

Legal Resolution of Same-Sex Relationships in Indonesia

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Abstract

This research is motivated by the social fact that same-sex relationships in Indonesia remain a sensitive issue, giving rise to tensions between moral values, religious views, and the national legal framework. Although consensual same-sex relationships between adults are not criminalized in the Criminal Code, there are regulatory ambiguities, the potential for indirect criminalization through moral norms, and the existence of several regional regulations that restrict the freedom of movement of LGBT groups. This research aims to analyze the applicable legal regulations regarding same-sex relationships and formulate a relevant legal settlement model in the Indonesian context. The issues include how the law regulates same-sex relationships in Indonesia and how the legal settlements are handled. The research uses a normative legal method with a statutory approach and a case approach utilizing secondary data. The results show that national legal regulations are still not uniform and tend to be influenced by majority moral norms, thus creating uncertainty in the protection of individual rights. Furthermore, the proposed legal settlement emphasizes the importance of regulatory harmonization, a non-discriminatory approach, and the protection of human rights as the basis for a more just settlement. This research emphasizes the need for clearer and more inclusive legal reforms to address Indonesia's evolving social dynamics.

Keywords: *Criminal law, Legal settlement, Same-sex relationships.*

INTRODUCTION

The legal resolution of same-sex relationships in Indonesia is a complex and multidimensional issue, as it lies at the intersection of religious values, social morality, the development of human rights, and the dynamics of national law formation. Indonesia, as a nation governed by the rule of law, is obligated to provide equal legal protection to all citizens, as guaranteed in Articles 27 and 28D of the 1945 Constitution of the Republic of Indonesia concerning equality before the law and guaranteeing legal certainty. However, to date, Indonesia does not have legislation that clearly regulates, recognizes, or prohibits same-sex relationships (Basalamah, 2018). This legal vacuum creates ambiguity in the application of the law, particularly when social conflicts, cases of violence, or criminal acts involving individuals with minority sexual orientations occur. In this context, it is important to comprehensively

examine the need for a legal resolution that is systematic, fair, and in accordance with the values developing in Indonesian society (Aisy et al., 2025).

From a legal perspective, the problematic nature of same-sex relationships can be analyzed by combining several legal theories (Al Nohandi, 2020). Hans Kelsen's legal positivism theory asserts that an act can only be considered unlawful if there are clear and concrete norms within the applicable legal system. Based on this theory, sexual orientation or relationships not regulated by law cannot be used as a basis for law enforcement action. The absence of norms regarding same-sex relationships often makes it difficult for law enforcement officials to determine the legal basis when handling social cases related to sexual minority groups. This uncertainty has the potential to lead to abuse of authority and discrimination, as the scope for interpretation becomes too broad without clear boundaries.

In contrast to the positivist approach, Satjipto Rahardjo's progressive legal theory emphasizes that law must adapt to societal needs and be aligned with humanity. According to this theory, law should not be viewed as a set of restrictive rules, but rather as an instrument for achieving substantive justice (Sudiyana & Suswoto, 2018). In the context of same-sex relationships, progressive law directs the Indonesian legal system to provide social protection, prevent violence, respect human dignity, and ensure the welfare of vulnerable groups. This approach allows for the formation of legal policies that are not only normative but also consider social realities, the impact of discrimination, and the dynamics of changing values in an increasingly pluralistic society.

Furthermore, Roscoe Pound's sociological jurisprudence provides the perspective that law should function as a tool to balance various interests in society. Pound argued that good law is one that accommodates social change and minimizes social conflict. In the Indonesian context, the interests of religious morality, public order, and the protection of individual rights often have the potential to conflict (Karisma & Anggellina, 2023). Therefore, legal resolution of same-sex relationships must consider social harmony while avoiding discriminatory practices that could harm some citizens. This approach helps formulate policies that rely not only on written law but also consider the community's need to live harmoniously in diversity.

Sociologically, Indonesia is a country with a majority population that adheres to religious and moral values (Sari et al., 2023). This situation places the issue of same-sex relationships in a sensitive position and often generates public controversy. However, developments in information technology, global connectivity, and increased understanding of human rights have made the existence of sexual minority groups increasingly visible in social spaces, both online and offline. Challenges arise when these differences in values are not balanced by adequate legal instruments. Without clear legal guidelines, society can take vigilante action against individuals with minority sexual orientations. This clearly contradicts the principle of the rule of law, which emphasizes that only the state, through its legal instruments, has the authority to enforce legal provisions (Hayat, 2015).

Unclear regulations also pose several dangers from a legal and social perspective. First, sexual minorities are vulnerable to physical, psychological, or sexual violence without adequate legal protection (Aristya, 2022). Many cases of violence cannot be handled effectively because the victim's sexual orientation creates a social barrier to reporting and law enforcement. Second,

the lack of norms opens up opportunities for excessive criminalization, where personal actions or interpersonal relationships within the private sphere are considered punishable even though they have no legal basis (Nasir, 2017). Third, legal uncertainty can be exploited by certain individuals to extort, intimidate, or abuse their authority against sexual minorities. Fourth, in the context of public health, stigma and legal uncertainty can hinder access to safe and non-discriminatory health services, thereby endangering the safety of individuals and the wider community.

In line with developments in international law, many countries are developing more comprehensive approaches to regulating same-sex relationships, whether through recognition, decriminalization, or strengthening human rights protections. Although Indonesia has a distinct socio-cultural character, the basic principle of protecting human dignity must remain intact. International conventions such as the International Covenant on Civil and Political Rights (ICCPR), which Indonesia ratified through Law Number 12 of 2005, affirm that everyone has the right to privacy, freedom from discrimination, and equal protection of the law (Joseph, 2022). Although there is no international obligation for Indonesia to recognize same-sex relationships, the state remains obligated to prevent violence and discrimination, including against sexual minorities.

From the perspective of Indonesian criminal law, same-sex relations have never been constructed as a criminal act because national law does not use sexual orientation as a basis for punishment. Criminal law can only work when there are norms that expressly define an act as a crime, so that without clear rules, punishment is not possible. This principle is the core of the principle of legality as stated in Article 1 paragraph (1) of the Criminal Code and is a fundamental principle in Hans Kelsen's theory of legal positivism, which emphasizes that the legitimacy of state actions depends entirely on the legal norms that regulate them (Situngkir, 2018). In the absence of norms that clearly regulate or prohibit same-sex relations, such relations cannot be categorized as criminal acts. Punishment based on sexual orientation would be contrary to the principle of the rule of law and could give rise to arbitrary practices by law enforcement officials.

However, even though same-sex relationships are not a crime, any form of interpersonal relationship can still involve unlawful acts if it fulfills the elements of a crime as formulated in the Criminal Code (KUHP) or special laws. In this context, legal assessment is directed not at the nature of the relationship, but at the concrete act that causes harm or violates the rights of others. For example, the crime of physical violence as regulated in Article 351 of the Criminal Code can occur in same-sex or heterosexual relationships. If the relationship is within the scope of a household or domestic relationship that fulfills the elements of Law Number 23 of 2004 concerning the Elimination of Domestic Violence, then psychological, physical, economic, or sexual violence can be processed based on that law. This legal framework emphasizes that legal subjects are treated equally, in line with the principle of equality before the law as regulated in Article 27 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (Kurniawan et al., 2025).

The context of sexual crimes also reinforces this principle of universality. Sexual violence or coercion in any form, whether rape, molestation, forced sexual intercourse, sexual exploitation, or non-consensual sexual acts, is expressly regulated in the Criminal Code and

reinforced by Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence (UU TPKS). The TPKS Law is neutral and does not differentiate between the sexual orientation of victims and perpetrators. The primary focus of this law is to fulfill the elements of violence, threats, deception, or the victim's inability to provide consent (Hairi & Latifah, 2023). This aligns with Satjipto Rahardjo's progressive legal theory approach, which emphasizes that the law must prioritize the protection of humans, especially vulnerable groups, without being trapped by narrow or discriminatory norms. Progressive law views the law as a tool for human protection and liberation, not a tool of moral repression.

Furthermore, crimes against children can still occur if the relationship involves a child as a victim. Law Number 35 of 2014 in conjunction with Law Number 23 of 2002 concerning Child Protection emphasizes the age and vulnerability of the victim, not the perpetrator's orientation. Therefore, acts such as child sexual exploitation, indecent acts against children, or sexual relations with children are still punishable regardless of the underlying relationship (Andayani et al., 2021). This principle aligns with Roscoe Pound's sociological jurisprudence framework, which holds that the law must protect the greater social interest, including the safety of children as a highly vulnerable group. Pound emphasized that the law functions as a tool of social engineering, which should protect the interests of society and prevent social harm (Sinaulan, 2018).

Furthermore, crimes such as extortion (Article 368 of the Criminal Code), threats, intimidation, coercion, fraud (Article 378 of the Criminal Code), embezzlement (Article 372 of the Criminal Code), or the distribution of pornographic content (Law Number 44 of 2008 concerning Pornography) can also occur in the context of same-sex relationships. All of these crimes are neutral and applicable to anyone, as their characteristics depend not on sexual orientation, but on the element of unlawful acts that cause harm to the victim. In certain contexts, relationships without clear legal status can pose an additional risk of blackmail or threats, for example, when one party threatens to reveal their relationship to the public. Such behavior is prosecuted not because of sexual orientation, but because the elements of blackmail, threats, or coercion have been met.

From a social justice perspective, the legal framework must also consider the risks of discrimination, stigmatization, and violence based on sexual identity. Ratifying the ICCPR certainly strengthens the state's obligation to ensure that law enforcement officials do not use sexual orientation as a basis for action or discrimination.

Based on this analysis, it can be concluded that the potential for criminal acts in same-sex relationships is not related to the identity or sexual orientation of the parties, but rather relates purely to the elements of unlawful acts stipulated in the law. Criminal law operates in a universal, objective, and action-based manner, so that same-sex relationships cannot be considered a crime in themselves. In an academic context, this discussion is important to avoid a criminalization approach that is not legally based and to ensure that research remains guided by the principles of legality, non-discrimination, and the concept of a state based on the rule of law that upholds human dignity. Therefore, studies regarding the potential for criminal acts in same-sex relationships should be directed at analyzing the unlawful acts that may occur, rather than the relationship itself, in line with the legal objectives of providing certainty, justice, and protection for every citizen.

In order to achieve a comprehensive legal solution, the state needs to consider several strategic steps. First, the development of regulations that clarify the boundaries between the private and public spheres, so that law enforcement officers have clear guidelines for taking action (Fithri & Arie, 2018). Second, the development of legal instruments that provide protection against all forms of violence based on sexual orientation, without having to enter into the realm of marriage recognition or civil relations (Wahyuni, 2008). Third, strengthening legal education, training officers, and public outreach on the principles of non-discrimination and respect for human dignity. Fourth, the use of a progressive legal approach in policy development, prioritizing humanity, substantive justice, and social benefits.

Thus, legal resolution of same-sex relationships in Indonesia cannot be achieved simply by adding or reducing criminal provisions. It must be achieved through a comprehensive approach that includes establishing clear norms, protecting the rights of every citizen, strengthening legal institutions, and educating the public. These efforts align with the legal objectives of maintaining order, protecting social interests, and ensuring that every citizen is treated fairly and with dignity. This approach is expected to reduce social conflict, prevent violence, and strengthen the principle of a state based on the rule of law, which upholds just and civilized humanity, as mandated by the constitution. Based on the above background, the research questions to be examined in this study include the legal regulation of same-sex relationships in Indonesia and how to legally resolve them.

METHOD RESEARCH

This type of research is included in the normative legal research type, which is conducted to study and explore law as norms, rules, principles, doctrines, theories, and various other legal literature in order to find answers to legal problems that are the focus of the study (Muhaimin, 2020). The problem approach used by the Author in this research is the statute approach and the case approach. The statutory approach is carried out by examining laws and regulations related to the legal issues that occur. In addition, the case approach is carried out by reviewing cases related to the issues faced that have become court decisions that have permanent legal force. The data sources used in this research are secondary data consisting of three sources of legal materials, including primary legal materials consisting of the 1945 Constitution of the Republic of Indonesia; Law Number 1 of 1946 concerning Criminal Law Regulations; Law Number 39 of 1999 concerning Human Rights; Law Number 23 of 2002 concerning Child Protection; Law Number 23 of 2004 concerning the Elimination of Domestic Violence; Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection; Law Number 12 of 2022 concerning Criminal Acts of Sexual Violence and Law Number 1 of 2023 concerning the Criminal Code. In addition, secondary legal materials from research results, works from legal circles, textbooks and scientific journals. collected by means or procedures used to solve research problems by examining secondary data through library research, namely by studying statutory provisions relevant to the research material. The data analysis technique used in this study is qualitative analysis, namely a method that focuses on the interpretation of legal materials by providing a detailed and comprehensive picture where the data is collected then analyzed systematically and studied to form a

conclusion. With this technique, the results of the study are expected to be able to provide a deep and relevant understanding of the problems being studied.

DISCUSSION AND ANALYSIS

1. Legal Regulations Regarding Same-Sex Relationships in Indonesia

The legal regulation of same-sex relationships in Indonesia is a constantly evolving issue, situated at the intersection of positive law, moral values, religion, human rights, and rapidly changing social dynamics. Although Indonesia does not criminalize same-sex relationships between adults in the private sphere, the national regulatory framework exhibits normative ambiguity that leaves gay, lesbian, and bisexual people in a space that is neither fully protected nor socially justified (Manik et al., 2021). This ambiguity arises because the three normative regimes of criminal law, religious law, and social values interact in an inharmonious manner, while human rights standards require the state to provide protection to all citizens without discrimination. This situation makes the legal regulation of same-sex relationships intelligible not only through regulatory texts but also through how those legal norms are produced, interpreted, and implemented in law enforcement practices and public policy.

In the context of positive law, the Criminal Code (KUHP) is the primary instrument often referred to when discussing same-sex relationships. The KUHP does not essentially prohibit same-sex relationships between consenting adults. The only relevant provision is Article 292 of the KUHP, which states that adults who commit lewd acts of the same sex with a minor can be subject to a maximum prison sentence of five years (Widayati, 2018). The scope of this article is not intended to criminalize same-sex relationships per se, but rather is part of the provisions for protecting children from sexual violence, abuse of authority, and coercion (Handayani, 2018). Therefore, same-sex relationships between adults are legal as long as they do not involve violence, coercion, or exploitation of the child. Therefore, it is clear that Indonesia does not criminalize sexual orientation in criminal acts.

However, the neutral articles in the Criminal Code have undergone significant development with the ratification of the new Criminal Code through Law Number 1 of 2023 (the National Criminal Code). Although the National Criminal Code still does not contain articles criminalizing same-sex relations between adults, there are expansions of moral norms that give rise to potential restrictions on the freedom of movement of Lesbian, Gay, Bisexual, and Transgender (LGBT) groups. For example, provisions regarding sexual relations outside of marriage, expanded indecent acts, and complaints that can be filed by family or interested parties (Danardana & Setyawan, 2022). This is because the state only recognizes marriage

between a man and a woman as stipulated in Law Number 16 of 2019 in conjunction with Law Number 1 of 1974 concerning Marriage. For this reason, same-sex relationships are automatically outside the framework of marriage, so that their sexual acts can be subject to articles on indecent acts or adultery, if there is a complaint from the family as mandated in statutory regulations (Burhanudin, 2018).

Furthermore, Article 414 of the National Criminal Code represents a significant development in the regulation of moral law in Indonesia because for the first time the National Criminal Code explicitly states that indecent acts can be committed against people of “the same or the same sex.” This formulation marks a significant change compared to the previous Criminal Code which only regulated indecent acts in a heterosexual context, except for Article 292 which was limited to indecent acts between people of the same sex against children. With this new provision, the Criminal Code broadens its scope so that indecent acts between people of the same sex now have a clear legal basis for criminal prosecution, especially if they are committed in public, committed with violence or threats of violence, or published as pornographic content. In fact, Article 414 paragraph (2) also stipulates that forcing someone to commit indecent acts against the perpetrator, whether of the same sex or a different sex, can be punished with imprisonment of up to nine years. Thus, the new Criminal Code does not criminalize same-sex relations that are voluntary and in private, but provides a more comprehensive basis for prosecuting same-sex indecent acts under certain conditions, which relate to something that was previously not fully accommodated in the old Criminal Code. This article shows that sexual orientation is not the focus of criminalization, but indecent acts involving elements of coercion, publication, or violation of public decency are now regulated more strictly without distinguishing between the gender of the perpetrator and the victim.

Although the enforcement of these articles is not specifically aimed at sexual minorities, the construction of social norms and facts indicates that same-sex groups have a greater potential to be targeted for criminalization because they lack the legal umbrella of legal marriage recognized by the state (Dani & Darmoko, 2023). This situation is not only a matter of legal interpretation but also reflects how lawmakers position morality as a basis for drafting criminal law (Agustanti, 2018).

In addition to national criminal law, a phenomenon that cannot be ignored in discussions about regulating same-sex relationships is the existence of regional regulations with a strong moral and religious basis. Aceh is the only region with the authority to create its own criminal law through the Qanun Jinayat (Gayo, 2017). This Qanun clearly criminalizes same-sex sexual

relations and stipulates penalties such as caning, fines, or imprisonment. This provision demonstrates a regulatory disparity between neutral national law and regional laws that tend to be repressive towards LGBT groups. Other regional regulations, while not as comprehensive as Aceh's, also adopt morality clauses in their public order regulations, which can be interpreted broadly to prosecute LGBT individuals or groups. In several major cities such as Jakarta, Bandung, and Depok, authorities frequently conduct raids on LGBT communities under the pretext of maintaining public order, despite the lack of a clear criminal basis in the National Criminal Code (Ramadan et al., 2022). This demonstrates that the implementation of administrative law often reflects societal moral pressure, rather than strict legal principles.

Meanwhile, the influence of religion as a source of moral values also strengthens society's reference to normative views on homosexuality. In Islam, the majority of Islamic scholars believe that homosexuality is prohibited both morally and legally (Khairani & Saefudin, 2018). Debates arise regarding the appropriate type of punishment, with some arguing for severe punishments such as the death penalty, while others prefer a *ta'zir* approach that allows judges to impose sentences tailored to the context of the case, such as imprisonment, fines, or caning (Azzahidi, 2025). Although Indonesia does not implement Islamic criminal law nationally, these religious views remain an important reference in shaping public opinion and influencing local policy direction. Other religions, such as Christianity, Catholicism, Hinduism, and Buddhism, also have normative interpretations that generally discourage same-sex relationships. Thus, religious norms have a significant influence on public perception and contribute to shaping the socio-political environment in which laws are formulated and enforced (Afiyah, 2016).

From a human rights perspective, Indonesia faces serious challenges because international human rights standards emphasize non-discrimination, including on the basis of sexual orientation. Instruments such as the ICCPR affirm the rights to privacy, non-discrimination, and protection from violence. Although same-sex relations between adults are not criminalized in Indonesia, LGBT people continue to experience significant discrimination in access to public services, security, health care, and the fulfillment of other basic rights. Incidents of persecution, residential raids, the disbandment of community events, and the practice of unlawful arrests demonstrate that human rights protections are ineffective. The absence of regulations explicitly protecting sexual minorities allows law enforcement officials to act arbitrarily under the pretext of maintaining morality or public order. This indicates that,

despite the absence of formal criminalization, there is a strong social criminalization reflected in the actions of officials and the public.

Public policy frameworks related to same-sex relationships generally intersect with the health sector, particularly the prevention of sexually transmitted diseases (Indira et al., 2022). However, health policies are not oriented toward punishment, but rather toward the provision of inclusive medical services. The biggest challenge in health policy is the stigma that discourages LGBT groups from accessing health services, even though several national programs, such as those addressing HIV/AIDS, are designed with non-discriminatory principles. The lack of a legal framework protecting sexual orientation often hinders government health efforts due to public concerns about being perceived as supporting or legitimizing same-sex relationships. Consequently, public policies that should be inclusive and rights-based often lack the full support of political institutions.

From a sociological perspective, legal regulation of same-sex relationships in Indonesia cannot be separated from the social construction of morality (Sholihin et al., 2023). In societies with a strong moral consensus, law tends to be used as an instrument to uphold dominant values. However, in a modern state governed by the rule of law, law should be able to distinguish between the private and public spheres. A major weakness in Indonesia's current legal system is the blurring of the lines between these two spheres, allowing sexual behavior, once considered a private matter, to become a matter subject to public prosecution. This raises important questions about the extent to which the state has the right to interfere with individual privacy. When moral norms become the basis for legal intervention, there is a risk that the law will no longer be an instrument of justice but instead a tool of social control that discriminates against minority groups.

Furthermore, the state has not yet provided a legal mechanism to protect LGBT groups from discrimination, leaving them facing both social and legal risks (Asyari, 2018). To create a more equitable legal system, Indonesia needs to reconstruct its legal approach by strengthening the boundaries between the private and public spheres, harmonizing regional regulations with national law, and ensuring that law enforcement does not discriminate against sexual minorities.

Ultimately, regulating same-sex relationships in Indonesia requires a clearer and more coherent legal framework to avoid uncertainty and potential abuse of authority. The state needs to formulate an approach that focuses not solely on criminalization or non-criminalization, but rather on protecting citizens rights, respecting privacy, and preventing violence and

discrimination. Therefore, although same-sex relationships remain a sensitive issue in a society that adheres to traditional religious and moral values, the law must act as an instrument of justice that guarantees protection and certainty for all citizens without exception. Legal regulation of same-sex relationships is a challenge for Indonesia to demonstrate its maturity as a state based on the rule of law that respects human dignity, diversity, and the human rights of every individual.

2. Legal Resolution of Same-Sex Relationships in Indonesia

The legal resolution of same-sex relationships in Indonesia is a growing issue in national legal, social, and political discourse. Although homosexual practices and same-sex relationships have become a dynamic part of Indonesian society, the Indonesian legal system still displays ambivalence and ambiguity in responding to this phenomenon. On the one hand, Indonesia, as a state based on the rule of law based on Pancasila and the 1945 Constitution of the Republic of Indonesia, upholds the principles of respect for human dignity, privacy, and individual freedom. However, on the other hand, prevailing social, moral, and religious norms significantly influence the evolving legal arrangements, often creating tensions between these principles. Therefore, the legal resolution of same-sex relationships is not solely related to the application of criminal laws but also involves normative and sociological considerations, as well as developments in international law and human rights.

Normatively, the Indonesian Criminal Code, as Indonesia's positive criminal law, does not explicitly criminalize consensual sexual relations between adults of the same sex. Article 292 of the Criminal Code only defines same-sex relations as a criminal offense when committed by an adult against a minor (under 18 years of age), essentially protecting children from sexual violence (Larasati et al., 2021). Therefore, in the context of same-sex relations between adults, the national legal system is neutral and does not establish criminalization. This demonstrates that formally, Indonesian positive law does not intrude into an individual's private space as long as there are no elements of violence, coercion, exploitation, or child involvement. However, this freedom is often perceived differently by society due to strong moral values and views that consider same-sex relations to be deviant behavior.

Several examples of LGBT cases in Indonesia can mostly be found in the directory of Supreme Court decisions involving members of the Indonesian National Armed Forces. First, based on the Decision of the Main Military Court Number: 41-K/PMU/BDG/AL/X/2022, it was found that the facts revealed in the first instance trial that the same-sex intercourse committed by the Defendant engaged in deviant sexual relations (LGBT) with Witness-1, only

to fulfill the Defendant's biological needs. This shows that the Defendant has an abnormal sexual behavior deviation, namely liking the same sex, namely other men, so that this can be dangerous, transmitting this deviation, therefore firm action must be taken against the Defendant. Furthermore, so that the Defendant's actions do not infect or be imitated by other Soldiers, he must be separated from the lives of other soldiers. This punishment is also to provide a deterrent effect to other soldiers, so as to protect military interests, especially the good name of the Defendant's unit. The decision is to impose a principal sentence of three months' imprisonment and an additional sentence of dismissal from military service.

Second, the Decision of the Military Court II-09 Bandung Number 49-K/PM.II-09/AD/III/2020, considers that reviewed from the juridical aspect and Military interests, the Defendant's actions in engaging in deviant sexual relations with the same sex in this case were carried out with Witness-3 who are both TNI AD Soldiers who in the scope of Military life are a large TNI family. The Defendant and Witness-3 should be able to look after each other, so that the Defendant's behavior has tarnished the good name of the TNI AD and has violated the order of the joints of the Soldier's disciplinary life and is contrary to the rules of law that must be respected, obeyed and upheld by every citizen and TNI Soldier, including the Defendant. That viewed from the sociological aspect or the eastern cultural values, customs, religious norms and propriety that live in society in general that the Defendant as a religious person then from the perspective of any religion if two people of the same sex then engage in deviant same-sex sex (Homosexual) this has violated the values of propriety and eastern customs that live in the Indonesian community and religious norms which according to any religion are definitely prohibited. That viewed from the philosophical aspect that the Defendant's actions who have engaged in intercourse/deviant sex with Witness-3, in order to obtain the ultimate and fair truth for all parties, the Panel of Judges assessed it from several sides, both from the side of the Defendant's actions and from the side of military interests. From the side of the Defendant's actions who engaged in intercourse/deviant sex (Homosexual) with Witness-3 who is a fellow TNI Soldier can clearly embarrass the Defendant himself and damage the image of the TNI and the Defendant's Unit, thus creating a negative image for the good name of his Unit in the eyes of the Community, if the Defendant is not given a punishment commensurate with his actions. The verdict was to impose a principal sentence of seven months in prison and an additional sentence of dismissal from military service.

That based on Article 2 of the Criminal Code, a military man who commits a general crime that is not regulated in the Criminal Code shall be subject to the provisions of the Criminal

Code with deviations determined in the Criminal Code including the imposition of additional penalties of dismissal from military service, that the legal norms for imposing additional penalties of dismissal from military service are regulated and based on Article 26 of the Criminal Code which states “dismissal from military service with or without revocation of the right to enter the Armed Forces. The additional penalty may be imposed by the Judge together with the decision to impose the main penalty on a military man who, based on the crime committed, is deemed no longer worthy of remaining in the military.” This provides the understanding that the additional penalty of dismissal from military service can be imposed on any Soldier, who has been legally and convincingly proven guilty of committing the crime charged against him, that based on the actions he has committed, the person concerned is deemed no longer worthy of remaining in the military.

Ultimately, the resolution of same-sex relationships refers back to the Criminal Code. Although the Criminal Code does not directly regulate same-sex relationships between adults, several regional regulations have begun to implement sharia-based rules that include same-sex relationships as prohibited, even criminal, acts. Aceh Province, through the Qanun Jinayat, for example, expressly stipulates that *liwath* (sexual relations between men) and *musahaqah* (sexual relations between women) are *jarimah* (criminal acts) punishable by caning, fines, or imprisonment (Aulia, 2024). This sharia-based law enforcement emphasizes the existence of legal pluralism in Indonesia, where an act can be considered legal nationally but illegal at the local level, which has specific autonomy. The existence of this qanun is often the subject of debate, particularly regarding its compliance with the human rights principles guaranteed in the 1945 Constitution of the Republic of Indonesia, particularly the principles of non-discrimination and protection of privacy.

Besides Aceh, several regions have attempted to formulate local regulations with moral or public order overtones, which in practice have been used to prosecute LGBT communities. Although many of these drafts have not been enacted, the debate over the role of local governments in regulating public morality underscores the complexity of the legal approach to same-sex relationships. This situation demonstrates that legal resolution of same-sex relationships in Indonesia cannot be separated from local political dynamics, pressure from the majority group, and the tension between the principles of individual freedom and public morality.

Contrary to previous court rulings, several LGBT cases have also occurred within marriages and have become the source of problems that have resulted in divorce. As stated in

the Sibuhuan Religious Court Decision Number 295/Pdt.G/2020/PA.Sbh, the Petitioner and Respondent were legally and religiously bound by marriage as husband and wife. Before handing down the verdict, the judge considered that the Petitioner's lawsuit essentially requested the Sibuhuan Religious Court to grant permission to pronounce a one-year divorce against the Respondent on the grounds that since the beginning of the marriage (early 2019) the Petitioner and Respondent had been living in a less harmonious and harmonious manner, because disputes and arguments often arose because the Respondent liked the same sex (LGBT), the Respondent often lied to the Petitioner. In addition, the Respondent did not respect the Petitioner as her husband, which ultimately resulted in the Petitioner and Respondent living apart for approximately 6 months and never getting along again. Finally, the judge granted the Petitioner's request by default.

In the realm of legal resolution, there is also discussion regarding changes to criminal law through the National Criminal Code, which was ratified and enacted in 2023. While not directly criminalizing same-sex relations, the National Criminal Code expands the crime of adultery to apply to anyone engaging in sexual relations outside of marriage, including same-sex couples who cannot legally marry in Indonesia (Sirjon, 2023). This implies that, although homosexual relations are not explicitly mentioned, the expansion of the crime of adultery has the potential to implicate private same-sex relationships if a complaint is filed by a party with legal standing. Thus, while not seen as direct criminalization, the National Criminal Code indirectly narrows the private space for same-sex couples and creates the potential for the use of law to oppress sexual minorities. This demonstrates that the legal approach to this issue remains heavily influenced by normative heterosexual moral values that dominate regulatory development.

In addition to the criminal approach, legal resolution of same-sex relations also falls within the domain of administrative law and public policy. The government has implemented various administrative measures in the form of restrictions, such as refusing to recognize LGBT community organizations, restricting campaign activities, and controlling the distribution of educational content on sexual orientation. In some cases, authorities have conducted raids or raids on places suspected of being LGBT community gathering spaces, despite not always having a clear legal basis for these actions. This approach reflects that legal solutions often involve repressive measures based on morality rather than a systematic legal framework oriented towards legal certainty (Putra, 2024).

On the other hand, a more humane legal approach can be found within the framework of human rights law. Indonesia has ratified the ICCPR, which affirms the principles of non-

discrimination, freedom of expression, and protection of human dignity. Although this international instrument does not explicitly mention LGBT, the United Nations Human Rights Committee's interpretation has classified discrimination based on sexual orientation as a violation of human rights. Therefore, legal solutions to same-sex relationships should consider the state's obligation to protect every citizen from the threat of violence, persecution, and discriminatory acts. However, the implementation of human rights principles in the LGBT context in Indonesia remains minimal due to strong social and political resistance, resulting in a slow translation of international human rights norms into national law.

In the context of non-criminal legal solutions, several more constructive alternative approaches are beginning to be discussed by academics and human rights practitioners. One such approach is restorative justice, which focuses on the restoration and protection of individual rights rather than the imposition of punishment. This approach is particularly relevant in cases where violence, intimidation, or discrimination against LGBT individuals occurs. In this case, the role of law enforcement officials should not be to prosecute people based on their sexual orientation, but rather to protect them from harmful criminal acts. Unfortunately, this approach has yet to become mainstream, as the shift in moral and legal paradigms regarding LGBT people is still ongoing.

Furthermore, legal resolution of same-sex relationships can also be viewed through a sociological approach to law. From this perspective, law is understood not only as a normative text but also as a social practice influenced by collective views, culture, and societal interactions. Much discriminatory law enforcement occurs not because of the legal rules themselves, but because of social stigma and bias among officials. When public opinion remains negative toward LGBT people, officials may engage in repressive actions without a strong legal basis, often justified by the community. Therefore, legal resolution in this context requires social transformation and public education, so that the law can be enforced more fairly and non-discriminatorily.

Furthermore, a comprehensive legal resolution requires harmonization of national law, customary law, and religious values. Indonesia, as a pluralistic nation, possesses diverse values, customs, and beliefs, all of which view same-sex relationships differently. Some indigenous communities are tolerant of variations in gender identity and sexual orientation, while others strongly oppose them. This plurality often makes national policy development extremely difficult. Therefore, legal solutions oriented toward substantive justice must balance this pluralism with human rights principles and constitutional guarantees.

Based on these analyses, it can be concluded that legal solutions to same-sex relationships in Indonesia are still in a transitional state. The state lacks explicit regulations to protect or restrict same-sex relationships. However, various existing legal instruments create loopholes for indirect criminalization and social persecution. An ideal legal solution should prioritize not only rule enforcement but also consider human dignity, the protection of vulnerable groups, and evolving social dynamics. Therefore, more comprehensive legal reform is needed, encompassing legislation, public policy, and legal education, so that the resolution of same-sex relationships can be carried out in a balanced, proportional manner, and reflect the values of justice in a pluralistic society.

The LGBT phenomenon is essentially part of the diversity of human sexual orientation that occurs across all levels of society, regardless of employment status, social standing, educational level, or economic background. Individuals with same-sex sexual orientation can be found in various professions, including civil servants, private sector employees, medical personnel, educators, informal workers, and professionals. This is because sexual orientation is not a characteristic determined by occupation, position, or work environment. Therefore, the existence of LGBT is a cross-sectoral social reality and cannot be associated or stereotyped based on specific employment status.

However, same-sex relationships can be considered a criminal offense if they meet the elements stipulated in the law. First, same-sex relationships are categorized as a crime if they involve children or minors, as stipulated in Article 292 of the Criminal Code. This includes indecent acts of the same sex committed by an adult against a child, which are punishable by a maximum of five years imprisonment. In addition, the latest provisions regarding indecent acts in the National Criminal Code are regulated in Article 414. Second, same-sex relations become a criminal offense if they are carried out with violence or threats of violence, coercion, fraud, or abuse of power as per the general provisions regarding crimes against morality in the Criminal Code and other relevant laws. Third, in the context of certain regions such as Aceh, same-sex sexual relations are also categorized as a criminal offense based on the Qanun Jinayat, regardless of whether there is consent between the perpetrators. Thus, it is not the sexual orientation or employment status of the perpetrator that is the basis for the criminal assessment, but elements of the unlawful act such as the age of the victim, the presence of coercion, violence, or special provisions in regional laws that determine whether the same-sex relationship falls into the category of a criminal offense.

Conclusion

Legal regulations regarding same-sex relationships in Indonesia demonstrate a lack of synchronization between positive legal norms, societal moral values, and the development of human rights principles. At the national level, the Criminal Code (KUHP) does not criminalize consensual same-sex relationships between adults, but several regional regulations, particularly the Aceh Qanun Jinayat (Qanun Jinayat), impose strict criminalization and penalties. Furthermore, amendments to the National Criminal Code, including the expansion of the crime of adultery and the expansion of the element of indecent acts, have the potential to indirectly diminish the privacy of LGBT individuals. This situation demonstrates that legal regulations are still influenced by the dominance of majority morality, thus preventing legal certainty, protection of rights, and the principle of non-discrimination. A more just legal harmonization, based on a human rights perspective, and in accordance with the plurality of Indonesian society, is needed.

Legal resolution of same-sex relationships in Indonesia has so far lacked a consistent direction, as its handling has been largely repressive rather than based on protecting citizens' constitutional rights. The ambiguity of normative formulations in criminal law often makes resolutions dependent on official interpretation and public moral pressure, thus maintaining the potential for indirect and discriminatory acts. More constructive approaches, such as protection against violence, erasing stigma, and implementing restorative justice principles, have not yet become mainstream. Therefore, an ideal legal solution requires comprehensive reforms that ensure the state not only maintains order but also guarantees the dignity and rights of every individual without discrimination, particularly for sexual minorities.

Suggestion

Harmonization of legal regulations is needed to clarify the boundaries between private and public spheres in addressing same-sex relationships, to prevent excessive criminalization and inappropriate legal interpretation. It is also crucial to strengthen legal interpretations that guarantee the protection of every citizen's rights from discriminatory acts, both in law enforcement and in the application of moral norms. Furthermore, local regulations need to be thoroughly evaluated to ensure they do not conflict with national provisions and create legal uncertainty, allowing for more consistent, proportional, and equitable regulation of same-sex relationships.

Law enforcement officials are urged to adopt a resolution approach that prioritizes the protection of citizens' rights and does not rely on majority morality. The government and legislature are advised to develop more educational and non-repressive legal resolution models, while civil society organizations and educational institutions need to improve legal literacy to reduce stigma. This approach will ensure that legal resolutions are more humane, proportional, and in accordance with constitutional principles.

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