

# **An Analytical Study of Solutions to LGBT Issues From The Perspectives of Islamic Law, Human Rights, and Positive Law in Indonesia**

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**Abstract:** The phenomenon of LGBT (Lesbian, Gay, Bisexual, and Transgender) in Indonesia has become an increasingly prominent social and legal issue, driven by advances in technology and greater freedom of expression in the public spaces. Although parts of the global community are increasingly accepting of non-heterosexual orientations, most people in Indonesia still reject them, seeing them as incompatible with religious and cultural norms. This study aims to analyze the LGBT phenomenon from three main perspectives; human rights, Islamic law, and Indonesia's positive law, in order to find common ground between individual freedom and the moral boundaries upheld by religion and the state. This study employs a normative legal method with a conceptual approach, drawing on literature reviews, statutory regulations, and Islamic legal doctrine, particularly the principles of maqasid al-syari'ah. The findings indicate that, under Islamic law, LGBT behavior falls under the category of al-fawahish (indecent acts), which contradicts human fitrah (natural disposition) and may be subject to hadd or ta'zir penalties. Under Indonesia's positive law, sexual orientation is not directly criminalized, but same-sex indecent acts may still be subject to criminal penalties under the Indonesian Criminal Law. From a human rights perspective, individual freedom is recognized but remains limited by moral values, religion, and public order, as stipulated in Article 28J of the 1945 Indonesian Constitution. Therefore, the response to the LGBT phenomenon must be comprehensive and humane, balancing the protection of individual rights with the enforcement of moral norms through legal, educational, and guidance approaches grounded in religious and humanitarian values.

**Keywords:** LGBT, Islamic Law, Human Rights, Morality, Individual Freedom..

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## **Introduction**

Sexual orientation deviations, commonly referred as LGBT (lesbian, gay, bisexual, and transgender), have become a global issue that is increasingly visible in the Indonesian public sphere. This phenomenon has become more prominent with the rapid advancement of technology, which has emboldened them to express themselves more freely in society. The LGBT movement in Indonesia is not a new phenomenon. The 1980s marked the growth of this movement with the emergence of the Fantastic Dolls dance group, which consisted of

transgender women. This was followed by the establishment of the first LGBT organization, Himpunan Wadam Djakarta (HIWAD). Over time, various other communities and organizations were formed to demand social recognition.<sup>1</sup> Significant changes occurred after the 1998 reforms, when freedom of expression began to be more widely recognized. Representatives of bisexual women, lesbians, and transgender men were officially

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<sup>1</sup> Endang Setiowati, "Permissive Attitude toward LGBT in Jakarta: Study of Differences in the Level of Permissiveness among

individuals born in 1950-1970's and 1980-2000's," *SHS Web of Conferences* 33 (2017): 2.

included in the activities of the Indonesian Women's Congress in December 1998.<sup>2</sup>

The LGBT movement has attracted widespread public attention. Although national law does not criminalize same-sex relationships, strong social norms and religious values mean that the majority of society rejects homosexuality and considers it unnatural. Only 9% of Indonesians say homosexuality is "acceptable," while 80% reject it.<sup>3</sup> However, Indonesia does not have any clear national regulations regarding LGBT people, either in terms of legalization or criminalization. From an Islamic perspective, deviant sexual orientation clearly contradicts the basic values of religion. LGBT practices do not allow for the reproduction process, which can hinder the continuity of generations, thus contradicting one of the most important *maqashid sharia*, namely *hifz an-nasl* (preserving offspring). However, another thing that cannot be ignored is that LGBT people are still human beings who have the right to live safely. Many of them have become victims of stigma, discrimination in education and employment, and even physical violence due to their sexual orientation, which differs from that of most people.

The legal vacuum in Indonesia regarding the LGBT phenomenon has caused uncertainty among the public. MUI fatwa no. 57 of 2014 does indeed emphasize that homosexuality is haram, but the fatwa is not binding and the MUI has no authority to enforce the law. Enforcement efforts are often hampered by human rights issues that view sexual orientation as a personal freedom beyond the scope of state intervention.

Several studies on the LGBT phenomenon in Indonesia have been conducted from various perspectives. Karnadi & Harahap (2020) examined LGBT from three major perspectives: religion, human rights, and psychology. They concluded that although LGBT people need to be protected from a humanitarian and health perspective, activities that contradict religious norms must still be restricted. Meanwhile, Ayub (2020) reviews the legitimacy of

the LGBT movement in the West, particularly in the United States, which is reinforced by the removal of homosexuality from the category of mental disorders in the Diagnostic and Statistical Manual of Mental Disorders (DSM), and criticizes the efforts of some parties who seek to deconstruct Sharia law to justify these practices. Meanwhile, Dalmeri (2021) highlights that the discourse on human rights is often used to justify sexual deviance. Through a legal and forensic psychology perspective, he emphasizes the importance of the role of religion and positive law in limiting the legitimacy of such behavior so that it is not normalized morally or socially.

From various existing studies, it seems that the LGBT phenomenon in Indonesia is always viewed through the lens of law, religion, and society. However, comprehensive studies that connect the three are still relatively limited. It is in this context that this article aims to examine LGBT issues from the perspectives of human rights, Islamic law, and positive law in Indonesia. This study is not only intended to identify points of contradiction and possible points of convergence between them, but also to formulate a non-discriminatory approach that remains consistent with the basic principles of Islamic law.

## Materials and Methods

This study is a normative study that adopts a conceptual approach. Normative legal research was chosen because it focuses on the analysis of literature, legal regulations, and related doctrines.<sup>4</sup> The conceptual approach is used to describe, understand, and compare developing ideas.<sup>5</sup> This applies both in positive law and in Islamic law, particularly in relation to the principle of *maqasid al-syariah*.

Primary legal materials include the constitution related to human rights, legislation concerning immoral acts, and sources of Islamic law. Secondary

<sup>2</sup> Muhammad Raihan Gemilang, dkk. "Urgensi Pembuatan Rancangan Undang-Undang Tentang Larangan Lesbi Gay Biseksual Dan Transgender (Lgbt) Di Kabupaten Rejang Lebong Ditinjau Dari Hukum Positif Dan Siyazah Dusturiyah" (Institut Agama Islam Negeri, 2024), 27.

<sup>3</sup> Jacob Poushter dan Nicholas Kent, "The Global Divide on Homosexuality Persists," *Pew Research Center* (blog), 25 Juni 2020,

<https://www.pewresearch.org/global/2020/06/25/global-divide-on-homosexuality-persists/>.

<sup>4</sup> Irwansyah, *PENELITIAN HUKUM Pilihan Metode & Praktik Penulisan Arikel* (Mirra Buana Media, 2024), 6.

<sup>5</sup> Irwansyah, *PENELITIAN HUKUM Pilihan Metode & Praktik Penulisan Arikel*.

legal materials consist of books, journals, research results, and documents related to the object of study. This study also uses tertiary legal materials to support the research, such as encyclopedias, legal dictionaries, and credible references. The data obtained is analyzed qualitatively by classifying legal issues, interpreting existing norms, and comparing constitutional principles with Islamic values, thereby obtaining the desired conclusions in accordance with the research objectives.

## Results and Discussion

### LGBT: A Sexual Orientation Deviation?

LGBT is an acronym for lesbian, gay, bisexual, and transgender, which refers to various sexual identities outside the norm. Lesbianism is a condition in which a woman is only attracted to other women. Gay is a sexual orientation in which a man is only attracted to other men. Bisexual is a term for individuals, both men and women, who are attracted to both sexes. Transgender is a person who identifies with a gender different from their biological sex; for example, a man who feels or acts like a woman, or vice versa.<sup>6</sup>

In 1952, the American Psychiatric Association (APA), the world's largest psychiatric organization, published the Diagnostic and Statistical Manual of Mental Disorders (DSM), which became the diagnostic guideline for many medical professionals in the United States and around the world. In the first edition of the DSM (1952), homosexuality was included in the category of sexual deviance. In DSM II (1968), it was still classified as a mental disorder, albeit with a milder classification. However, in DSM III (1973), a significant change occurred. Homosexuality was no longer considered a sexual deviation.<sup>7</sup> This certainly caused controversy among psychologists and psychiatrists. It turns out that the removal of

homosexuality from the list of mental disorders was influenced by protests and pressure from gay activists. According to them, the diagnosis of "mental disorder" actually added to social discrimination. The APA then reopened the discussion to review the issue. In the end, the existence of psychologists who were not heterosexual also became an important factor in strengthening the effort to remove homosexuality from the list of mental disorders.<sup>8</sup>

The APA's internal discussion process reached its peak in 1973, when Robert Spitzer and the Nomenclature Committee redefined what constituted a mental disorder. They concluded that homosexuality did not meet the criteria for a disorder because it did not automatically cause subjective distress or interfere with social functioning. The results of this study were accepted by the APA Board of Directors, and in December 1973, homosexuality was officially removed from the DSM.<sup>9</sup> Furthermore, homosexuality can only be referred to as a mental disorder if a person feels dissatisfied with their own sexual orientation.<sup>10</sup> The Western world does not seem to view this "abnormality" as a problem, but rather uses the individual's subjective experience as the starting point for diagnosis. This crucial historical process shifted the medical paradigm from helping patients return to heterosexuality to simply helping them accept their homosexuality.

The claim that LGBT people cannot be cured through therapy is refuted by the National Association for Research and Therapy of Homosexuality (NARTH), a psychological organization based in the United States. In its report, NARTH explains that various approaches have been proven to change a person's sexual orientation, based on studies conducted over the past 125 years.<sup>11</sup>

The pros and cons regarding LGBT issues apparently do not stop at the medical dimension

<sup>6</sup> Maryati, *Asuhan Kebidanan pada Perempuan dan Anak Kelompok Rentan* (Scopindo Media Pustaka, 2023), 140.

<sup>7</sup> Henri Shalahuddin dkk., "Homosexuality Arguments According To The American Psychological And Psychiatric Association: An Islamic Prespective Analysis Study," *Al-Hikmah: Jurnal Agama Dan Ilmu Pengetahuan* 20, no. 1 (2023): 56

<sup>8</sup> Jack Drescher, "Out of DSM: Depathologizing Homosexuality," *Behavioral Sciences* 5, no. 4 (2015): 570–71.

<sup>9</sup> Jack Drescher, "Out of DSM: Depathologizing Homosexuality," 570.

<sup>10</sup> Joseph Nicolosi, "The Removal of Homosexuality from the Psychiatric Manual," *Catholic Social Science Review* 6 (July 2001): 72.

<sup>11</sup> Ayub. Penyimpangan Orientasi Seksual (Kajian Psikologis dan Teologis) *Tasfiah: Jurnal Pemikiran Islam*, Vol. 1, No. 2, Agustus 2017. 199.

alone. As a consequence of the APA's decision, which has become the benchmark for the world of psychology and psychiatry, social and legal reforms have begun to emerge in several countries because it is not a deviation. As of January 2024, laws in 129 countries (66% of all countries in the world) no longer criminalize same-sex sexual relations.<sup>12</sup> This has led to the emergence of new policies in these countries, such as the legalization of same-sex marriage, the enactment of laws protecting the human rights of LGBT people, and adoption rights for LGBT couples. However, this has certainly sparked controversy worldwide. The diverse cultures of the world's societies, along with the different social norms upheld by each country, have given rise to different views on the LGBT phenomenon. In Indonesia itself, religious and cultural norms remain the basis for the rejection of the legalization of LGBT behavior, so that the debate on this issue focuses on the aspects of morality, law, and the spiritual values embraced by society.

### LGBT in the Perspective of Islamic Law

The phenomenon of same-sex sexual relations is not an issue that arose in the modern era. In Islam, male homosexual behavior is referred to as *liwath* (اللوواط). This term refers to the actions of the people of Prophet Lot who were punished for their deviance, and the perpetrators are called *al-luthi* (اللّوطي).<sup>13</sup> The practice of sexual relations between women is known as *al-sahaq* (السحاق) or *al-sahiqah* (السحاقية).<sup>14</sup> Both are considered forms of sexual deviance that are despicable and contrary to human nature in Islam. The story of the people of Prophet Lot, who were punished by Allah for doing things that were contrary to human nature, is mentioned in various verses of the Qur'an. as in QS. Al-A'raf verses 80–81 as follows:

وَلَوْطًا إِذْ قَالَ لِقَوْمِهِ أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ الْعَالَمِينَ  
 ٨٠ إِنَّكُمْ لَأَتَأْتُونَ الرِّجَالَ شَهْوَةً مِنْ دُونِ النِّسَاءِ ۗ إِنَّكُمْ قَوْمٌ مُّسْرِفُونَ ٨١

80. And [We had sent] Lot when he said to his people, "Do you commit such immorality as no one has preceded you with from among the worlds? 81.

Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people."

In the Tafsir at-Thabari, the deviation that "no one from previous nations had ever committed" refers to sexual relations between men that were consciously and repeatedly committed by the people of Prophet Lot, and therefore became the main reason for the punishment that befell them.<sup>15</sup> This interpretation is also in line with the explanation in Tafsir Ibn 'Asyur, which emphasizes that the interrogative form of the sentence in the verse ("Do you approach such an abomination?") contains a meaning of denial and harsh condemnation of the behavior of the people of Prophet Lot. Meanwhile, the term *al-fahisyah* here is explained as a morally despicable act, which was well known to the Arab society at that time, so that the use of the article "al-" refers to a well-known meaning. Ibn 'Asyur also explains that the phrase "which no one from previous generations had ever done" indicates that the people of Prophet Lot were the pioneers of this deviation, paving the way for the spread of similar behavior in subsequent generations.<sup>16</sup>

The majority of scholars from the Malikiyah, Hanabilah, and some Syafi'iyah stated that sodomy is a major sin that must be punished with *hadd*. They compare sodomy to adultery, because there are similarities between the two, namely sexual relations involving intimate organs that are unlawful according to sharia, accompanied by sexual desire and the satisfaction of lust. According to the main view in the Maliki, Hanbali, and some Shafi'i schools of thought, the punishment for sodomy is stoning to death, both for the perpetrator and the target of the act, regardless of whether they are *muhsan* (married) or not. Alternatively, both must be killed with a sword, as a form of *hadd* punishment. The argument used by this group is based on the words of the Prophet narrated by Ibn 'Abbas:<sup>17</sup>

<sup>12</sup> Matthew M. Kavanagh dkk., "Global Legal Environment for LGBTQ+ Sexuality and Public Health," *Journal of Law, Medicine & Ethics* 53, no. 1 (2025): 119,

<sup>13</sup> HUazemah T. Yanggo, *Problematika Fikih Kontemporer* (Gaung Persada Press, 2019), 16.

<sup>14</sup> Sayyid Sabiq, *Fiqh as-Sunnah* (Dar al-Kitab al-Arabi, 1977), 405.

<sup>15</sup> Abu Ja'far Muhammad bin Jarir ath-Thabari, *Tafsir ath-Thabari* Volume 11. (Jakarta: Pustaka Azzam, 2007), Hal. 295–296.

<sup>16</sup> Ibnu 'Asyur, *Tafsir at-Tahrir wa at-Tanwir* (Tunisia: Dar at-Tunisiah, 1984), Juz 8, Hal. 230.

<sup>17</sup> Dahlia Haliah Ma'u, *TELAAH HUKUM ISLAM TENTANG LGBT (SEBUAH SOLUSI DALAM MEMECAHKAN PROBLEM*

اقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ

“Kill the perpetrator (*liwat*) and the person who is the object of it.”

There is also another opinion in the Shafi'i school of thought that equates the punishment for sodomy with the *hadd* for adultery in terms of legal details. This means that if the perpetrator is *muhsan*, they will be stoned to death; however, if they are *ghairu muhsan*, they will be flogged 100 times and exiled for one year.<sup>18</sup>

This differs from the view of Imam Hanafi, who states that the punishment for sodomy is *ta'zir*. This means that the ruler, whether an imam or a judge, has the authority to determine the punishment. If the perpetrator is not deterred, then the death penalty by sword can be imposed as a form of *ta'zir*, and not as *hadd*.<sup>19</sup> Imam Hanafi argues this because, according to him, homosexual acts do not cause chaos in the lineage and generally do not lead to disputes that could result in the murder of the perpetrator, so they are not classified as adultery.<sup>20</sup> Although there are differences of opinion among the fuqaha mutaqqaddimin regarding the sanctions imposed on LGBT perpetrators, in general they agree that such acts are a form of moral deviance that is strictly prohibited in Islam and contrary to human nature.

Some modern scholars argue that homosexuals should be punished with *ta'zir*, which is a punishment that is not specified in the text, but is left to the discretion of the judge according to social conditions and the level of harm caused. Abdullah Ahmed an-Na'imm quotes Mahmoud Syaltut's view in *al-Islam 'Aqidah wa Syari'ah*, that the Islamic legal system gives the state the authority to determine punishment for acts that are not explicitly regulated in the categories of *hudud* or *qisas*. Other scholars, such as Abdul Qadir Audah, explain that the difference in terminology between *zina* and *liwat* indicates distinct legal categories. *Zina* involves the corruption of lineage and the invalidity of descent,

while *liwat* does not have such effects, so it tends to fall under the category of *ta'zir*.<sup>21</sup>

The emphasis on the gravity of sin and the threat of punishment in various schools of thought shows that Islam considers the protection of social order and morality to be important. Therefore, the Islamic legal approach to this behavior is not only repressive through the imposition of punishment, but also contains preventive and educational dimensions in order to preserve the purity of family and community values.

### LGBT in the Perspective of Positive Law in Indonesia

Although the majority of classical scholars have established strict sanctions against homosexual acts, such as stoning to death or punishment equivalent to adultery, the legal reality in various countries, including Indonesia, demands a more contextual approach. In Indonesia, the Indonesian Ulema Council (MUI), as the official institution that serves as a reference for the Muslim community in addressing religious issues, has issued a fatwa regarding LGBT issues in Fatwa No. 57 of 2014.<sup>22</sup> In short, this fatwa explicitly states that Islam only permits sexual relations within a valid marriage between a man and a woman, so that all forms of homosexual behavior, lesbianism, sodomy, and molestation are haram and constitute a crime (*jarimah*). Perpetrators may be subject to legal sanctions in the form of *hadd* and/or *ta'zir* punishments, and may even be subject to aggravated punishment up to the death penalty, especially if children are involved as victims.

Different from some schools of thought that impose *hadd* punishments absolutely, the MUI prefers the *ta'zir* approach, which leaves the determination of the form and severity of punishment to the judge or government. This approach is based on the principle of *istinbath*,

KEMASYARAKATAN), RAHEEMA: Jurnal Studi Gender dan Anak, 2016, <https://digilib.iainptk.ac.id/xmlui/handle/123456789/3265>.

<sup>18</sup> Wahbah al-Zuhaili, *al-Fiqh al-Islamiyy wa Adillatuhu* (Dar al-Fikr, 1985), 39–40.

<sup>19</sup> Syaikh Abdurrahman al-Juzairi, *Fiqh Empat Mazhab* jilid 6 (Jakarta: Pustaka Al-Kautsar, t.t.), 237-239.

<sup>20</sup> Slamet Rian Hidayat, *Analisis Pendapat Imam Abu Hanifah Tentang Kadar Hukuman Bagi Pelaku Liwath* (Fakultas Syari'ah dan Hukum, UIN Walisongo Semarang, 2016), 59.

<sup>21</sup> Purwi Lestari Handayani, “Sanksi Pidana Di Indonesia Terhadap Penyimpangan Seksual Sesama Jenis Dalam Prespektif Fikih Jinayah,” *Integrative Perspectives of Social and Science Journal 2*, no. 2 Mei (30 Mei 2025): 3059.

<sup>22</sup> “FATWA MUI NOMOR 57 TAHUN 2014 TENTANG LESBIAN, GAY, SODOMI, DAN PENCABULAN.,” 2023, [https://mui.or.id/baca/fatwa/lesbian-gay-sodomi-dan-pencabulan.](https://mui.or.id/baca/fatwa/lesbian-gay-sodomi-dan-pencabulan), diakses 27 Juni 2025. 08.24 AM

which derives legal arguments from the Qur'an, hadith, and the views of scholars, while taking into account social realities and the national legal system.<sup>23</sup> Furthermore, the MUI emphasizes that the purpose of this punishment is *zawajir* and *mawani'*, which is to deter the perpetrator and prevent others from committing similar offenses.<sup>24</sup> This MUI fatwa shows that Islamic law is not rigid, especially in determining the form and severity of punishment, as long as it is based on sharia principles and leads to public interest. However, the fatwa does not have binding force in the national legal system because the MUI is not a state institution authorized to impose criminal sanctions.

In the context of Indonesian positive law, homosexual acts can be found in The New Book of Criminal Code (Kitab Undang-Undang Hukum Pidana Baru /KUHP) article 414 section (1) which states:

Any Person who commits obscene acts toward other persons of the same or different sex:

- a. in public, shall be sentenced with imprisonment for a maximum of 1 (one) year and 6 (six) Months or a maximum criminal fine of category III, that is IDR 50 million.
- b. by force with Violence or Threats of Violence, shall be sentenced with imprisonment for a maximum of 9 (nine) years; or
- c. which are published as pornographic content, shall be sentenced with imprisonment for a maximum of 9 (nine) years.

The articles above does not specifically criminalize same-sex sexual orientation. However, it can be understood that the object of punishment is obscene acts committed with several details that have been stated, namely committed in public, by force, and published as pornographic content. Thus, the article does not question sexual orientation itself, but focuses on obscene acts that disturb the public or violate moral norms. This opens up further discussion on how national law responds to the increasingly complex phenomenon of LGBT in modern society.

In addition, similar provisions can be found in Article 292 of the Criminal Code (KUHP), which explains crimes against decency. The provisions in this article indicate violations of moral and sexual norms considered deviant from the values of decency that are deeply rooted in society. Article 292 of the KUHP reads: "People who are old enough, who commit obscene acts with other people of the same sex, are known or should be suspected, that they are not old enough, threatened with imprisonment for a maximum of five years".<sup>25</sup> It can be understood that this article is a form of protection for children from indecent acts or sexual exploitation by adults, especially those committed against persons of the same sex. This article does not directly criminalize homosexual orientation, but rather punishes indecent acts committed against children or underage victims.

### **The Relevance of Human Rights, Islamic Law, and Indonesia Positive Law to LGBT Issues**

The topic of LGBT is currently a hot issue both nationally and internationally. This is not only about sexual orientation, but also touches on broader moral, social, and legal aspects. On the one hand, LGBT supporters argue that the right to determine one's sexual orientation is part of individual freedom guaranteed by human rights principles. However, on the other hand, many argue that such practices are far from the moral, religious, and cultural values that form the basis of society. This is where the debate lies between the principle of individual freedom and the moral boundaries upheld by legal and religious norms.

From a religious perspective, LGBT people are often viewed as deviant behavior that contradicts moral values and spiritual teachings. The four major religions in the world, namely Islam, Christianity, Hinduism, and Buddhism, generally share similar views on this matter. In Islam, the Qur'an emphasizes the prohibition of homosexual behavior, as mentioned in QS. Al-A'raf: 80-81 and QS. Hud: 77-81, which describes the severity of the

<sup>23</sup> Nur Azizah dan Fatimah, "Analisis Peran Fatwa MUI No. 57 Tahun 2014 Terhadap Pembentukan Kebijakan Hukum Islam Di Indonesia Studi Kasus Tentang Isu Kontemporer (Perihal LGBT)," *Jurnal EDUCATIO: Jurnal Pendidikan Indonesia* 9, no. 1 (2023): 553.

<sup>24</sup> "FATWA MUI NOMOR 57 TAHUN 2014 TENTANG LESBIAN, GAY, SODOMI, DAN PENCABULAN.",..... diakses 27 September 2025. 08.24 AM

<sup>25</sup> "Buku Kedua-Bab XIV - Kejahatan Terhadap Kesusilaan - Beranda Hukum," diakses 9 oktober 2025, <https://berandahukum.com/a/Buku-Kedua-Bab-XIV-Kejahatan-Terhadap-Kesusilaan>.

punishment for the people of Prophet Lot. In Christian teachings, particularly in Genesis 1:27-28 and Leviticus 18:22, it is stated that sexual relations should only occur between a man and a woman within the bonds of marriage. As for Hindu and Buddhist teachings, although not explicitly stated, there are moral principles that encourage self-control in avoiding behavior considered deviant from the norm. This view shows that the rejection of LGBT practices is deeply rooted in religious moral principles.<sup>26</sup>

In the context of human rights, the LGBT community demands recognition and equal rights based on universal human freedom and dignity. Human rights protect the freedom of every individual and oppose discrimination. However, freedom in the context of human rights is not unlimited freedom. In practice, human rights are limited by national laws and regulations to balance individual rights and the public interest. The preamble to the Universal Declaration of Human Rights (UDHR) states that an individual's freedom must be balanced with social responsibility, and its implementation is governed by moral norms, public order, and the common good.

In Indonesia, which implements a legal system based on the principles of Pancasila, restrictions on the exercise of human rights are also enforced. This is confirmed in Article 28J of the 1945 Constitution of the Republic of Indonesia, which states that every individual, in exercising their rights and freedoms, must respect the rights of others and comply with the restrictions set by law to ensure the recognition and respect of the rights and freedoms of others, taking into account moral considerations, religious values, and public security and order. In addition, Law No. 39 of 1999 on Human Rights, specifically Article 70, states that the exercise of every human right is limited by fundamental human obligations in the interests of morality, order, and the welfare of the wider community.<sup>27</sup>

Therefore, both human rights and Islamic law place freedom in the context of morality,

responsibility, and social order. In Islamic teachings, human freedom is a natural right bestowed by Allah, but this freedom must be exercised within the boundaries of Sharia law.<sup>28</sup> Freedom that contradicts Allah's provisions is not respect for rights, but a deviation from human nature. Therefore, LGBT behavior, although often declared as an expression of individual freedom, is still considered a moral and legal violation from an Islamic perspective.

In Islamic law, LGBT acts are considered *jarimah* or criminal acts that are subject to *ta'zir* sanctions. This punishment is determined by the authorities to protect society's interests. This thinking is based on the principle that sexual relations are only valid within marriage between a man and a woman as a form of worship and preservation of honor. Islam considers unlimited sexual freedom to be a deviation from the purpose of human creation.

Thus, both within the framework of human rights and Islamic law, individual freedom has certain restrictions. The government plays a key role in establishing rules that balance individual freedom with moral interests and public order. In the Indonesian context, human rights are not freedom without control, but rather freedom that is adapted to the values of religion, social ethics, and national culture. Therefore, the fundamental similarity between human rights and Islamic law lies in the principle that human freedom is not absolute, but must be exercised within moral boundaries, responsibly, and for the common good.

### A Solutive Response to the LGBT Issues

According to data from the Indonesian Ministry of Health as of March 2025, there are 356,638 people in Indonesia living with HIV. Of this number, 37 percent are men who have sex with men (MSM), female sex workers (FSWs), injecting drug users (IDUs), and transgenders.<sup>29</sup> This high number indicates that deviant sexual practices affect not only moral and social aspects, but also public health. Therefore, appropriate solutions are needed while

<sup>26</sup> Nur Asiah dkk., "Studi Tentang LGBT Perspektif Hukum Islam, Psikologi, Dan Ham," *Jurnal Hikmatina* 3, no. 2 (2021): 138–39.

<sup>27</sup> Sulaiman Tamba, "LGBT Perspektif Hukum Islam dan UU HAM Nomor 39 Tahun 1999," *Jurnal Taushiah FAI UISU* 9, no. 2 (2019): 36.

<sup>28</sup> Tamba, "LGBT Perspektif Hukum Islam dan UU HAM Nomor 39 Tahun 1999," 39.

<sup>29</sup> Mecca Yumna Ning Prisie, *Per Maret 2025 Kemenkes Temukan 356.638 Orang dengan HIV di RI*, diakses 10 Oktober 2025, <https://www.antaraneews.com/berita/4913705/per-maret-2025-kemenkes-temukan-356638-orang-dengan-hiv-di-ri>.

still paying attention to Islamic law and human rights values. The following solutions can be considered:

1. The government should review articles in legislation that address issues of sexual orientation. This review is not solely for the purpose of criminalizing LGBT people, but rather to reinforce the moral boundaries and social order upheld by the state. With the state taking a firm stance, the government can then establish a special agency focused on rehabilitation, guidance, and counseling.
2. Medical professionals can provide treatment that not only focuses on validating the patient's sexual orientation, but also requires a psychological approach that can make them aware of their true identity so that they can recover from deviant behavior.
3. There is a necessity for early education in educational institutions, whether through counseling or curriculum development that includes sex education based on religious values, so that children grow up with a clear awareness of morality and identity.
4. Public education regarding the LGBT phenomenon must be conducted using a humanistic approach without discrimination. This is important considering that the growing negative stigma against LGBT individuals makes them feel marginalized in their social environment and can hinder rehabilitation efforts.

### Conclusions

The LGBT phenomenon in Indonesia raises legal, social, and moral challenges that require a balance between individual freedom and religious values. Human rights do protect the right of every individual to be safe and free from violence, but that freedom is not entirely without limits. Within the framework of Indonesia, which is based on Pancasila and the values of the One Almighty God, the application of human rights must be in accordance with religious norms, ethics, and public order as stipulated in Article 28J of the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights.

From an Islamic legal perspective, LGBT behavior is considered a sinful act and a violation (*jarimah*) that can be subject to *ta'zir* punishment for going against human nature and social order. However, Islam also emphasizes the importance of treating LGBT individuals with compassion, education, and *da'wah*, not just with repressive punishment. Thus, addressing the LGBT phenomenon in Indonesia cannot be done through a legal approach alone, but must be accompanied by complementary medical, educational, and spiritual measures. This comprehensive and value-based approach is expected to restore individuals to their human nature while maintaining order and morality in the nation in accordance with the principles of Islamic law, human rights, and Indonesian positive law. Therefore, positive law in Indonesia and Islamic law share the same principle of limiting individual freedom in order to maintain morality and public welfare.

As a solution, the LGBT phenomenon must be addressed comprehensively through legal, psychological, educational, and humanistic approaches. The state needs to reinforce moral boundaries in regulations, provide rehabilitation and counseling institutions, and strengthen values-based sex education from an early age. A humanistic approach without discrimination is also important to encourage recovery and social reintegration for LGBT individuals. Thus, addressing LGBT issues is not merely a legal matter, but also an effort to uphold morality, public health, and social harmony in accordance with Islamic values and Pancasila.

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