.

3. Results and Discussion

Whereas in the Criminal Code and in the Draft Criminal Code, LGBT behavior is not a crime because there is no coercion and it is carried out in public. However, LGBT behavior is against the constitution,

namely the 1945 Constitution, Pancasila, religion, customs, and values that live in society so that LGBT behavior must be criminalized considering the impact it causes. Regarding the current regulation, LGBT behavior is regulated in Article 284 KUHP, Article 285 KUHP and 292 KUHP. Based on this, the researcher believes that there is a need for further discussion regarding the criminalization of LGBT in the Draft Criminal Code. Therefore, the DPR must immediately regulate LGBT behavior considering the impact it causes.

In determining whether LGBT behavior is a form of crime or not, we must first understand what LGBT itself is, starting from its history and development in Indonesia, then views from various perspectives on LGBT, then how criminal policies regulate LGBT behavior and how. Legal relations with religion address LGBT behavior as well as criminal law reform through criminal law reform as an effort to achieve legal certainty.

3.1. History and Development of LGBT in Indonesia

Judging from the long history of LGBT existence, we can find homosexual stories from various literatures. In Christian and Jewish teachings we know the practice of sodomy, in Islam we know it with the people of the Prophet Lut, Philip J, Adler calling King James I of England a direct homosexual, and so on. [4]

The LGBT movement has existed since 1969 with the presence of Wadam Djakarta and the open LGBT organization, Lambda, on March 1, 1982.[5] Since 1982 in Indonesia, LGBT communities began to emerge. Some of the LGBT communities include Gaya Nusantara, Arus Pelangi and Ardhanary Institute.[6] The term wadam means transvestite, that is, a man who behaves and dresses like a woman. After the formation of the first transgender organization, which was accompanied and facilitated by the Governor of DKI Jakarta, Ali Sadikin, the organization changed its name to the Djakarta Wadam Association (HIWAD). In 1980 the term wadam was changed to waria, which is an open organization that accommodates the first gay people in Indonesia. In 1982 it changed to the Lambda organization, which has a secretariat in Solo and several branches in major cities in Jakarta, Surabaya and Yogyakarta. In 1982-1984 the organization published a bulletin under the name of the cheerful lifestyle.

Furthermore, in 1985 in Yogyakarta the Yogyakarta Gay Brotherhood organization (PGY) was born which changed its name to the Indonesian Gay Association in 1988. On August 1, 1987 there was the Lesbian and Gaya Nusantara Working Group (KKLGN) which published Gaya Nusantara magazine. Then in 1990 a gay organization emerged in Pekanbaru, Bandung, Malang, Denpasar. At the end of 1993 the 1st Lesbian and Gay Indonesia Congress (KLG I) was held in Kaliurang Yogyakarta which was attended by 40 representatives from each city. Furthermore, KLG II was held in Lembang, West Java. Then in 1997 KLG III was held in Denpasar Bali. With the cooperation of the National Assembly and the Surabaya City Transgender Association, gay pride is celebrated openly. Meanwhile the National Working Meeting scheduled for Solo was canceled due to criticism from FPIS. On 4 February 2007, Gaya Warna Lentera network was established in Surabaya, which is funded by Australian Of AIDS Organizations Inc. (AFAO). In March 2010 the 4th International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) regional conference was canceled.[7]

3.2. The phenomenon of LGBT in Indonesia

LGBT is a group that has a different sexual orientation from heterosexuals. Lesbian is a term for women whose sexual orientation is towards women or it can also be said that women who love women physically, sexually, emotionally and spiritually. Gay is a term for a man whose sexual orientation is towards men, in other words, men who love men physically, sexually, emotionally, or spiritually. Bisexual is a sexual orientation characterized by aesthetic attraction, romantic love, and sexual desire for both men and women. Transgender people are people who do, feel, think or see differently than the gender assigned at birth.

[8]Thinking is a process that generates knowledge. This process is a series of movements of the mind in following a certain way of thinking which eventually comes to a conclusion in the form of knowledge.[9] Therefore, researchers argue that LGBT behavior is not innate but is formed from conducive factors that make it up.

Homosexuals fall into the category of psychosexual disorders and are called egodistonic sexual orientations where gender identity or sexual preferences are not in doubt, but individuals expect others to be caused by psychological and behavioral disorders and seek treatment to change them. That is, homosexuality is considered negligence only if the individual is unhappy with his sexual orientation and intends to change it.[10]Based on this, LGBT is a deviation that is shaped and influenced by various non-innate factors. So that LGBT behavior must be rehabilitated and cured. However, currently the number of LGBT groups is not small. Deputy Governor of West Sumatra (West Sumatra) Nasrul Abit said the number of LGBT groups in West Sumatra was 18,000.[11]

Seeing the number that is not small, in people's lives this has a very broad impact, such as husbands who do not provide for the reason that their husband likes the same sex, LGBT online communities that cause deviant behavior related to pornography, immoral crimes, rape, domestic violence, fraud, neglect. household, the moral generation of the nation's children and so on. For example, the LGBT phenomenon, namely on Saturday 29 August 2020 at around 00.30 WIB, as many as 56 men aged 20 to 40 years held a gay sex party with various kinds of games at the Kuningan apartment in South Jakarta with the evidence in the form of 8 (eight) contraceptive boxes, one magic tissue box, one registration book, 3 (three) bottles of lubricant, 8 (eight) bottles of stimulants and proof of transfer of party admission tickets. Other than that, [12]In addition, on 21 May 2017, the police raided 141 men in a gay-to-gay striptease show (telanjang dancers) at a shop in Jakarta, with evidence in the form of contraceptives, CCTV footage, photocopies of business licenses, and prepared tips. for strippers, mattresses, commercials for shows and cell phones to record live broadcasts.[13]

LGBT behavior is seen as a symptom of a psychological disorder rather than an inherited disease. Several experts provide an understanding of LGBT. Among them, Kinsey said that homosexuality is a behavior that cannot be cured. Even if they want to change themselves, it only regulates homosexual fantasies, but cannot be cured. According to him, LGBT is born from treatment that is formed from culture, social, religion, ideology, law and economy.[14]

3.3. Various Perspectives Regarding LGBT

3.3.1. Human Rights Perspective

Human rights are basic rights that are inherently humane, universal and eternal. So it must be protected, respected, defended and must not be ignored, reduced or seized by anyone.[15] Talking about LGBT, it is not only a matter of individual freedom, but also a public safety and security issue which is an important point in human rights.[16]Human rights in Indonesia come from Pancasila, which means that human rights are guaranteed strongly from the nation's philosophy, namely Pancasila. This means that the implementation of human rights must pay attention to the lines stipulated in the provisions of Pancasila. [17]Based on this, it is clear that LGBT behavior is against the values of Pancasila which are against the spirit of the nation and the human rights of others. Because in reality a person's human rights are limited by the rights of the general public, so that they cannot be interpreted and used as a basis for justifying human rights for LGBT perpetrators. Where human rights are limited by religion and customs, as stated in Article 28 paragraph (2) of the 1945 Constitution based on considerations of moral, religious values, public order, and public order.

3.3.2. Religious Perspective

In the context of Islam, to achieve a halal sexual life which is categorized as worship, Islam has conceptualized a Muslim who is able to marry physically and mentally. Where marriage is seen as being

able to neutralize deviant sexual urges so that it becomes a blessing. In Islam, LGBT practices are known as liwat. That LGBT acts are seen as disgusting and destroying human nature and are hated by Allah SWT, there is no reason whatsoever to justify homosexual practice, either in normal circumstances or in urgent situations.[18] Christianity also rejects the existence of LGBT as stated in the bible or bible. Where LGBT acts in the Old Testament explicitly state that these are heinous and despicable acts even hated by God. In the sense of Hinduism, in the book Manavadharmasastra it is stated that the purpose of marriage is dharmasampatti, that is, together with husband and wife to realize the implementation of dharma, praja, namely giving birth to offspring and rati, namely enjoying sexual and other sensual life, satisfaction. Judging from Buddhism, LGBT is not strictly regulated but it can be understood that in Buddhism Pancasila must be practiced, namely refraining from: killing living beings, taking what is not given, sexual deviance, lying and drinking addictive drugs and drinking. drink. hard.[19]

4.3.3 Legal Perspective

Whereas the Applicable Law must originate from and may not conflict with the 1945 Constitution which is the basis of the constitution. Therefore, regulations that contradict basic laws do not have legal legitimacy. Based on this, LGBT behavior must be regulated in laws and regulations so that it has legal certainty, whether LGBT is behavior that can be categorized as a form of crime and how to regulate it. The Constitutional Court Decision Number 46 / PUU-XIV / 2016 provides a different view, some argue that the Constitutional Court decision provides space for LGBT perpetrators, but there are also those who understand that the Constitutional Court decision states that it has no authority. to determine new criminal acts. Based on this, the LGBT arrangement in the Constitutional Court ' The Constitutional Court's decision still lacks legal certainty, because there are still differences of opinion in interpreting the MK decision. This is in line with the essence of a statutory review agency, namely maintaining the statutory regulation system so that there are no contradictions. This is in line with the provisions of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the laws reviewed by the Constitutional Court are still valid, before there is a decision declaring the law valid, contradictory. with the 1945 Constitution. namely maintaining the system of laws and regulations so that there are no contradictions. This is in line with the provisions of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the laws reviewed by the Constitutional Court are still valid, before there is a decision declaring the law valid, contradictory to the 1945 Constitution. namely maintaining the system of laws and regulations so that there is no contradiction. This is in line with the provisions of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the laws reviewed by the Constitutional Court are still valid, before there is a decision declaring the law to be valid. contradictory. with the 1945 Constitution. before there is a decision stating that the law is valid, contradicting the 1945 Constitution. namely maintaining the system of legislation so that there is no contradiction. This is in line with the provisions of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the laws reviewed by the Constitutional Court are still valid, before there is a decision declaring the law to be valid. contradictory. with the 1945 Constitution. before there is a decision stating that the law is valid, contradicting the 1945 Constitution. namely maintaining the system of legislation so that there is no contradiction. This is in line with the provisions of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the laws reviewed by the Constitutional Court are still valid, before there is a decision declaring the law to be valid. contradictory. with the 1945 Constitution. This is in line with the provisions of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the laws that are reviewed by the Constitutional Court are still valid, before there is a decision declaring the law to be valid. contradictory. with the 1945 Constitution. This is in

line with the provisions of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the laws reviewed by the Constitutional Court are still valid, before there is a decision declaring the law to be valid. contradictory. with the 1945 Constitution.[20] Prior to the Constitutional Court's decision, LGBT behavior was threatened with sanctions as stipulated in Article 284 of the Criminal Code, Article 285 of the Criminal Code and 292 of the Criminal Code. Article 284 of the Criminal Code regulates a person, both male and female, who is married but commits overspend, Article 285 regulates the crime of rape, and Article 292 of the Criminal Code regulates the criminal act of obscene acts against minors. So that with regard to LGBT, until now there has been no clear regulation for LGBT perpetrators regarding the types and punishment, therefore there is a legal vacuum. LGBT behavior is an act that is against the morals, religions, customs, laws that live in society. According to W. A Bonger, that crime is an anti-social act that consciously gets a reaction from the state in the form of suffering and then as a reaction from the state in the form of suffering and then as reactions to the legal definition of crime.[21] Thus, LGBT behavior is a deviation and is against the morals, religions, customs and values that live in society, so LGBT is a criminal act.

In this regard, in the Draft Criminal Code Article 420 paragraph (1) it is determined that every person who commits obscene acts against other people of different or same sex in public, with violence and violence or threats of violence and / or publication. as pornographic content. In addition, Article 421 of the Draft Criminal Code states that punishable by a maximum imprisonment of 9 (nine) years, every person who commits obscene acts with someone known to be unconscious or helpless, commits obscene acts with someone known or reasonably suspected of being an act. a child, by enticement or trickery causes a child to commit or condone obscene acts with another person. That obscene acts are actions that violate the norms of decency, modesty or other indecent behavior and always associated with lust or sexuality. In addition, Article 417 paragraph (1) of the Criminal Code states that every person who is not husband or wife is punished for adultery with a maximum imprisonment of 1 (one) year or a fine class II. Article 419 of the Criminal Code states that everyone who lives together as husband and wife outside of marriage will be subject to imprisonment for a maximum of 6 (six) months or a maximum fine of class II. Based on these provisions, the Draft Criminal Code has not yet criminalized LGBT as a form of crime because it is determined to be a criminal offense if there is an element of coercion and is committed in public. Article 419 of the Criminal Code states that everyone who lives together as husband and wife outside of marriage will be subject to imprisonment for a maximum of 6 (six) months or a maximum fine of class II. Based on these provisions, the Draft Criminal Code has not yet criminalized LGBT as a form of crime because it is determined to be a criminal offense if there is an element of coercion and is committed in public. Article 419 of the Criminal Code states that everyone who lives together as husband and wife outside of marriage will be subject to imprisonment for a maximum of 6 (six) months or a maximum fine of class II. Based on these provisions, the Draft Criminal Code has not yet criminalized LGBT as a form of crime because it is determined to be a criminal offense if there is an element of coercion and is committed in public.

3.3.3. Health Perspectives

One of the impacts of LGBT behavior if it is not prevented immediately is suffering from HIV / AIDS. HIV is a disease that cannot be cured and there is no known cure. HIV (Human Immunodeficiency Virus) is a virus that can cause AIDS by attacking white blood cells called CD4 cells, thereby destroying human immunity. HIV is found in body fluids, especially in blood, sperm, vaginal fluids, and breast milk. [22] Apart from causing and spreading HIV and AIDS, LGBT behavior creates psychological pressure because it is very contradictory socially, culturally, religion and disrupts people's lives.

Mediation analysis showed that perceived discrimination led to increased depressive symptoms among LGBT men and women, and led to an increased risk of self-harm and suicidal ideation among LGBT men. Perceived discrimination is likely a cause of emotional distress among LGBT adolescents.[23]

3.4. Criminal Policy

That the reason for LGBT behavior is important to be criminalized, namely because the act is religiously prohibited, considered detrimental to society, contrary to the values that live in society, contrary to the moral values of Pancasila and for legal certainty. in law enforcement.[24] The development of the multiplicity of new crimes that are considered corrosive, despicable and detrimental to society on a very large scale, often these crimes are not covered by written legislation with criminal sanctions, so that the perpetrators can act freely by hiding behind the principle of legality, but if viewed from against the law of an act, even though the act is not regulated in statutory regulations (against the formal law), if the act is considered despicable because it is not in accordance with the sense of justice. or norms of social life in society (against material law) then the act can be punished. The steps to operationalize criminal politics in a good way of reasoning are carried out through:[25]

- a. Establishment of statutory policies (legislative / formulative policy) which contains the determination of policies regarding:
 - 1) What actions should be criminalized (criminalization policy)
 - 2) What sanctions should be used or imposed on the perpetrator (punishment policy / punishment policy)
- b. Application of crime by court (judicial application / policy)
- c. Commitment of crimes by criminal apparatus (execution policy)

From a criminal law policy perspective, crime prevention can be carried out with the following approaches:[26]

- 1) The criminal approach, namely the application of criminal law or the application of criminal law. Efforts to prevent crime through criminal action are more emphasized on its refreshive nature.
- 2) The non-penal approach is an effort in the form of coaching and / or other non-formal education efforts. The non-penal approach focuses more on those that are preventive in the form of prevention, deterrence, control before the occurrence of a criminal act, given that efforts to combat criminal acts through non-penal channels are more preventive in nature against the occurrence of criminal acts, so that the main objective is to deal with these conducive factors, among others, focus on problems . social problems that can directly or indirectly lead to crime.
- 3) The integrated approach (integrated) is a combination of penal and non-penal approaches.

4.4.1 Politics of Criminal Law.

LGBT behavior is a part of a criminal act, but the regulation is still limited to same-sex behavior committed by adults to minors, so criminalization efforts are needed in efforts to reform the criminal law. Criminalization is part of the politics of criminal law, which in essence is a policy on how to formulate good criminal law and provide guidelines in the making (legislative policy) of criminal law. Criminal law politics itself is part of legal politics. The politics of criminal law, according to Sudarto, is a series of efforts to create legal norms that are in accordance with the situation and conditions at a certain time. Criminalization is the determination of an act that is not a criminal act to become a criminal act. Where is the important aspect,[27] This is in line with Pompe's opinion which states that criminal law is the entire rule of law regarding punishable actions and criminal acts. Meanwhile, Moeljatno stated that criminal law is part of the overall law in force in a country which establishes the principles and rules for determining which actions should not be taken, which are prohibited, accompanied by threats or sanctions in the form of certain crimes for anyone. those who violate the prohibition, determine when and in what cases those who have violated the prohibition can be subjected to or subjected to piana as threatened, determining in what way the punishment may be imposed if a person is suspected of violating the prohibition.[28] With reform efforts through criminal law politics or criminal law policies based on Pancasila and the 1945 Constitution, the provisions stipulated in these regulations must limit actions that are not only limited to prohibited

behavior, both actions and consequences, but also actions that violate religion, morals and values. -values that live in society as stated in Pancasila as the source of all sources of law.[29]

4.4.2 Laws and regulations

Regarding LGBT regulations, on February 17, 2016, General Chairman Ma'ruf Amin in a press conference at the Central Jakarta MUI Office said that LGBT is prohibited in Islam, contrary to Law Number 1 of 1974 concerning Marriage, contrary to Article 3 of Law No. Law Number 20 of 2003 concerning the National Education System, contradicts the first and second principles of Pancasila and contradicts Article 28, Article 29 paragraph (1) of the 1945 Constitution.[30] Currently, there are several laws and regulations that criminalize LGBT behavior, including South Sumatra Provincial Regulation Number 13 of 2001 concerning Eradication of Immorality in South Sumatra Province, Regional Regulation of Palembang City Number 2 of 2004 concerning the Eradication of Prostitution. Furthermore, on October 15, 2018 the Regent of Cianjur signed a circular containing an appeal to each Jami mosque to deliver preaching with LGBT-related material, then on November 28, 2018 the DPRD Kota Pariaman West Sumatra passed a Regional Regulation on Peace and Public Order Containing LGBT Sanctions, The Depok City Government prepared a Perwali related to LGBT because it was considered effective in preventing social deviations, then the Regent of Kotawaringin Timur,[31]

3.4.1. government policy

Law is part of the social system working tools. The function of this social system is to combine the interests of community members, so as to create state order. Criminal law policies must be able to tackle LGBT by making or reconstructing good regulations that can be an effort to overcome acts that are contrary to Pancasila and the moral values of society contained in the three values of the balance of Pancasila. Crime prevention policies must keep abreast of the developments of crime itself. Efforts to tackle all forms of criminal acts are continuously being pursued, the criminal law policies taken so far are none other than steps that are continuously explored and studied so that efforts to overcome these crimes can be optimally anticipated.[32] According to Dewi Rokhmah, there are several ways that can be done to prevent LGBT behavior, namely:[33] maintain relationships, must have life skills, close all gaps in pornography, hold studies or seminars on the dangers of LGBT, the role of the mass media, the role of government, the role of leaders, scholars and education experts, and the role of the community. Based on this, there needs to be an active role from the government as a legislative, executive and judicial institution as well as community and family participation as a small part of society in preventing and overcoming highly influential LGBT behavior. have a broad impact on social life.

When viewed from the relationship between law and religion, the law should be based on religion. This is in line with Mahfud MD, who said that there is a universal conflict regarding LGBT as the 1948 Universal Declaration along with derivatives and particularism which states that human rights serve society as a theory of law and society. In Islam, it is mentioned by Ibn Qoyim that laws change according to society, time and customs. In 1998 the Declaration of Human Rights in Cairo which states that human rights in the west and in the east are different, then signed by the Indonesian people as stated in Article 28 paragraph (2) that LGBT human rights can be reduced by law based on law. Considerations of moral, religious values and public safety and public order.[34]

In terms of criminal law reform, criminal law reform is an effort to provide legal certainty through the renewal or formation of new laws for the people of Indonesia. In the process of law formation, of course, the study of legal values that live in society and the interests of the entire community is an important thing that must be considered to be accommodated. Whereas in the perspective of law as a tool of social engineering, law does not create satisfaction but law is only used as a legitimate interest to achieve

satisfaction and balance, therefore the law that is made must be a law that maintains a balance of interests. from an entire community, not a group of people.[35]

Basically, in the application of law (*rechtstoepassing*) theoretically depends on the existence of 4 (four) elements, namely: legal elements, structural elements, community elements and cultural elements. What is meant by legal elements here is a product or text of legal regulations. The structural element in the application of the law is related to the institutions or organizations needed to apply the law. What is meant by elements of society relates to how the socio-political and socio-economic conditions of the community will be influenced by the application of a rule of law or law. Meanwhile, what is meant by cultural elements is related to how the contextuality of a law is applied to the mindset, behavior pattern, norms, values and habits that exist in society.[36] When it comes to criminalizing LGBT behavior, the arrangement must be clear philosophically, juridically and sociologically.

The emergence of crime with a new dimension (new dimensional crime) which is a negative impact of the development of society and the development of science and technology today also needs to be addressed with various more effective crime prevention efforts. In short, the increasingly complex problems faced by society and law enforcement officials in tackling modern crimes need to be balanced with reforming and building a criminal law system as a whole which includes the development of the culture, structure and substance of criminal law. It is clear that criminal policy occupies a very strategic position in the development of modern criminal law.[37] Regarding LGBT, which has penetrated the world of cybercrime, it has a wide impact on society.

In this regard, Roesco Pound said that "law is a means of meeting social needs". Criminal law enforcement and legislation should aim to change the mindset of every law enforcer and society to anticipate and overcome increasingly complex criminal patterns.[38] Meanwhile Mochtar Kusumaatmadja said that law in Indonesia does not have enough role as a tool, but also as a tool for community reform. [39]The concept of social engineering should not stop at the creation of written legal rules because such written laws always have limitations. This concept demands the role of professional law enforcement officers, to give soul to written sentences in statutory regulations. Legal apparatus, especially judges, must be able to explore the legal values that live in society, as mandated in Article 27 of Law Number 14 of 1970 concerning Basic Provisions of Religious Power and then use good values to interpret the applicable law. [40]So that LGBT behavior must be clearly regulated in the laws and regulations so that there is legal certainty for the community. This is related to the concept of criminalization which speaks of an act that is not originally a criminal act to become a criminal act, in this case what can determine the act is a criminal act is the authority of the DPR, not the authority of the Constitutional Court which is negative towards the legislator.

When viewed from the perspective of human rights as the basis for LGBT, there are differences between the Western Declaration of Human Rights and the Declaration of Human Rights from the East. Non-Discrimination of Islamic Human Rights in DC No.A / CON.157 / PC / 62 / Add.18 (1993) emphasizes the concept of justice and its implications in accordance with Islamic religious law, namely collective human rights. However, in UDHR No.A / Res / 217 0 December 1948, non-discriminatory human rights emphasized individual rights according to the liberal concept. The principle of Western non-discrimination against human rights according to Universal Decree No. A / Res / 217 December 10, 1948 does not adhere to a religion, but the principle of non-discrimination on Islamic human rights in DC No. A / CON. 157 / PC / 62 / Add. 18 (1993) adapted to Islamic religious law. The principle of non-discrimination according to UDHR No.A / Res / 217 10 December 1948 is implied in Article 22 of Law Number 39 Year 1999. The principle of non-discrimination against Islamic human rights in DC No.A / CON.157 / PC / 62 / Add.18th (1993) is implicit in the Fifth Pancasila and UUD 1945 paragraph (2) Article 29 and Article 28 point 1. There is no religious egoism at all. for Muslims or non-Muslims in HAM and DC No. A / CON.157 / PC / 62 / Add.18 (1993) soon to be ratified nationally.[41]

4. Conclusion

LGBT has been around for a long time, but these regulations are not clearly stated in the statutory regulations (positive law). Based on the research results, it shows that LGBT is not a crime, However, LGBT behavior is contrary to the constitution, namely the 1945 Constitution, Pancasila, religion, customs, health and the values that live in society. Therefore, Indonesia as a rule of law should have a strong and firm determination in regulating LGBT behavior because the source of law can be written law or unwritten law as an effort to create legal certainty.

Recognition

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