

Islamic Legal Reasoning On Lgbt Marriage (Study Of Prophetic Law Theory)

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ABSTRACT

The phenomenon of Lesbian, Gay, Bisexual, and Transgender has become a widely discussed issue in Indonesia with the rise of advertisements on social media intensified by this community. Propaganda for recruitment by the LGBT community has spread through various social media and has reached campuses, schools, and other public places. In the legal norms of Indonesia, this sexual deviance is refused because this nation is built in an integralist order in which every individual is a member of a family group. Formulating concessions of state life is done by respecting the positioning of a generational identity with the right to a proper place to grow and develop. That is why sexual behavior is strictly regulated in a marriage bond. Thus, concessions in the formulation of LGBT from a human rights perspective must consider prophetic legal reasoning aimed at guiding human life in achieving happiness in the world and the hereafter because prophetic law cannot be separated between the physical body (formal) and transcendental values, so prophetic legal justification sought is for the sake of justice based on the truth of God's power that is oriented towards human benefit. This research aims to learn about LGBT issues from a human rights perspective and how Islam views these issues. This type of research is literature, studying and reviewing several records related to LGBT issues from a humanitarian perspective and an Islamic legal perspective. The result of this research is that from humanity's perspective, LGBT is a deviant sexual behavior that needs to be protected in terms of health and welfare. On the contrary, in the view of religion (Islam), LGBT is a sexual deviation as a trait that is difficult for human reason to understand because this behavior is a grave sin that must be avoided. Based on the prophetic theory, every legal reasoning must be aimed at holding human life in achieving happiness in the world and the hereafter.

1. Introduction

Sexuality is a biological need for normal humans in order to maintain the existence of the human species on earth (Suhaimi Razak, 2016). With sexuality, humans can maintain their existence as khalifatullah on this planet (Yusuf Qardawi, 2003). Islam recognizes the existence of human sexual desire as an inseparable part of the essence of humanity. Fulfillment of biological needs must be in line with religious provisions, that sexual relationship is only justified if it is done with the opposite sex and

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through the mechanism of marriage. Islam prescribes the release of sexual desires through legal marriage. Apart from the institution of marriage, forms of illegal releasing sexual desires are not justified in Islam.

In the current era of modernization, humans face various issues that are interesting to discuss in both informal and official contexts by involving scientific principles. One of the hottest issues discussed lately is the Lesbian, Gay, Bisexual, and Transgender (LGBT) phenomenon, which is rife in society. Many groups reject this phenomenon because it is considered dangerous for human existence. However, some parties accept and even defend this behavior as a form of individual rights that must be respected and protected. This LGBT issue has been the object of debate for quite a long time in the history of human civilization. Societal norms that condemn various kinds of sexual deviations are challenged by groups who feel aggrieved by these norms. This kind of debate became even more visible after the campaign of the LGBT movement started in Western society (Munadi, 2017). The forerunner of this movement was the formation of the Gay Liberation Front (GLF) in London in 1970 (Colin Spencer, 2017), which was inspired by the previous liberation movement in Stonewall, United States of America, in 1969 (Joanne Myers, 2003).

The LGBT phenomenon is an issue that is widely discussed in Indonesian society with the rise of promotions or advertisements on social media that this community is intensifying. Propaganda for recruitment by the LGBT community has spread through various social media and has reached campuses, schools, and other public places. Various domestic and foreign independent survey institutions state that in Indonesia, there are 3% of LGBT people from the total population. (Rustam Dahar Karnadi Apollo Harahap, 2016). In various parts of the world, this behavior has occurred in society since ancient times and continues until today. During the Roman Empire, there were a number of people with same-sex sexual orientation, for example, Nero, a Roman emperor (54-68 AD), who had four wives. His last wife, Sporus, was a transgender person who was originally a man and was then ordered to turn himself into a woman. Then a former gladiator, Spartacus, who rebelled in 73-71 BC, had a pair of followers, namely Agron and Nasir, both of whom were same-sex couples. In the modern era, a famous storyteller from Denmark, Hans-Christian Andersen (1805-1875), is a world celebrity who is also bisexual. Andersen is secretly involved in a romantic relationship with her best friend, Edvard Collins (Munadi, 2008).

The Qur'an has given a hint that this deviation has occurred in society, as the word of Allah swt. in Q. S. an-Naml / 27: 54-55.

تَجْهَلُونَ قَوْمَ آثَمَ بَلِّ ۗ النِّسَاءِ نُونٍ مِّنْ شَهْوَةِ الرِّجَالِ لَتَأْتُونَ أَبْنَكُمْ تُبْصِرُونَ وَأَنْتُمْ الْفَاجِشَةُ آتَأْتُونَ لِقَوْمِهِ قَالَ إِذْ وَلُوا طًا

Translation:

“And (remember) Luth, when he rebuked his people, “Do you commit that shameful deed while you can see (the abomination)?” What is meant by shameful deed in this verse are sexual deviations, including same-sex relationships. “Do you really lust after men instead of women? In fact, you are (only) a people acting ignorantly.”

In other verses, it is found in Q. S. Ash-Shu'ara/ 26: 165-166. Allah swt. said:

عَادُونَ قَوْمَ آثَمَ بَلِّ أَرْوَاجِكُمْ مِّنْ رَبِّكُمْ ۗ لَكُمْ خَلْقٌ مَّا وَتَذَرُونَ ۗ الْعَلَمِينَ مِنَ الذُّكْرَانِ آتَأْتُونَ

Translation:

“Why do you (men) lust after fellow men, leaving the wives that your Lord has created for you? In fact, you are a transgressing people”.

The two verses above tell about the people of Prophet Luth who had the habit of liking the same sex (homosexuals). Allah SWT mentions it as a shameful deed (faahisyah) and transgression. Allah SWT ordered the people of Luth to stay away from and change their sexual orientation from homosexual to heterosexual (liking the opposite sex). Allah SWT mentions that women are partners for men to become wives and sexual partners. Normal sexual intercourse is between a man and a woman, while same-sex sexual relations are deviations that must be avoided.

In the concession of legal norms in Indonesia, this sexual deviance is refused because this nation is built in an integralist order in which every individual is a member of a family group. The model of Indonesian humanity is the glorification of generations with clear lineages that form social groups. This is the foremost identity in the building of Indonesian national law.

Formulating concessions to state life is done by respecting each generation and positioning their identity with the right to a proper place to grow and develop. That is why sexual behavior is strictly regulated in marriage bonds. This problem is regulated in Article 1 of Law no. 1 of 1974 jo. Law no. 16 of 2019 concerning Marriage: "Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household)

based on Belief in the One Almighty God." This article requires that sexual behavior be only accommodated in marriage as a "physical and spiritual bond," which aims to form a family based on Belief in One Almighty God. This is not just a record, but more than that is the maintenance of generations. Every legal decision must be with perfect consideration as a reason to reach a logical decision. The human mind tends to the truth. Thus, concessions in the formulation of LGBT in the perspective of human rights must take into account prophetic legal reasoning, the law that has the soul of justice and protects human dignity, has a transcendental dimension, and has a value axis attached to essential truth and is related to the spiritual structure of civilized society intended to guide life in achieving happiness in the world and the hereafter. Because prophetic law cannot be separated between physical bodies (formal) and transcendental values, the only justification for prophetic law sought is for the sake of justice based on the truth of God's power which is oriented towards human benefit as a manifestation of His love (Absori, 2018).

2. Literature Review

2.1 Definition of LGBT

LGBT is an acronym for Lesbian, Gay, Bisexual, and Transgender, which refers to forms of sexual orientation in humans. This term is used to indicate self-identity. The acronym LGBT is an attempt to categorize various groups within a single gray area, and the use of this acronym signifies that the issues and priorities of the groups represented are given equal attention.

The word Lesbian comes from a poet from the island of Lesbos in Greece who highly glorifies homosexual love and understands it as something higher than heterosexual love, where a woman directs her sexual orientation to another woman or also called a woman who loves another woman physically, sexually, emotionally, or spiritually. (Munadi, 2008). A Lesbian is a woman who loves or feels sexual stimulation of the same sex or an emotional relationship involving feelings, love, and affection between two people of the same sex, woman (Kartini Kartono, 2009). A community with erotic and sexual emotional ties among women then identifies as a lesbian. (Triana Adhiati, 2007). Lesbians also divide roles. There is the type of woman who adopts the role of a man as in heterosexual relationships, called butch lesbians, and there is a type of woman who plays a role like a woman in a heterosexual role with a feminine appearance, is passive, and only waits or accepts. (Naek L, Tobing, 1987). Another opinion says that lesbians are an emotional component in a relationship, where a woman establishes a relationship with the same sex in the form of an emotional bond. Meanwhile, the term homosexual is more focused on sexuality, a relationship that is carried out to have sexual intercourse with each other (Endah Susilandari, 2004).

Gay is a term generally used for individuals with homosexual traits. Initially, this term began to be used at the end of the 19th century AD to express feelings of freedom, unattached, happiness, bright and flashy. Then this word was associated with men whose activities and culture glorified the sexuality of their kind (Munadi, 2008). In everyday terms, gay is more often used to refer to men who have a tendency to like and have a sexual orientation towards the same sex (Duffi and Atwater, 2005). Kelly Brook states that to identify that someone is gay can be done in three ways: a) There is an interest in other people who have the same gender as himself; b) Sexual involvement with one or more people who have the same sex as himself; c) He identifies himself as gay (Kelly Brook, 2001). Therefore, the term gay is a phrase that describes a man's sexual, romantic, or emotional attraction toward other individuals of the same sex or men that are attracted to other men.

Bisexual is a sexual orientation disorder that likes not only the same sex but also the opposite sex. This disorder favors women and men. With both, they feel sexually satisfied. It can also be defined as groups of people who are physically, emotionally, and/or spiritually attracted to both the opposite sex and the same sex. (Robi Yansyah and Rahayu, 2018). According to Jeanete, as quoted from Chaplin, bisexuality is a state of feeling equally attracted to both sexes, women and men (Jeanete Ophilia Papilaya, 2016).

Etymologically, transgender comes from the words trans and gender. The word trans means moving (hand; dependent) transfer, and gender means sex (Pius A. Partanto dan M. Dahlan Al Barry, t. th.). Etymologically, transgender comes from the words trans and gender. The word trans is moving (hand; dependent) transfer, while gender means sex. (Pius A. Partanto and M. Dahlan Al Barry, t. th.). Meanwhile, terminologically, transgender is defined as a symptom of someone's dissatisfaction because they feel an incompatibility between their physical form and gender and their psychology. Some of the expressions visible are in the form of makeup, style, behavior, and even further to sex reassignment surgeries. (Mahjuddin, 2005). According to Nanis Damayanti, as quoted from Gibtiah, a transgender is a person whose way of behaving or appearance is not in accordance with their gender roles in general, or people who at various levels "violate" cultural norms regarding how men or women are. (Gibtiah, 2016). From the above understanding, it can be understood that LGBT is sexual behavior in the form of lesbian (sexual relations between women), gay (sexual relations between men), bisexual (relationships can be with men and women), and transgender (people who move gender because they feel they find their identity).

2.2 Characteristics and Phenomena of LGBT in Indonesia

LGBT in Indonesia can be classified into two different entities: First, LGBT includes mental disorders or sexual orientation deviations inherent in a person as an individual. The disease is caused by two factors, biological and sociological, and can be transmitted to other people. This first entity was divided into two identities, some deliberately closed themselves off, but some revealed their identities with the hope that someone could help heal them. Second, LGBT as a community, group, or organization with a certain vision, mission, activity, or movement. This second entity is now widely discussed. These two entities have become a phenomenon that is constantly debated between groups that reject it on the grounds of religiosity and the perpetrators will be punished with grave sins and groups that accept their existence on the basis of human rights, which are naturally inherent in human beings, are universal and lasting, and must be protected, respected, maintained and may not be neglected, reduced, or seized by anyone.

Historically, the development of LGBT started in the 1960s. Previously they were known as Sentul and Kantil. Now they are called Buci and Femme. Over time this community has increasingly moved forward to become institutionalized as it is today. The presence of this group in Indonesia dates back to 1969, when the Governor of DKI Jakarta, Ali Sadikin facilitated the establishment of the first wadam organization named "The Djakarta Wadam Association". But in 1980, the term "wadam" changed to waria. On March 1, 1982, the first gay organization in Indonesia and Asia was established, named Lambda Indonesia, with a secretariat in Solo. Then several branches appeared in Yogyakarta, Surabaya, Jakarta, and other places. In 1985, a gay group in Yogyakarta established the Yogyakarta Gay Brotherhood (PGY). In August 1987, the Lesbian and Gay Nusantara Working Group (KKLGN), whose name was later shortened to GAYa Nusantara, was founded in Pasuruan, as the successor of Lambda Indonesia, with the main character Dede Oetomo (Yulianti Mutmainnah, 2016).

This deviation in sexual behavior shows a tendency to increase and raises pros and cons in society. Those who agree with the LGBT hope that their existence is valued on the basis of humanity, is no longer seen as a behavior of a mental disorder, and have access to politics, the economy, and all other fields, as heterosexuals do. Those who are against it see that this behavior is deviant, sinful, and causes damage to the social order of humanity to the point where it leads to the extinction of the human species. LGBT is seen as a mental disorder, requiring assisted therapy to cure it. Indonesia does not yet have definite statistical data about the exact number of these community members because not all of them open up and admit their orientation (Yudianto, 2016). The estimated data of 3% of the total population of Indonesia shows an increase that must receive serious attention because their promotion and self-introduction campaigns are massive.

2.3 LGBT in Human Rights Perspective

The resolution on the recognition of LGBT rights is the first UN resolution that specifically addresses the issue of human rights violations based on sexual orientation and gender identity. This resolution on the recognition of LGBT rights is used as the basis for demands for LGBT people to demand their rights in the name of human rights. However, in the Indonesian context, upholding human rights, especially those fought for by the LGBT community, must be adapted to the rule of law and the values of Pancasila as the basis and philosophy of life as a nation and state. For the Indonesian state, which is based on law and Pancasila, the state will respect the rights of every citizen, and the enforcement of human rights will also be adjusted to the values and philosophy that the Indonesian nation adheres to.

The preamble of the Universal Declaration of Human Rights states that human rights need to be protected by legal regulations so that people will not be forced to choose the path of rebellion as a last resort against tyranny and colonialism (Resolution 217 A, December 10, 1948). The 1945 Constitution states "the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as an individual before the law, and the right not to be prosecuted on the basis of retroactive law." are human rights that cannot be reduced under any circumstances (Articles 28A and 28i of the 1945 Constitution). A National Commission on Human Rights commissioner said in an interview that the state has an obligation to protect Indonesian citizens regardless of their type, ethnicity, religion, race, ethnicity, or minorities and vulnerable groups (meaning vulnerable to violence), including LGBT (Natalius Pigai, in discussion on ILC TV ONE, Tuesday, February 16, 2016). As for protection, what must be guaranteed and provided in the LGBT context from a human rights perspective is the protection of human rights in the form of health insurance to recover from illness, as stated in the Universal Declaration of Human Rights: "Every person has the right to a standard of living adequate for the health and welfare of himself and his family, including the right to food, clothing, housing, and health care as well as necessary social services, and the right to security in case of unemployment, illness, disability, becoming a widow/widower, reaching old age or other circumstances resulting in a lack of livelihood, which are beyond his power" (Article 25 of the UDHR). Based on the information above, it can be inferred that from a human rights perspective,

the protection provided is a matter of health and welfare (treatment and care), not recognition of their deviant sexual orientation.

2.4 Islamic views on LGBT

Islamic Sharia is universal, governing all aspects of human life. Among the aspects of life that are important to regulate in Islam is biological relationship. Sex is sacred, must be done properly and morally through marriage. Having sex outside of marriage is called adultery, which is a disgraceful offense. Lately, sexual behavior in the form of adultery, homosexuality, lesbians, and various strange behaviors in sex has been widely discussed by Indonesian people, both through electronic and printed media, as well as through seminars and discussions. The term that develops in sexual behavior and strange behavior is called LGBT.

In Islamic teachings, LGBT is seen as deviant sexual behavior and is a grave sin. The Qur'an clearly explains that LGBT behavior is a sexual deviation that has existed since ancient times. Allah says:

مُسْرِفُونَ قَوْمٌ بَلَّ النِّسَاءَ دُونَ مَنْ شَهَوَهُ الرِّجَالُ لَتَأْتُونَ إِيَّكُمْ الْعَالَمِينَ مَنْ أَحَدٍ مِنْ بَنِي سَبَقَكُمْ مَا الْفَاحِشَةُ أَتَأْتُونَ لِقَوْمِهِ قَالَ إِذْ وَلَوْ طَأَّ

Translation:

"And [We had sent] Luth when he said to his people, "Do you commit such immorality as no one has preceded you with from among the worlds? Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people."

This verse describes the life of Prophet Luth's people, who tended to like their same-sex (men) to do liwath, and did not like women. This act is classified as heinous and exceeding limits. Allah forbids this act and will torture the perpetrators with a painful punishment as it befell the people of Luth. Apart from liwath, another phenomenon emerged recently called Sihaq, sexual intercourse between women so that they both feel a delicacy in this relationship (Sayyid Sabiq, t. th.). These actions (liwath and sihaq), both homosexual behavior (same-sex relations), are included in major sins. Prophet Muhammad SAW. said:

وَلَا الْمَرْأَةُ عَوْرَةَ إِلَى الْمَرْأَةِ تَنْظُرُ وَلَا الرَّجُلُ عَوْرَةَ إِلَى الرَّجُلِ لَا يَنْظُرُ : وَسَلَّمَ عَلَيْهِ اللهُ صَلَّى اللهُ رَسُوْلُ قَالَ : قَالَ أَبِيهِ عَنِ الْخُدْرِيِّ سَعِيدِ أَبِي بِنِ الرَّحْمَنِ عَبْدِ عَنِ الْوَاحِدِ النَّوْبِ فِي الْمَرْأَةِ الْمَرْأَةُ إِلَى تَفْضِي وَلَا الْوَاحِدِ النَّوْبِ فِي الرَّجُلِ إِلَى الرَّجُلِ يَفْضِي

Translation:

"From Abdurrahman bin Abu Sa'id Al Khudri from his father he said; The Prophet sallallaahu 'alaihi wasallam said: "Don't let a man see another man's genitals and don't let a woman see another woman's genitals, don't let a man share a blanket with another man and also don't let a woman share a blanket with another woman." (Narrated by Baihaqi).

This hadith explains the prohibition for men to gather in one garment, as well as for women with other women. This is a violation of religious norms, moral norms, and denial of the will of Allah SWT., who only created humans of two types, men and women. There is no other type created by Allah swt. related to gender.

In Islam, homosexuality among men is called liwath, whose root word is the same as the root word luth. The action is called liwath because it was carried out by people who were disobedient to the call of Prophet Luth as. Homosexuality and those related to it are heinous acts and include grave sins, damaging elements of ethics, human nature, religion, the world, and even destroying mental health. Allah SWT. denounced homosexuality with great torment as Allah showered burning stones on the people of the prophet Luth in return for this disgusting deed. Seeing that the LGBT phenomenon is increasingly widespread and worrying for this nation, especially in the continuity and welfare of generations, the Indonesian Ulema Council issued fatwa Number 57 of 2014 concerning Lesbian, Gay, Sodomy, and Obscenity, which can be viewed from two perspectives;

The reasons for the MUI's issuance of the fatwa are: 1) Recently, the phenomenon of same-sex (homosexual) couples community, both gay and lesbian, is increasingly prevalent openly and secretly, not infrequently they even live like husband and wife , 2) In the name of human rights, this homosexual community, both gay and lesbian, demands equality and equal rights as well as recognition of their sexual orientation including same-sex marriage, 3) In addition to homosexuality, sexual crimes, such as obscene behavior and sodomy, i.e. same-sex sexual indulgence through the anus is increasingly widespread and very troubling to society, 4) The forms of sexual deviation as above are disturbing society, threatening social order, and threatening the institution of marriage as the only legitimate institution in releasing sexual desires and managing household

and community life, 5) With regard to this facts, questions arose from the public regarding punishments for same sex offenders, both lesbian and gay, sodomy, and obscenity perpetrators.

The contents of the MUI Fatwa Number 57 of 2014 are as follows: 1) Sexual relations are only permissible for someone with a husband-and-wife relationship, a partner based on a valid marriage according to syar'i; 2) Sexual orientation towards the same sex is a disorder that must be cured, and deviation, which must be straightened out; 3) Homosexuality, both lesbian and gay, is illegal and is a form of crime (jarimah); 4) Homosexual perpetrators, both lesbian and gay, including bisexual, are subject to had and/or ta'zir punishment by the authorities; 5) Sodomy is unlawful and is a heinous act that incurs a grave sin (fahisyah); 6) The perpetrators of sodomy are subject to ta'zīr punishment whose maximum level of punishment is death penalty; 7) Homosexual activity other than sodomy (liwat) is haram, and the perpetrators are subject to ta'zīr punishment; 8) Fornication acts, which are sexual desires such as groping and other similar acts without a legal marriage bond, carried out either to a different sex or the same sex, to adults or children, are illegitimate (haram); 9) The perpetrators of the fornication act, as intended in number 8, are subject to ta'zīr punishment; 10) In the case that the victims of homosexual (jarimah), sodomy, and fornication crimes are children, the perpetrators are subject to increased punishment up to death penalty; 11) Legalizing same-sex sexual activity and other deviant sexual orientations is haram.

Viewed from the mashlahah murshalah approach this MUI fatwa is intended to prevent harm arising from deviant sexual behavior and to realize benefit by recommending that biological relations are only for people of different sexes through marriage. The principle in Mashlahah mursalah is benefit in the sense of carrying out an act that contains the value of benefit and rejects mafsadat (المفاسد ودرء المصالح جلب). Viewed from sad az-zariyah approach, this fatwa is intended to prohibit and close roads that can cause something to cause harm. This fatwa is not just an appeal but rather an order to avoid actions leading to a deviant sexual orientation. Therefore, it should be obeyed based on the rule of fiqh *بما منوط الرعية على امام الا تصرف لمصلحت* "The policy issued by the priest/government for the people must be based on maslahah".

3. Methodology

Answering the main problem, the compiler uses a type of qualitative research with a descriptive method, which is a type of research by relying on systematic reasoning of the relationship of two or more objects through logic and common sense, justification on the basis of relevance, chronology or coherence of human reason. Data sources in this study are primary data and secondary data. Data collection is carried out by observation techniques, interview techniques, and documentation techniques. After a number of data is collected, the next step is to analyze the data with 3 stages, namely data reduction, data presentation, and data verification. Data crunching is done by participation, increasing observation persistence, and regulation.

5. Conclusion

Based on the descriptions above, the following conclusions can be drawn:

1. LGBT is sexual behavior in the form of relationships between women, sexual relations between men, relationships with both men and women, and people who change gender because they feel they have found their identity.
2. LGBT in Indonesia are classified into two different entities: 1) LGBT includes mental disorders or deviations of sexual orientation attached to a person as an individual. 2) LGBT as a community, group, or organization with a vision, mission, and certain activities or movements, and is campaigned massively.
3. From the human rights perspective, the protection given is a matter of health and welfare (medication and care), not of recognition of their deviant sexual orientation.
4. In Islam, sexual deviation in any form is a characteristic that is difficult for a believing human mind to understand because it is a grave sin that must be avoided. Based on the prophetic theory, every legal reasoning must be aimed at holding human life in achieving happiness in the world and the hereafter.

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