

IMPOSING CRIMINAL SANCTIONS AGAINST LESBIAN, GAY, BISEX AND TRANSGENDER BEHAVIOR FROM THE PERSPECTIVE OF CRIMINAL LAW AND PANCASILA

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ARTICLE INFO

Article history :

Received : Mar 1, 2023

Accepted : Apr 2, 2024

Published : May 6, 2024

Keywords :

LGBT,
KUHP,
Pancasila

ABSTRACT

Lesbian, gay, bisexual and transgender are synonymous with sexually deviant behavior towards members of the same sex and their presence is the object of debate among society, because their behavior is contrary to religious and social legal norms, so that the presence of LGBT is also met with rejection in society. The aim of this research is to examine and analyze legal incidents committed by Lesbians, Gays, Bisexuals and Transgenders on the basis of consensual acts as criminal acts and to study more deeply what are the obstacles to law enforcement against Lesbians, Gays, Bisexuals and Transgenders. This research was conducted using a qualitative approach and a legal approach. Analysis shows that the Criminal Code (KUHP) does not provide criminal threats against lesbian, gay, bisexual and transgender (LGBT) groups. Therefore, there is a need for a legal system to enforce laws against LGBT.

INTRODUCTION

Society in general is currently faced with a Liberalism order of life based on human rights, which gives birth to an understanding of freedom of thought and freedom of behavior in society and encourages demands for legal recognition so that its existence is acknowledged, behavior that is born from the foundation of liberalism, namely the emergence of lesbians, gays , Bisexual and Transgender. LGBT is an acronym for the words Lesbian, Gay, Bisexual and Transgender, which denotes the forms of sexual orientation found in humans. This term has been used since the 1990s and replaced the phrase "gay community".

Some data explains the emergence of LGBT In fact, it has been around for a long time, as stated in the Koran, that the emergence of LGBT people began with deviations in the behavior of the Prophet Lut, and this LGBT issue has been the object of debate for quite a long time in the history of human civilization, in fact its development is not only in urban areas, It has even spread to remote rural areas which threatens the social order of society, especially the social relations of children and teenagers today. This condition is certainly very worrying. Reporting from data from the Indonesian Ministry of Health, the list of the largest population of LGBT people in Indonesia is quoted from research by the Ministry of Health of the Republic of Indonesia, namely West Java with 302 thousand people registered as LGBT, East Java with 300 thousand, Central Java with 218 thousand, and DKI Jakarta with as many as 43 thousand.

The increasing development of LGBT shows that Indonesia is in a state of LGBT emergency which must be handled seriously, both from political, legal, health and psychological aspects, so that its development can be prevented with appropriate steps. Moreover, the LGBT community currently feels supported by western countries which are voicing their support for LGBT people by inserting messages supporting LGBT.

As is the agenda for the meeting of lesbian, gay, bisexual and transgender (LGBT) activists throughout ASEAN in Jakarta, which was organized by ASEAN Queer Advocacy Week (AAW),

however this activity was canceled in Jakarta on July 12 2023 which was canceled by the Government.

The campaign, entitled ASEAN Queer Advocacy Week (AAW), is an effort to influence Indonesian society to accept western culture which believes it upholds human rights, so that Indonesian society can follow what is customary. Through this campaign activity, it was hoped that there would be a positive response from the Indonesian people, however, the social control carried out by the community through religious institutions such as the Indonesian Ulema Council received a strong reaction against this activity, so the Government took steps to evaluate the licensing of this activity.

Freedom of LGBT behavior cannot be separated from human rights which are used as guidelines to place freedom of behavior and freedom of thought as the foundation for protecting the existence of LGBT, because human rights have always been a reason to voice the defense of LGBT existence. This is different from the view of Islamic teachings that regulating humans according to nature is something that must be done, because humans were created by Allah SWT, namely in pairs, namely men and women. As Allah SWT explains in the Qur'an, Surah Alhujrat: 13: Meaning: *"O people, indeed We created you from male and female, and We made you into nations and tribes so that you may know each other. Indeed, the most noble of you to Allah are those of you who are pious (insyaf). Indeed, Allah is All-Knowing and the Giver of news" (TQS.Al Hujuraat verse 13).*

The verse above informs us that life must be carried out according to the decree of the human creator, so that the presence of LGBT is a form of legal violation. In the next verse, the Qur'an also hints at the LGBT phenomenon that occurs in society, including in the QS. Al-Naml (27): 54-55 which reads:

Meaning : *And (remember the story of) Lut, when he said to his people: "Why do you do those fahisyah (abominable) acts while you are showing (them). Why do you go to men to (fulfill) (your) desires, not (go to) women? Actually you are a people who don't know (the consequences of your actions)." (QS. Al-Naml (27): 54-55)*

The two verses above explain human decisions in terms of nature that must be accepted and carried out, as well as the verse above tells about the Prophet Lut's people who had the habit of liking people of the same sex (homosexuals), Allah SWT calls this a heinous act (faahisyah) and beyond the limits. Then ordered them to stay away from and change their sexual orientation from homosexual to heterosexual (liking the opposite sex). Allah SWT states that women are partners for men to become their wives and sexual partners. Normal sexual relations are between men and women, while same-sex sexual relations are a deviation that must be avoided.

A study published in the Citizenship Journal Volume 18, Number 2 (2021) presents data on the increase in LGBT groups in Indonesia. In particular, gay people in urban areas such as Bali, Jakarta, Surabaya and Yogyakarta. The research is entitled "The Existence of LGBT in Indonesia in a Study of Human Rights, Religion and Pancasila Perspectives". The study was carried out by a team consisting of Toba Sastrawan Manik, Dwi Riyanti, Mukhamad Murdiono, and Danang Prasetyo from across universities. Toba and his team wrote that the LGBT group has an organization called Gaya Nusantara. In fact, it is claimed to be the largest gay organization in Southeast Asia with distribution in 11 cities in Indonesia.

The phenomenon of developing LGBT behavior has invited many academics and researchers to conduct research with different focuses and points of view. The author tries to present several legal events by presenting cases that occurred in the Military Court and General Court, and were determined through the judge's decision as follows:

1. DILMIL II 08 JAKARTA Decision Number 231-K/PM II-08/AU/XII/2020 dated 23 March 2021 through the Jakarta Military Court, has committed a criminal act intentionally and openly violating decency" committing deviant sexual acts.
2. Manado III-17 Military Court Decision number 19-K/PM.III-17/AD/III/2021 The defendant was legally proven. has committed a criminal act intentionally and openly violating morality" committing deviant sexual acts
3. State District Court Decision number: 36/Pidsus/2021/PNNga, The State District Court which hears the Defendant's criminal case on behalf of YASIN . The District Court declared the defendant YASIN guilty of committing the crime of obscene acts towards a minor.

Based on the data above, the author sees that in each decision that has been made, it is more about imposing sanctions for obscenity and ethical violations, it has not touched on the full legal object relating to the punishment of Lesbian, Gay, Bisexual and Transgender behavior by the perpetrators so it is necessary to conduct research on how to enforce the law. towards Lesbian, Gay, Bisexual and Transgender perpetrators and what are the obstacles to law enforcement.

Departing from the research background that has been explained, the author conducted this research as an effort to enrich knowledge and broaden insight in the field of law. The purpose of writing this article is:

1. To study and analyze legal incidents committed by *Lesbians, Gays, Bisexuals* and *Transgenders* on a consensual basis as criminal acts;
2. To study more deeply what are the obstacles to law enforcement against *Lesbians, Gays, Bisexuals* and *Transgenders*.

RESEARCH METHODS

In the process of conducting legal research the author will use the approach that is considered most appropriate to the research, namely:

1. Legislative Approach

This approach means a research approach that is carried out by reviewing all laws and regulations related to the legal issue being handled by the researcher. With this approach, the author will look for the legal ratio and ontological basis for the birth of the law, so that the researcher is able to understand the philosophical content of the law and is able to conclude whether there is a philosophical conflict between the law and the issue at hand.

2. Case Approach

The case approach is carried out by examining cases related to the legal issues being faced. This case is a case that has become a court decision that has permanent force or inkracht. This case is not limited to the region, it can occur in Indonesia or in other countries. The main study in this case approach is the judge's ratio decidendi or reasoning to arrive at a decision. Ratio decidendi or reasoning is needed both for practice and academic studies.

3. Historical Approach (Historical Approach)

This historical approach is carried out by conducting a study of the background of the thing being studied and the development of regulations regarding the issue being faced. This study is necessary when the researcher wants to reveal the philosophy and thought patterns that gave rise to the issue being studied.

4. Comparative Approach (Comparative Approach)

This comparative approach is carried out by comparing Indonesian state regulations with one or more other countries regarding the same thing. Researchers can also compare court decisions in several countries regarding the same case. The function of legal research with a comparative approach is to find similarities and differences between these laws. Then, this difference is to answer the issue between the provisions of the law and the philosophy that gave birth to the law. The result of comparing laws is that researchers will be able to obtain an overview regarding the consistency between philosophy and law between one or more countries. This picture can also be obtained by comparing court decisions between one country and other countries in the same case

RESULTS AND DISCUSSION

Review of the Punishment of LGBT from a Pancasila Perspective

In criminal law, if an act can be categorized as a criminal act, it must fulfill the element of "against the law". Acts against the law in Dutch are called "*wederrechtelijk*". Before 1919 in the Netherlands, unlawfulness was only defined as a violation of written legal articles, but since 1919, the Netherlands has experienced legal development by interpreting "against the law" not only for violations of written legislation, but also for any violation of decency or appropriateness in social life.

The element of unlawfulness is an objective assessment of an action, as well as related to LGBT behavior, it is an unlawful activity that is contrary to nature. Morality and the constitution, so that LGBT behavior is an act that is prohibited by law and is contrary to the Pancasila constitution.

Using Pancasila as an Indonesian perspective in discussing the punishment of LGBT, punishment from the Pancasila Philosophy perspective must be oriented towards the following principles :

- 1) Recognition of humans as creatures of the Almighty God. Thus, the form of punishment must not conflict with any religious beliefs held by Indonesian society. A person's punishment must be directed at awakening the convict's faith, through which he can repent and become a faithful and obedient human being. In other words, punishment must function to carry out mental development of the person being punished and transform that person into a *religious person*.
- 2) Recognition of the nobility of human dignity as creatures created by God. Punishment must not injure one's most basic human rights and must not degrade human dignity for any reason. The implication is, even though the convict is in a correctional institution, his human elements and characteristics must not be put aside in order to free the person concerned from his thoughts, habits and evil behavior.
- 3) Fostering national solidarity with other people, as fellow citizens of the nation. The perpetrator must be directed to increase tolerance with other people, foster sensitivity to the interests of the nation and direct the perpetrator not to repeat his crime. In other words, it can be said that punishment needs to be directed at instilling a sense of love for the nation.
- 4) Develop maturity as a solemn citizen, able to control oneself, be disciplined and respect and obey the law as a form of the people's decision.
- 5) Raising awareness of the obligations of each individual as a social creature who upholds justice together with other people as fellow members of society.

As previously discussed, LGBT behavior is very contrary to the Pancasila constitution, because basically LGBT behavior reflects acts against the law, which give rise to violations of the order of state life.

Legal policy towards LGBT according to the Criminal Code

In the history of the development of criminal law, an action/deed is only seen as an act that damages or harms the interests of another person which is then followed by retaliation. Retaliation is not only the obligation of the person who has been harmed or affected by the action, but is also the obligation of the entire family and even a group of people. The aim of criminal law (*strafrechtscholen*) in general is to protect the interests of individuals or human rights and to protect the interests of society and the state in a harmonious balance, from crimes/disgraceful actions on the one hand and from arbitrary actions of authorities. -authority on the other hand.¹²

Conceptually, the essence and meaning of law enforcement lies in the activity of harmonizing the relationship between values that are described in stable and embodied rules and attitudes of action as a series of final stages of value translation, to create and maintain peaceful social life. (Soekanto, 1979). Based on this theory, basically the laws and regulations that are made must be in line with the constitution, so that law enforcement can run smoothly. So far, there have been obstacles in enforcing the law against LGBT, because criminal law policy in Indonesia does not recognize the term LGBT, but rather in terms of obscene acts and crimes against decency/moral crimes. These actions are regulated in the old Criminal Code which was still in effect at the time this article was written and Law number 1 of 2023 concerning the new Criminal Code which will come into effect 3 years from the date of promulgation, namely in 2026.

As stated by the Coordinating Minister for Political, Legal and Security Affairs (Menko Polhukam) Mahfud MD, he emphasized that the Criminal Code (KUHP) does not provide criminal threats against lesbian, gay, bisexual and transgender (LGBT) groups.¹⁴ In Law number 1 of 2023 concerning the Criminal Code, Article 414, which is part of the legal system to regulate and organize life in a country so that people governed by the law obtain certainty, benefit and justice in social life. and state. Article 414 reads :

- 1) Any person who commits an obscene act against another person of the same or different gender:

- a. In general, he will be punished with a maximum imprisonment of 1 (one) year and 6 (six) months, or a maximum fine of III;
 - b. Forced by force or threat of violence, shall be punished with imprisonment for a maximum of 9 (nine) years, or
 - c. What is published as pornographic content is punishable by a maximum imprisonment of 9 (nine) years.
- 2) Every person who, by force or threat of violence, forces another person to commit an obscene act against him, shall be punished with a maximum imprisonment of 9 (nine) years.
- It is necessary to realize that the policies issued by the government towards LGBT people can be said to be still half-hearted in their implementation. For example, the issue of gatherings, there are no rules that prohibit groups of same-sex lovers from gathering and associating and expressing opinions. In fact, regarding LGBT and its rights in Indonesia, Indonesian law only stipulates two genders, namely men and women.

CONCLUSIONS

Legal events are all incidents or occurrences that can give rise to punitive consequences between parties who have a legal relationship, including in this case LGBT behavior, potential violations of behavior that are clearly contrary to the norms of decency and rejection of human nature, have caused problems in society. , so that the atmosphere of the social relations system is disrupted, in the midst of this condition, law enforcement is needed in the form of imposing sanctions on LGBT which have permanent and clear legal force, so that the spread of LGBT can be prevented.

From the reviews that have been submitted, the issue of criminalization of LGBT is a problem that has received little attention in criminal law policy, because it is caused by obstacles that are influenced by human rights which want groups of lovers of the same type to be seen as fair by the world community, that they (LGBT group) is a human being created by God who is also the same as other humans in general. Even though LGBT behavior is clearly behavior that goes against the nature of the creation of the Almighty God, so criminal law policies against LGBT are really needed, to place humans according to their nature.

This support or rejection can more or less influence the social order of society due to the opinions formed by each person, thereby influencing social behavior that has existed for a long time. The opinions that are formed can also influence the State to take action and make decisions in the form of policies to respond to existing opinions in society and how to respond to them. The government of a country plays an important role in responding to a social phenomenon that exists or arises in society.

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