

EFFICACY OF LESBIAN, GAY, BISEXUAL AND TRANSGENDER MARRIAGE IN THE PERSPECTIVE OF NATIONAL LAW IN INDONESIA

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ABSTRACT

Human life in a world of different sexes (men and women) naturally has the power of mutual need between one another to be able to live together, or logically can be said to form a bond of birth and mind with the aim of creating a family or home harmonious, happy, prosperous and eternal ladder. Various parts of the world are now in the Lesbian, Gay, Bisexual and Transgender (LGBT) movement with LGBT couples developing more rapidly and broadly falsifying heterogeneous natural marriages, to be needed to be revealed relatively from the perspective of national law, marriage law and several perspectives in Indonesia. This research is conducted empirical method with evaluative research that aims to assess and overcome the legal behavior of LGBT couples in terms of marriage law in Indonesia and this study also uses a normative method in which the data used are secondary data in the form of books, laws and regulations, documents and various news on the internet related to the problem being studied. Marriage is a legal event in human life.

Keywords: LGBT partner marriage, national law and marriage law

INTRODUCTION

One of the legal requirements for a marriage according to the provisions of positive law as stipulated in Law Number 1 of 1974 which states that there is a physical bond between men and women. Meanwhile, Islamic Law further emphasizes that marriage becomes legal if there is a goal to uphold the teachings of religion in a family unit that is parental. However, the problem that then arises is that human rights guarantee the freedom of everyone to choose and determine their marriages. One of the freedoms that occurred lately is namely marriages conducted by gays and lesbians. This marriage indicates a deviant relationship in one sex, which is emphasized on the basis of affection to form a family through a legal marriage.

Basically, in the context of legal perspective in Indonesia, we must consider all social, state and national behavior in the lens of law. This means that between citizens there can be different opinions in a matter. Such differences must remain in the constitutional corpus, so that life as a nation and state can continue well.

The development of LGBT in Indonesia if it is normatively clear that LGBT acceptance or sealing and same-sex marriage cannot be accepted in Indonesia, but it cannot close your eyes that the development of LGBT itself is already quite rapid in Indonesia. Although not yet getting definitive data on the number of LGBT community members in Indonesia, some LGBT communities have held demonstrations at the HI roundabout to oppose violence experienced either communally through their communities or personally. In their speech they rejected discriminatory regulations by the government, but they did not give speeches to legalize same-sex marriage. This is what underlies the authors write about "**The Validity of the Status of Lesbian, Gay, Bisexual and Transgender Marriage in the Perspective of National Law in Indonesia**"

MATERIALS AND METHODS

1. Material

a) Indonesia's Positive Legal Perspective

1) RI Law of 1945

In the Indonesian constitution of the 1945 Constitution Article 28J paragraph 1 says "Everyone must respect the human rights of others in the orderly life of society, nation and state", this means that the human rights that are cooled by this nation are human rights in accordance with the norms and order which grows and develops in the community, so when the prosecution of the fulfillment of the right to legalize same-sex marriage by LGBT people, which is then judged by the majority of Indonesian people to be in conflict with the prevailing norms in society, the fulfillment of these rights cannot be realized so that there is no the argument of human rights violations.

The same thing is also regulated in the Human Rights Chapter of the Indonesian Constitution, namely Article 28J paragraph 2 of the 1945 Constitution which says "In exercising and protecting their human rights and freedoms, everyone must submit to the limitations established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others, and to fulfill fair demands in accordance with moral considerations, religious values, security and public order ". So it is clear that there is no discrimination and violation of human rights for LGBT people in Indonesia, considering that Indonesia does not have legal loopholes for legalizing same-sex marriages and is strictly regulated by the Indonesian constitution namely the 1945 Constitution as well as the philosophy of the State of Indonesia namely Pancasila in the "Godhead, "then all aspects of national and state life must be based on the one and only God.

The principle of "God Almighty" also mandates that a legal marriage is a marriage that is based on faith in God Almighty, which is set out in the religious and / or belief rules that are recognized in Indonesia. So far, both Religion and the flow of belief in God Almighty in Indonesia acknowledge marriage if it is done by men and women according to religious procedures and / or beliefs that are owned. Although some people argue that the recognition of similar marriages is a form of recognition of the humanity of a citizen, the researcher believes that respect for the humanity of a citizen must run in the corridors of the nation and state that prioritizes the unity and integrity of the nation as an absolute price. Any indication of division through unconstitutional efforts must be rejected. Likewise with similar marriages.

2) 1974 Law on Marriage

Marriage in this case is one way to maintain humanity from moral damage. Therefore religion regulates marital law to unite one Muslim with another to live in pairs.

In human life, we can see the fact that two people of the opposite sex, that is, between a man and a woman, live together in a household. These two sexes are called husband and wife, if their lives are based on prescribed rules of law. In supporting a life together called husband and wife, of course, it must go through a certain procedure.

The entire legal norms that determine the procedure that must be passed along with the legal provisions that determine the legal consequences are called marriage law. The marriage itself is the main goal is to continue the descent, which is obtained from the children of the marriage itself. In this case the author seeks to analyze Law No.1 of 1974 concerning Marriage which is the basis of marriage in Indonesia.

2. Method

This type of research uses empirical methods with evaluative forms of research aimed at assessing and tackling the legal behavior of LGBT couples in terms of marriage law in Indonesia and this study also uses normative methods in which the data used are secondary data in the form of books, legislation, documents and various news on the internet related to the problem being studied.

RESULTS AND DISCUSSION

1. The concept of Lesbian, Gay, Bisexual and Transgender

- a) Lesbian comes from the word Lesbos, which is an island in the middle of the sea of Ege, which in ancient times was inhabited by women. According to Greek mythology, a similar love affair took place on the island between Shappo's daughter

and Athis⁴⁴. The Big Indonesian⁴⁵ Dictionary identifies Lesbians as women who love or feel same-sex sexual stimulation.

- b) Homosexual, derived from the term Homo from the Greek meaning the same⁴⁶. Sexual has two meanings, first: sex as sex; and second: sex is a matter relating to the genitals, such as intercourse or intercourse⁴⁷. According to the Big Indonesian Dictionary⁴⁸, homosexuality is a condition of being attracted to people and the same sex, the Melaya Nusantara Language Dictionary⁴⁹, gives two meanings to homosexuals. First, people who are interested in their lust for someone like him.
- c) The bisexual understanding of the word "bi" which means two, while "sexual" means intercourse between men and women⁵⁰. So it can be concluded in language, that bisexuals are people who are attracted to two sexes, male and female⁵¹.
- d) Etymologically transgender comes from two words namely "trans" which means to move, transfer and⁵² "gender" which means sex⁵³. Another term used in sex change operations is "transsexual" which is a translation from English. It is called sexual transmission because the operation is primarily aimed at replacing the sex of a transvestite who wants to be a woman⁵⁴.

⁴⁴ Kartini Kartono, *Psychology of Abnormal and Sexual Abnormalities* (Bandung: Mandar Maju, 2007)

⁴⁵ *Big Indonesian Dictionary* (Jakarta: Balai Pustaka 2002)

⁴⁶ Kartasa Poerta and Hartini, *Dictionary of Sociology and Population* (Jakarta: Bumi Aksara 1992)

⁴⁷ J.S Badudu, Suthan Muhammad Zain, *Indonesian General Dictionary* (Jakarta: Pusat Harapan Harapan 1994)

⁴⁸ *Ibid*

⁴⁹ *Dictionary of the Malay Archipelago*, 2003,

⁵⁰ Peter Salim and Yenny Salim, *Contemporary Indonesian Dictionary* (Jakarta: Modern English Press, 2002) Third Ed,

⁵¹ Ministry of Education National Dictionary of the Big Indonesian Dictionary (Jakarta: PT. Gramedia Reader 2008) Cet. Ke-1, Ed to IV,

⁵² Pius A.Partanto and M. Dahlan Al Barry, *Popular Scientific Dictionary* (Surabaya: Arkola, tt)

⁵³ *Ibid*

⁵⁴ Muhjuddin, *Masailul Fiqhiyah Various Cases Facing Current Islamic Law* (Jakarta: Kalam Mulia, 2005)

2. Marriage of a type of LGBT in the perspective of Islamic law and some other religions.
 - a) Islam: Islamic law teaches that Allah SWT has strictly forbidden His servants from entering into class of people who like the same sex, like LGBT.
 - b) Christianity: The Bible especially the new covenant, that the Bible shows how the Christian paradigm should be about gay homosexuals, and also lesbians. The Scriptures clearly show that homosexuality is a sin.
 - c) Buddhism: LGBT is a disease of human nature and deviant sexuality, this is a view that is not suitable and appropriate according to Ven Ajahn Brahm's statement that the statement is just like a fool.
 - d) Hinduism: Some argue among Hindus that LGBT does not violate the rules of dharma and does not contradict religion.
3. Marriage like LGBT in the Perspective of Human Rights in the Unitary State of the Republic of Indonesia

Human Rights (HAM) are basic rights that are inherently inherent in human beings, are universal and lasting, and therefore must be protected, respected, maintained and should not be ignored, reduced or deprived of by others or anyone else. And the Preamble to the Universal Declaration of Human Rights (UDHR) states that human rights need to be protected by the rule of law, so that people will not be forced to choose the path of rebellion as a last resort to challenge despotism and colonialism⁵⁵.

Not human rights in recognition or legalization of their sexual deviant traits, on the other hand, besides human rights held by LGBT groups, there are actually human rights obligations (KAM) that must be obeyed by everyone as included in article 29, paragraph (1 and 2) UDUH, namely:

⁵⁵ Preamble to the Universal Declaration of Human Rights (Accepted and Announced by the UN General Assembly on December 10, 1948 through Resolution 217 A (III))

- 1) Every person has an obligation to the community where he can develop his personality freely and fully.
- 2) Carrying out their rights and freedoms, each person must submit only to the limitations set by law whose purpose is solely to guarantee the proper recognition and respect for the rights and freedoms of others, and to meet fair conditions in terms of decency, order and public welfare in a democratic society⁵⁶.

4. Marriage like LGBT in the Customary Law Perspective

In principle, the purpose of marriage according to customary law is to carry on the descendants of the descendants of ancestors who have blood relations down and down from the previous generation of later generations. This is very important so that there are successors of clans, titles, clans, ancestral inheritance and successors who guard the village or village in one particular area and so forth⁵⁷. But even though the legal consequences related to this ancestral singularity in all regions are not the same, yet in reality there is a common basic view of the issue of descent in all regions, namely that descent is an essential and absolute element for any clan, tribe or relatives who want themselves to not be extinct, who want that there is a next generation.

5. Marriage like LGBT in the Community's View from a Sociological Perspective

LGBT cannot be accepted in the scope of Indonesian society because according to the values of religion, culture, law in the country of Indonesia is still not allowed, and there is a prejudice that one day LGBT will make Indonesian children become like LGBT people, and many assumptions from the community that LGBT it is bad, following the perception of the community: same-sex relationships are forbidden by religion and are classified as major sins; humans were created in pairs by God, we should as humans follow these rules and not act

⁵⁶ See article 29 of the UDHR as an implementation of the provisions of the UDHR. Then in RI Law No. 39 of 1999 concerning Human Rights in article 69. it is stated that every citizen is required to respect the human rights of others, morals, ethics and order of life in a society, nation and state. Every human right creates a basic obligation and responsibility to respect, protect, uphold and promote it

⁵⁷ Bushar Muhammad, Principles of Customary Law, Jakarta: Pradnya Paramita, 2000, p. 115

against nature; and natural disasters are more and more occurring and are signs of the end of time, as more and more people declare themselves part of LGBT, as well as the media also play a role, there are several opinions that disagree with LGBT as follows: Deputy Chair of the MPR RI Mahyudin emphasized that the spread of lesbian, gay, bisexual and transgender (LGBT) understandings and behavior was clearly contrary to Pancasila and religion. For this reason, anyone in Indonesia may not spread it. "All the recognized religions in Indonesia clearly prohibit LGBT behavior and understanding⁵⁸.

CONCLUSION

Research with the aim to find out the influence of Law Number 1 of 1974 concerning Marriage and the perspective of human rights in terms of same-sex marriage between LGBT couples, the Researcher finally concluded 2 (two) conclusions, as follows:

1. National law prohibits or does not allow LGBT couples to have same-sex marriage; and
2. Because same-sex marriage is prohibited in Indonesia, LGBT relations are only recognized by Indonesia's positive law in terms of social relations between fellow members of the state.

SUGGESTION

As guided by the conclusions above, the Researcher recommends 2 (two) things, namely:

1. The state may only allow marriages based on Marriage Law in Indonesia, which is between men and women, and not between same-sex couples.
2. Except in the case of granting similar marriage licenses, the State must still meet the basic needs of every citizen, including LGBT people

⁵⁸ Ibid

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