

Human Rights Challenges in the Digital Age: Controversy over Criminalization of LGBT Identity in Indonesia



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ABSTRACT: Pancasila functions as a guideline, and therefore, no actions should contradict its values. One of the most important values for every human being is what we now call human rights. Given that Pancasila serves as a guideline, no actions should contradict its values. One of the most important values for every human being is what we now call human rights. The majority of the population in Indonesia firmly rejects the presence of the LGBT community in Indonesia, especially considering that in this digital era, the LGBT community could spread rapidly across Indonesia like a virus. Therefore, the identity of the LGBT community in Indonesia should be considered for criminalization, given that this has become a debate between human rights and the prevailing norms in Indonesia.

KEYWORDS: LGBT, Human Right, Digital Age

I. INTRODUCTION

The Indonesian Constitution clearly states that Indonesia is a state based on law (*rechtstaat*), not a state based on mere power (*machstaat*)¹. This indicates that every aspect of national and state life must always be based on the applicable legal values. Indonesia is (*staatsfundamentalnorm*)². Therefore, philosophically, Pancasila can be said to be a way of life, awareness, and legal ideals along with moral ideals that always encompass the spiritual atmosphere and contain the original values and characteristics of the Indonesian nation. Because Pancasila functions as a guideline, no actions should contradict its values. One of the most important values of every human being is what we now call human values or Human Rights (therefore called HAM)³.

Human rights are basic rights that are inherent in every individual since birth, given by God Almighty, and cannot be taken away or revoked. These rights must be respected, upheld, and protected by the state, law, government, and every person to maintain human dignity. Human rights are universal rights that do not depend on nationality, ethnicity, social status, culture, religion, or laws in force in a person's place of residence.

In Indonesia, Article 1 of Law No. 39/1999 on Human Rights and Law No. 26 of 2000 on Human Rights Courts states that human rights are a series of rights inherent in the nature and existence of humans as creatures of God Almighty, and are a gift that must be respected and protected by the state for the sake of preserving human dignity. This law is in line with the Universal Declaration of Human Rights 1948 which states that human rights are basic rights that are inherent in humans, including the right to form a family, the right to self-development, justice, freedom, communication, security, and welfare.

These basic rights include the right not to be arbitrarily arrested, the right to a fair and impartial trial, the right to legal aid, and the right to the presumption of innocence. Inalienable rights are personal rights that are owned by individuals, are not granted by law, custom, or belief, and cannot be taken away or transferred. These rights are considered natural rights granted by the creator. In addition to Law No. 39/1999 concerning Human Rights, Article 1 Paragraph 1 of the Human Rights Law defines human rights as a series of rights inherent in the nature and existence of humans as creatures of God Almighty and must be protected by the state to

¹ Muhlashin, I. (2021). Negara Hukum, Demokrasi dan Penegakan Hukum di Indonesia. *Al-Qadau Journal: Peradilan dan Hukum Keluarga Islam*, 8(1), 87-100. <https://doi.org/10.24252/al-qadau.v8i1.18114>

² Novrizal, I., R., & Marzuki., & Nasution Mirza. (2021). Pancasila Sebagai Staatsfundamentalnorm Indonesia dalam Pembentukan Hukum Nasional. *Jurnal Ilmiah Metadata*, 3(2), pp. 541-558. <https://doi.org/10.47652/metadata/v3i2>

³ Putri, D. W. D. (2022). LGBT Dalam Kajian Hak Asasi Manusia di Indonesia. *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal*, 2(1), pp. 88-100. <https://doi.org/10.15294/ipmhi.v2i1.53739>

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maintain human dignity. The UN Universal Declaration of Human Rights and Law No. 39/1999 concerning Human Rights both recognize humans as creatures of God.⁴

Currently, digitalization is in the spotlight in developing countries like Indonesia because of the emphasis on its positive impacts. Digitalization brings benefits such as fast access to scientific information, news, and the latest issues. However, in addition to these positive impacts, digitalization also has negative impacts that are often not realized by the public. For example, the increase in individualism reduces communication and socialization in the community, as well as the decline in religious values. This causes the return of individualistic lifestyles, hedonism, and racism.⁵

The digital era began with the emergence of digital technology, especially internet networks and computer information technology. New media in the digital era has characteristics that are easy to manipulate and are based on networks or the internet. Various groups can now easily access information in various ways and can enjoy digital technology facilities freely and in a controlled manner.⁶ Social media is a digital media that includes social networks, blogs, podcasts, content-based forums, and microblogging. Social media makes it easier for people to find out about events in other parts of the world quickly. With social media, people can communicate, search for information, and do various other activities via the internet. This causes various trends from other countries to be easily and quickly enjoyed by the Indonesian people. Social media that are often used by the Indonesian people include WhatsApp, Instagram, Facebook, and Twitter. In addition to being used to communicate with family and close friends, social media is also used to follow trends and show one's existence.

Technological advances that facilitate access to various things can also pose a threat to human rights, such as the right to privacy, freedom of expression, freedom of opinion, and the right to information. The presence of lesbian, gay, bisexual, and transgender (LGBT) people has become a topic that is widely discussed in Indonesian society, especially with the rampant promotion or advertising of LGBT people on social media. Sexual behaviour that is considered deviant is still taboo in Indonesian society which has an Eastern culture. Indonesian society is still thick with moral, ethical, and religious teachings so sexual behaviour that is considered deviant is not easily accepted.

Sexual behaviour that is considered deviant arises because of different sexual orientations. Sexual orientation is a person's tendency to direct their feelings of attraction, romanticism, emotions, and sexuality to men, women, or a combination of both. Sexual behaviour that is considered deviant is carried out by groups of people who have different sexual orientations, better known as the LGBT group (Lesbian, Gay, Bisexual, and Transgender/Transsexual). The courage of LGBT people to openly show their existence indicates that they are supported by a macrosystem that makes their path easier. Homosexuality and transgender are acts that according to the majority of Indonesian society are acts that are considered contrary to religious values and moral norms, as well as public order.

Although the law in Indonesia does not criminalize the LGBT (lesbian, gay, bisexual, and transgender) community, they as a sexual minority still face a lot of discrimination. Based on a survey conducted by the US-based Pew Research Institute in 2019 and published by The Jakarta Post in 2020, out of 38,426 respondents in 34 countries, only 9% of Indonesians believe that homosexuality should be accepted and tolerated in society. In addition, there have been several attempts to criminalize the LGBT community. In May 2022, Mahfud MD, the Coordinating Minister for Law, Politics, and Security, stated that regulations on LGBT had been added to the proposed Revised Criminal Code (RKUHP). Mahfud argued that this was the right action because LGBT is against religious norms.⁷

The majority of the population in Indonesia firmly rejects the presence of the LGBT community in Indonesia, especially considering that in a digital era like this, the LGBT community will spread rapidly throughout Indonesia like a virus. Considering that social media can now be accessed by anyone, even LGBT people are now increasingly openly showing their existence. Therefore, the population in Indonesia strongly rejects the presence of LGBT people in Indonesia because it is considered one of the great sins. Where the act is considered an act that violates religious and moral norms, it is only natural that society wants the act to be criminalized because it has violated the norms that exist in society, and also not only seen from the side of violating norms but also from the side of health because it is considered to cause infectious diseases such as (syphilis, herpes, cancer, infection), anal cancer, and HIV / AIDS due to sexual activity carried out by LGBT people. Seeing the facts above, the identity of LGBT people in Indonesia should be considered to be criminalized considering that this is a debate between HUMAN RIGHTS and the norms that apply in Indonesia.

⁴ Fadhilah, A. E., & Dewi, A. D., & Furnamasari, F. Y. (2021). Hak Asasi Manusia dalam Ideologi Pancasila. *Jurnal Pendidikan Tambusai*, 5(3), pp.7811-7818. <https://doi.org/10.31004/jptam.v5i3.2233>

⁵ Andriyana, P., & Adrian, B. (2024). AGAMA, MEDIA, DAN MASYARAKAT DI ERA DIGITAL. *Journal of Islamic Studies*, 4(2), pp. 85-95. <https://doi.org/10.37567/borneo.v4i2.2810>

⁶ Halimatussadiyah, S., et al. (2024). The Impact of Technology on People's Behavior. *Primagraha Journal*, 5(1), pp. 1-10. <https://doi.org/10.59605/jp.v5i01.627>

⁷ Salim, N., A. & Halim, S., M. (2024). The Mediating Effect of Self-Esteem on the Association Between Minority Stress and Social Well-Being Among Indonesian Young Adult Gay Men and Lesbian Women. *ANIMA Indonesian Psychological Journal*, 39(1), e08. <https://doi.org/10.24123/aipj.v39i1.5794>

II. RESEARCH METHOD

The Type of research is normative research. This type of research is library research, in the sense that all data sources come from written materials in the form of books, documents, magazine, and manuscripts that are related to the topic of discussion on through a review of various literature related to research which includes primary, secondary, and tertiary data.

III. FINDING AND ANALYSIS

Indonesia is a country of law. In its development, the law is not only used to regulate existing behavior in society and maintain existing patterns of habit. Law is actually a human work that reflects the will and goals of society that are to be achieved. Indonesia is a country of law based in Pancasila. Therefore, all laws in Indonesia are based on Pancasila, which is the source of all sources of law. Pancasila is a way of life and moral ideals that are the values and characteristics of the original Indonesian people. The first principle of Pancasila, namely the values of divinity, emphasizes that the existence of the state, nation, and people of Indonesia is related to God Almighty, who is considered the source of all goodness. The determination of Pancasila as a source of law for the state is in line with the 4th paragraph of the Preamble to the 1945 Constitution. The 1945 Constitution itself is a manifestation of the values of Pancasila. The purpose of law is an integral part of the national goals stated in Pancasila and the 1945 Constitution and is an implementation of the values of Pancasila.

Pancasila plays an important role as a symbol of the spirit and aspirations of the Indonesian people to achieve national unity, which is important in fostering harmony and peace for the sake of the sustainability of the country. Pancasila is considered a national treasure because it can be a guideline in realizing moral, ethical, and spiritual values that are role models. By having five main principles, namely Divinity, Humanity, Nationality, Democracy, and Social Justice, Pancasila is the highest ideal that should not be doubted or violated, depicting the unity of the soul of the Indonesian nation with these values. The first principle of Pancasila contains the following:

1. Tolerance between religious communities by respecting differences and avoiding division;
2. Belief and religion are relationships between humans and God and no one has the right to interfere in other people's affairs;
3. Do not force others to follow the religion we believe in;
4. Do not force Do not differentiate between religious communities so that they can live in harmony with others to follow the religion we believe in;
5. Carrying out religious orders by one's beliefs.

The value of divinity is sacred and must be highly respected in Indonesia. As a religious nation, Indonesia is expected not to contradict the will of God as stated in the holy books of existing religions. However, as time goes by, contradictory and violative actions, including those carried out by the LGBT community, seem to have reduced the sanctity of these values. The sacred values of Pancasila are of great importance to Indonesian society, and should not be questioned even in the context of human rights.

Human rights, also known as HAM, are one of the fundamental values inherent in every human being. Since birth into this world, humans carry natural rights that are integral to their lives. The concept of HAM according to the Great Dictionary of the Indonesian Language includes the right to be protected internationally, such as the right to life, liberty, freedom of opinion, and freedom to own. Human rights have been owned by every individual since birth and may not be taken or seized by anyone.⁸ The UN Declaration has protected HAM regardless of race, ethnicity, religion, or social status. One form of HAM is personal rights, which include individual freedom to express opinions, embrace religion according to their respective beliefs, worship, and have the freedom to organize or join a union.

Respect for human rights in the Indonesian context is expanded through the formation of laws to maintain human honor and dignity, by the provisions of the 1945 Constitution. This approach is considered very important by legislators in Indonesia. According to Muladi, the implementation of human rights in Indonesia can be conceptually classified into three views:

1. The universal view recognizes that human rights are universal but also takes into account certain exceptions by Article 29 of the Universal Declaration of Human Rights;
2. The absolute universal view sees human rights as universal values defined in the Universal Declaration of Human Rights (UDHR). Adherents of this view reject traditional, cultural, and religious differences in the application of human rights internationally;
3. The absolute particularistic view views human rights as a problem that must be regulated by each nation without providing strong justification, especially regarding international documents.⁹

⁸ Siahaan, M. V. A. (2024). Analisis Pertanggungjawaban Pidana Terhadap Pelaku Tindak Pidana Kekerasan dalam Rumah Tangga Menyebabkan Kematian: Studi Kasus Putusan Nomor: 44/Pid.B/Pn.Bks. *COMSERVA: Jurnal Penelitian dan Pengabdian Masyarakat*, 3(11), <https://doi.org/10.59141/comserva.v3i11.1210>

⁹ Wahyuni, T., D. (2024). Pancasila Education as One of the Forms of National Character in the Global Era. *Research Horizon*, 4(1), pp. 17-24.

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Although the state is obliged to respect and protect the rights of every Indonesian citizen, it is important to note that the implementation of human rights must be by the norms, values, principles, and beliefs of Indonesian society. Respect and protection of human rights in Indonesia are adjusted to the values and norms prevailing in society. This action cannot be considered a violation of human rights because the state also has a responsibility to protect the rights of others to ensure public order, peace, and the general welfare of the people.

Increasing awareness and protection of human rights in the digital era is very important. The rapid development of information and communication technology brings new challenges in protecting human rights. One of the issues that is a major challenge is the LGBT problem in Indonesia. The development of information technology is growing more and more. Social media, as a tool in the digital era, has become a means to spread propaganda and trigger a war of ideas among Muslims. Although social media provides various positive content such as education and religious studies, we must not ignore the negative side. Much inappropriate content such as nudity advertisements and behaviour that violates life norms is widely spread on social media. This triggers debate and conflict of ideas in society, which is exacerbated by the ability of social media and technology to disseminate information.

Social media is a platform without limitations, both geographically and ideologically. However, the digital era also brings various problems, one of which is related to LGBT which is increasingly prominent through social media. The LGBT phenomenon is often found in the form of campaigns, WhatsApp groups that discuss LGBT, content that is not suitable for certain ages that are easily accessible, and debates about LGBT that are increasingly intense on social media. There are efforts to deviate from the goals of sexuality carried out by LGBT people, such as child adoption and pornography practices, which they spread through the internet media with the aim of obtaining legality and being widely accepted in society.

In the Indonesian legal system, in accordance with the 1945 Constitution, fundamental human rights such as the right to life, the right not to be tortured, the right to freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person before the law, and the right not to be prosecuted under retroactive laws are rights that cannot be reduced under any circumstances, as regulated in Articles 2, 7, and 22 of the Universal Declaration of Human Rights (UDHR). The Commissioner of the National Human Rights Commission, Natalius Pigai, emphasized that the state must protect all Indonesian citizens, regardless of gender, tribe, religion, race, ethnicity, or minority status, and vulnerable groups from violence. The state is also obliged to fulfill the human rights needs of all Indonesian citizens, including minority and vulnerable groups such as LGBT.¹⁰

In the LGBT context, human rights protection that must be guaranteed and provided by the state includes guaranteeing adequate access to health care to obtain appropriate treatment, as mandated in Article 25 of the Universal Declaration of Human Rights. This confirms that LGBT groups have the right to obtain appropriate medical care for the conditions they face, without interpreting it as recognition or legalization of sexual orientations that are considered deviant. In Indonesia, the principles of human rights are recognized, respected, and protected by law. However, this does not mean that every individual's wishes can be carried out freely. There are limitations set by law, moral norms, community ethics, and religious values that affirm that every individual not only has human rights that must be respected but also has a human obligation to respect the human rights of others and comply with the social norms in which they are located.

The development of globalization that has brought Western culture into Indonesia has raised concerns about the potential erosion of Pancasila values. This phenomenon raises questions about the need for regulations that limit actions that are considered contrary to Pancasila values and morals adopted by Indonesian society. One example is the LGBT phenomenon, which is considered contrary to Pancasila values.

In Indonesia, Pancasila is considered the foundation of values that regulate national and state life. The values of Pancasila, including humanitarian values, are the basis for the view of human rights (HAM). In this context, Indonesia views human rights as something that is integrated with the values of Pancasila, which is different from the more universal view of human rights adopted by Western countries. This view suggests that the values of Pancasila emphasize the importance of maintaining the social, moral, and spiritual integrity of Indonesian society. However, in facing the challenges of globalization, Indonesia is also faced with complex debates about how to respond to modern phenomena such as LGBT, which are often associated with different perspectives on human rights in various parts of the world. Thus, discussions on protecting Pancasila values in the context of globalization show the need for a balanced approach between respecting local values and maintaining openness to global dynamics.

As a country based on Pancasila, with the First Principle affirming the existence of God Almighty, Indonesia recognizes the importance of adhering to religious teachings and providing religious freedom to all its people. Religions in Indonesia firmly oppose LGBT behaviour that is considered deviant. If LGBT-related content is widely disseminated and LGBT behaviour becomes more widely accepted, there is a risk that it will gradually be considered normal and become part of the social norm.

LGBT in Indonesia is still considered a taboo topic, especially among those who hold fast to religious values. The majority of them criticize the behaviour and sexual orientation of the LGBT group. For example, the MUI (Indonesian Ulema Council) has issued a fatwa rejecting the practice of same-sex sexual intercourse and marriage. However, some people are neutral; they accept

¹⁰ Mahardika, G., A. (2023). Legal Politics Concerning The Fulfillment of LGBT Constitutional Rights in The Indonesian Legal Approach. *ANIFA JOURNAL: Gender and Child Study*, 4(1), pp. 43-55, <https://doi.org/10.32505/anifa.v4i1.5985>

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the existence of LGBT but do not agree if LGBT carry out activities openly. This group believes that everyone has the same right to live and obtain human rights, but still considers the local context. On the other hand, there is a group of LGBT supporters consisting of activists and advocates for gender equality, who support LGBT rights without limitations, including in terms of same-sex marriage. They fight to eliminate discrimination against LGBT and fight for full recognition of their rights in every context of life.

Islam, one of the main religions in Indonesia, strongly opposes LGBT behaviour, as stated in the Quran, such as in the letter Al-A'raaf verse 81 stated that such behaviour is considered to be beyond the limit and is forbidden. In addition to Islam, the Bible also emphasizes that sexual relations can only be carried out between men and women in a legitimate marriage, and condemns adultery, including homosexual behaviour. Several verses in the Bible that oppose LGBT are found in Genesis, Leviticus, Mark, Romans, and Hebrews. These verses call for LGBT people to return to their nature as men and women with heterosexual sexual orientation in the context of a legitimate marriage. LGBT supporters often refer to human rights (HAM) as a justification for their behaviour. However, religious values, both Islamic and Christian, emphasize that LGBT practices are contrary to religious teachings and are a violation of moral values held firmly by Indonesian society. Nevertheless, HAM is still considered a basic right that is inherent in every individual since birth, which must be protected by the state.

Article 292 of the Criminal Code regulates the prohibition of homosexual acts between adults and minors, with a maximum prison sentence of five years. According to R. Soesilo in his book *The Criminal Code (KUHP) and its Complete Article by Article Commentaries*, the definition and provisions of Article 292 of the Criminal Code are explained as follows:

- Adult: A person is considered an adult if they are 21 years old or under 21 years old but have been married.
- Same sex: Includes acts between men and men or women and women.
- Obscene acts Refer to any act that violates morality or decency, including acts such as kissing, groping genitals, groping breasts, and so on, including masturbation.
- Implementation of punishment: Two adults or two minors who commit obscene acts together are not punished under Article 292 of the Criminal Code, because this article only regulates obscene acts by adults against minors.
- Criminal requirements: In order to be punished under Article 292 of the Criminal Code, adults must know or at least be able to suspect that their partner who committed the obscene act is not yet an adult

Article 292 of the Criminal Code specifically regulates the protection of minors from indecent acts committed by adults, without explicitly prohibiting homosexuality between adults and other adults.

In the context of fulfilling LGBT rights to basic human rights, it is important to consider the alignment with the values and laws in force in Indonesia. LGBT is considered a deviation from the true nature of humans. Traditionally, humans are created in pairs between men and women, not between men and men or women and women. This is reflected in Law No. 1 of 1974 concerning Marriage which emphasizes that marriage is only valid between men and women, so same-sex marriage as desired by LGBT is contrary to the law in Indonesia. Understanding the fulfillment of human rights must also consider compliance with established laws. This is important so that the fulfillment of human rights is not only seen as an expression of certain groups that prioritize their selfish interests. After all, the foundation of the state and law in Indonesia opposes same-sex marriage and sexual orientation.

LGBT acts must be formulated with certainty containing elements of acts of the same sex or with the same type of genitals, not only against minors. These acts should be formulated in the pornography law and also in the draft Criminal Code as reconstructed as in Article 10 paragraphs (2) and (3) and Article 484 paragraph (1) letters f, g, and h because these acts are one of the acts that are oriented towards sexuality and sexuality carried out by the same sex, and for criminal provisions, they are followed according to the criminal provisions for Article 10 of the pornography law.

CONCLUSIONS

Human rights awareness and protection in the digital era are crucial. With the advancement of information and communication technology, we face new challenges in protecting these rights. One challenge is the unclear identity of LGBT. The uncertain legal regulations regarding the LGBT community in Indonesia have caused turmoil in society. Until now, there has been no criminal law that specifically prohibits homosexual and transgender behavior in Indonesia. Therefore, the current law is still very limited and irrelevant to prosecute homosexual and transgender perpetrators. This is due to the public's view that these acts are very reprehensible and contrary to the norms and religious values adopted by Indonesian society. In addition, it is important to carry out criminalization because of the absence of specific legal regulations related to homosexual and transgender acts.

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