

A LEGAL ANALYSIS OF LGBT MARRIAGE EFFORTS WITHIN THE CONTEXT OF PANCASILA

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Abstract

The research discusses how Pancasila, as the state philosophy, state ideology, and way of life of the Indonesian people, which was born from acculturation and formulation of the diversity of customs, culture, nobility, religion, and beliefs that already exist and are developing in Indonesia, is faced with LGBT propaganda that uses human rights pretext. Many times, LGBT propaganda has tried to find loopholes and opportunities to be accepted in Indonesian society; they have even tried to get recognition and validation of their marriage. However, until now, LGBT people have not found a space or a place in Indonesia. The aim of this research is to provide understanding to the Indonesian people, especially LGBT people, about the role of Pancasila in preventing them, even though they hide behind international human rights in the name of freedom of expression. This research is library research, where the data comes from writings in the form of books, journals, articles, news, and magazines. From the results of this research, it was found that LGBT people are trying to get a place and space, as well as recognition and validation for what they do. They argue in the name of freedom of expression because LGBT is considered human nature. With Pancasila's analysis of LGBT as the basis of the Republic of Indonesia, especially the first principle of Pancasila, which is "belief in One Almighty God," in the context of LGBT, it is very contrary to Godly values, where all religions that live in Indonesia reject the legality of LGBT in Indonesia. While the second principle of Pancasila is "Just and Civilized Humanity," in the context of LGBT (Lesbian, Gay, Bisexual, and Transgender), the approach to the perspective of the second principle, Pancasila, protects human rights but does not conflict with religious norms, especially Islamic law, as adherents of the majority of Muslims in Indonesia. Because in Islam, something that is considered good by religion is also good in human eyes, while something that is considered bad in human eyes is

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also bad in religious eyes. Goodness will produce a reward that will take every servant to His heaven; evil will make him angry and take him to hell.

Keywords: *Pancasila, religious norms, law, Islam, Indonesia, LGBT*

A. Introduction

Recently, there has been a resurgence of the LGBT campaign phenomenon in several parts of the world, including Indonesia, even though the behavior and support for LGBT people are very contrary to religious and social norms¹. However, the Lesbian, Gay, Bisexual, and Transgender campaign, which is then abbreviated as (LGBT), always tries to find a platform so that their existence is recognized, both as individual humans and as social humans.

LGBT is a sexual orientation that is considered abnormal in Indonesian society and even the world because its behavior is not in accordance with the norms and values of Indonesian society in particular and world society in general. LGBT disease can be experienced by anyone, young and old, including teenagers. In adolescence, many of them do not know their sexual identity; many of them are just trying it out or doing it on purpose so that they experience a sexual orientation that is considered abnormal. It is during these times that they search for their sexual identity. Sexuality is basically a foundation of social life that is often more decisive than the history of kings, political history, or major events that we have known so far.²

The sexuality system is put into one vessel with gender construction. This means that the interpretation of sexuality refers to the construction of gender in society. Men are constructed as masculine figures, while women are constructed

¹ Yudhitiya Dyah Sukmadewi Wawan Setiawan, "Peran Pancasila Pada Era Globalisasi" Kajian Terhadap Pancasila Dan Fenomena Lgbt (Lesbian, Gay, Bisexual, Transgender) Di Indonesia," Jurnal Dinamika Sosial Budaya 19 (2017): 129.

² Indah Listyorini Hamdan Arief Hanif, "GBT Dalam Perspektif Hukum Keluarga Islam," ABHATS: Jurnal Islam Ulil Albab 5, no. Sepptember (2024): 13–24.

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as feminine figures.³ This series of constructions is the background to the formation of sexual identity between men and women. The LGBT phenomenon re-emerged around 2012, and there are already 10 countries that have legalized same-sex marriage, namely the Netherlands, Belgium, Spain, Portugal, Sweden, Norway, Iceland, Canada, Argentina, and South Africa. Meanwhile, in Indonesia itself, it seems that the legalization of same-sex marriage is still very difficult to realize.⁴

M. Nurul Irfan (2019) examined LGBT issues from the perspective of Pancasila and argued that LGBT behavior contradicts the principles of Belief in the One and Only God and Just and Civilized Humanity. The study emphasized that Pancasila is inseparable from Indonesia's religious and moral values. However, the analysis remained largely normative-ideological and did not specifically address the legalization of same-sex marriage as an issue of constitutional law.⁵

Similarly, Herlambang (2020) analyzed LGBT-related issues within the framework of Indonesian positive law, particularly Law No. 1 of 1974 on Marriage and the 1945 Constitution of the Republic of Indonesia. The study concluded that the Indonesian legal system does not provide legal recognition for same-sex marriage. Nonetheless, the research did not comprehensively engage with the philosophical dimension of Pancasila as the staatsfundamentalnorm.⁶

³ Anggraini Dwi Milandry Desi Apriani, Hendry Andry, Esy Kurniasih, "Jurnal Pengabdian Masyarakat-Com: Indonesian Community Journal Vol.3 No. 4 Desember 2023, Hal. 2003-2011E-ISSN : 2809-2031 (Online) | P-ISSN : 2809-2651 (Print) THIS WORK IS LICENSED UNDER A CREATIVE COMMONS ATTRIBUTION 4.0 INTERNATIONAL LICENSE 2003 Sosialisa," *Pengabdian Masyarakat* 4, no. 1 (2023): 2003-11.

⁴ Miskari, "Wacana Melegalkan LGBT. "di Indonesia (Studi Analisis LGBT Dalam Perspektif HAM Dan Pancasila)," *Raheema*, 2017, 44.

⁵ M. N Irfan, "LGBT Phenomena in Indonesia: A Pancasila Perspective," *Journal of Indonesian Legal and Social Studies* 4, no. 2 (2019): 123-138.

⁶ R. Herlambang, "Same-Sex Marriage and Indonesian Positive Law: A Constitutional Analysis," *Indonesian Journal of Constitutional Law*, 7, no. 1 (2020): 45-60.

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In several parts of the world that adhere to democratic, liberal, and secular systems, many have legalized marriage and living in one household for LGBT people, and there are even religious figures who support it. The question is, does the existence of LGBT people in Indonesia not conflict with the basic philosophy of Pancasila, state ideology, and the state's Pancasila way of life? So, what are the views of Pancasila and UUD 1945 on the LGBT phenomenon? And what is the legal view of Indonesia's official religions towards LGBT people in Indonesia?

This research is in the form of library research, where data is obtained from writings in the form of news, articles, books, research, and social phenomena. This research uses a qualitative method approach by analyzing findings regarding the symptoms and existence of LGBT people in Indonesian society based on Pancasila. These findings will be discussed and analyzed by relating them to Pancasila as the basis of the state, the Indonesian people's way of life, and the philosophy of the Indonesian people.

After analyzing it in depth, where the values of Pancasila fully contain the religious values that live and develop in Indonesia, it was found that efforts to legalize LGBT marriage are actually not feasible and should not exist and develop in the Unitary State of the Republic of Indonesia.⁷ Because it is based on Pancasila. So the title of this research is "**A LEGAL ANALYSIS OF LGBT MARRIAGE EFFORTS WITHIN THE CONTEXT OF PANCASILA**".

B. Research Method

This research method uses a library research approach, namely the method used in positive law research, which originates from a literature review.⁸ In this research, the data used is primary data obtained by reviewing library

⁷ Fokky Fuad Wasitaatmadja, *Falsafah Pancasila, Epistemologi Keislaman Dan Kebangsaan*, 1st ed. (Depok: Premedia Group, 2018). Hlm 65

⁸ Dedy Mulyana, , *Metodelogi Penelitian Kualitatif* (: 2004 (Bandung: Remaja Rosdakarya, 2004). Hlm 160

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materials (research library).⁹ This study adopts a library research approach, which is commonly employed in normative legal research within the domain of positive law.¹⁰ The research is based on a systematic review of legal and philosophical literature to examine the issue of same-sex marriage within the framework of Pancasila as the foundational ideology of the Indonesian legal system.

The data consist of primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia and Law No. 1 of 1974 on Marriage.¹¹ Secondary materials are obtained from peer-reviewed journal articles, academic books, and authoritative legal commentaries addressing Pancasila, constitutional law, and marriage law in Indonesia.¹²

Data analysis is conducted using a qualitative normative method through three stages: classification of legal materials based on thematic relevance; interpretative analysis of legal norms and the philosophical values of Pancasila as the staatsfundamentalnorm; and systematic legal reasoning to assess the compatibility of same-sex marriage legalization efforts with the Indonesian legal system.¹³

To maintain analytical focus, this study is limited to the examination of same-sex marriage from the perspectives of Pancasila and Indonesian positive law. Other perspectives such as Islamic law, human rights discourse, psychology, or historical analysis are addressed only insofar as they support the central legal-ideological inquiry.

⁹ Sugiyono, *Memahami Penelitian Kualitatif* (Bandung, Alfabetika : 2005 (Bandung: Alfabetika, 2005). Hlm 63

¹⁰ Soerjono Soekanto dan Sri Mamudji, *Penelitian Hukum Normatif Suatu Tinjauan Singkat* (Jakarta: PT. Raja Grafindo Persada, 2009).

¹¹ Vivi Hayati, “E-ISSN : 2615-7845 Volume 14, Nomor 2, Juli-Desember 2019 ~ 290 ~ LGBT DALAM PERSPEKTIF HUKUM POSITIF DAN HUKUM ISLAM (Suatu Kajian Kritis Perkembangan LGBT Di Aceh),” *Jurnal Hukum P-ISSN : Samudra Keadilan* 14, no. Juli-Desember (2019): 290–301.

¹² Irfan, “LGBT Phenomena in Indonesia: A Pancasila Perspective.”

¹³ Jimly Asshiddiqie, *Constitutional Law and Pancasila*, 3rd ed. (Jakarta: Konstitusi Press, 2010).

C. Discussion and Result

Human Nature and Human Pancasila

Basically, by nature, humans were created by Allah SWT along with their physical drives and instincts. One of the instinctual drives is the instinct to preserve offspring (*gharizatu al na'u/hibdhun nazl*), whose manifestations include a feeling of love and sexual urges between opposite sexes (men and women). The view of men towards women as well as women towards men is a view of preserving offspring (*Hifdzun Nasl*), not a view of merely satisfying lust.

Likewise, the purpose of creating this instinct is to preserve offspring, while preserving offspring can only be done by a married couple (male and female). This is the meaning of the definition of marriage, which is the smallest unit in society consisting of husband and wife, or husband and wife and their children. As time progresses, many forms of family that were previously not considered family are now referred to as family according to the National Population and Family Planning Agency, abbreviated BKKBN (2021).

Marriage, or marriage in Islam, can only be performed by the bride and groom, who are male and female. These legal provisions are considered *ma'lumun min ad-din bi ad-dharurat* provisions, or legal provisions that are *mujma' alaih* (mutual agreements)¹⁴. The law also means that in heterosexual marriage in Indonesia, the husband or man plays the role of head of the family, while the wife or woman plays the role of housewife. This is supported by Law No. 1 of 1974, Article 31, Paragraph (3), which says "The husband is the head of the family, and the wife is the housewife". Thus, the family is inhabited by men and women. Open between men and men or women and women.

The Koran explains: "And if you are afraid that you will not be able to do justice to (the rights of) orphaned women (if you marry them), then marry (other) women that you like: two or two, three or four-four. However, if you are afraid

¹⁴ Imam Nakhe'I, "LGBT PERPSPEKTIF ISLAM," *Jurnal Lisan Al-Hal* Volume 4, (2012): 6. Hlm 6

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that you will not be able to do justice, then just have one (existing) wife or (suffice it to have sexual relations with) the slaves you own. That is closer to not committing wrong doing." In another verse, Allah says,

"Your women are fields for you, so come to your fields from whatever direction and in whatever way you like". (al-Baqarah [2], 223)

There are also those who interpret homosexuality as the tendency of a man to have a sexual attraction to people of his own sex. Gay also carries a meaning that is more or less the same as lesbian, namely a deviation from sexual satisfaction that is different from the general public (outside normal human habits), for example by making the anus the object of sexuality, but this gay symptom is practiced (the satisfaction is carried out) between men and boys.

A transgender person can identify themselves as heterosexual, homosexual, bisexual, or asexual. From all the definitions above, although they differ in terms of sexual fulfillment, what they have in common is that they have pleasure both psychologically and biologically, and sexual orientation is not only with the opposite sex but also with the same sex. What would happen if this instinct to preserve offspring were to be realized in same-sex relationships? From this, it is clear that LGBT is against human nature. The Lesbian, Gay, Bisexual, and Transgender (LGBT) phenomenon is a deviation from sexual orientation that is contrary to human nature, religion, and the customs of Indonesian society.¹⁵

Because, even though Indonesia is not an Islamic country, it still adheres to eastern customs (easternization). It cannot be denied that the number of homosexual groups, whether lesbian or gay, is currently increasing. As stated by Dr. Dede Oetomo (2009), who is the Chair of GaYa Nusantara, one of the largest gay organizations in Indonesia, statistical data shows that 8-10 million of the Indonesian male population at any one time are involved.

¹⁵ Dwi Riyanti Toba Sastrawan Manik and Mukhamad Murdiono, "EKSISTENSI LGBT DI INDONESIA DALAM KAJIAN PERSPEKTIF HAM, AGAMA, DAN PANCASILA," *JURNAL KEWARGANEGARAAN* 18 (2021): 84.

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The Interpretation of The First Principle of Pancasila That Contains Islamic Law

The Pancasila ideology is the basic source for the formation of the Unitary State of the Republic of Indonesia (NKRI). Pancasila functions as a primary source for limiting the movements of the Indonesian people so that they are safe and orderly. This means that Pancasila morals have become the source of state order and legal order, as well as the soul of all state activities in all areas of life. Pancasila must also be made a legacy from generation to generation for the next generation of Indonesian youth through Indonesian and national education. Every nation has a unique identity that is stated in its state philosophy.

As a great nation, concern for the inheritance of the nation's noble culture must always be maintained and socialized. Indonesia has clear and firm laws implied in Pancasila, but because its practice is still very lacking, there are even concerns that it could be influenced by foreign cultural assimilation (LGBT). Apart from that, we are worried that there will be partial and tribal interpretations, which could force and paralyze national unity. For example, we have a tradition of deliberation to reach a consensus, but its implementation is increasingly rare.

Indonesia, with the source of all legal sources, is primarily Pancasila, so every case must be returned to the source of state law. If it conflicts, it must be thrown away. Even though Indonesia is not explicitly and clearly a religious country, if we return to the points of Pancasila, we will find implicitly that Indonesia is a religious country. So, anything that is contrary to the state and religion must be rejected¹⁶.

Because hermeneutically, the founding fathers, Soekarno, in the process of formulating Pancasila, especially the principle of belief in one God, it is important to find its essence, because it is in the essence of this first principle that the

¹⁶ As'ad Said Ali, *Negara Pancasila Jalan Kemaslahatan Berbangsa*, pertama (Jakarta: Pustaka LP3ES, 2009). Hlm 75

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Indonesian State laid the philosophical basis of the state, which is unique and not commensurate with the philosophies of other countries in the world. As stated by Kahin and Dahm, the formulation of Pancasila put forward by Soekarno is a unique conception that does not exist in the philosophical thought of other countries in the world. Although there are those who argue that Soekarno's thinking is a synthesis of western democracy, Islamism, and Marxism, However, there are actually many views and inputs in the process of formulating the principles of the Almighty God, especially in relation to the relationship between the state and religion in the Indonesian state that will be established.

We have a democratic climate in national life, but demand after demand to create a democratic climate has raised questions about the purity of that democratic attitude. Since it was first ratified constitutionally on August 18, 1945, Pancasila can be said to be the basis (philosophy) of the state, the main source of law, outlook on life, national ideology, and unifying ligatures in religion, life, Indonesian nationality, and statehood. In short, Pancasila is the basic principle that unites and is a dynamic guiding star (leitstar), which directs the nation in achieving its goals.

In such a position, Pancasila is the source of identity, personality, morality, and the direction of the nation's salvation. Of the various positions and multi-functions of Pancasila, the central point of discussion is the position and function of Pancasila as the basis of the Republic of Indonesia. This is in accordance with the finalist reasons.

Pancasila, which was formulated by the shapers of the state, is essentially the basis of the Republic of Indonesia and is extracted from elements in the form of values found in the Indonesian nation itself, in the form of the Indonesian nation's own way of life. Therefore, from the various positions and functions of Pancasila, it can actually be returned to two main types of positions and functions

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of Pancasila, namely as the basis of the Republic of Indonesia and as the way of life of the Indonesian nation¹⁷.

However, what is most important for scientific studies is the causal relationship between the various positions and functions of Pancasila. Therefore, there need to be efforts to inherit this important culture through Pancasila education, which is carried out in formal education (schools). As the basis of the state, Pancasila has juridical binding power. All arrangements of national and state life that conflict with Pancasila as a juridical-constitutional rule are basically invalid and must be revoked and abolished. Thus, the establishment of Pancasila as the basis of state philosophy means that the nation's morals have become the state's morals based on the religion contained in Pancasila.

The elements for the formation of Pancasila came from the Indonesian people themselves. The history of Indonesia proves that the noble value of diversity in the nation that has been created is a wealth that cannot be matched by the philosophy of any other country, so it must be maintained. In Indonesia, people never stop believing in God; this is proven by the existence of places of worship that are considered holy, holy books from various religious teachings, religious ceremonies, religious education, etc., which are manifestations of the noble values of Pancasila, especially the sila¹⁸. The efforts of some mass organizations to legalize LGBT in Indonesia are, of course, very contrary to the first principle of Pancasila norms.

As Indonesia's national identity, Pancasila provides fundamental normative characteristics for social life, particularly through the first principle, Belief in the One and Only God. This principle reflects a universal religious value that does not favor any specific religion or group, yet requires that social conduct align with moral and spiritual foundations embedded in Pancasila. From this

¹⁷ Yudi Latif, *Negara Paripurna, Historisitas, Rasionalitas, Dan Aktualitas Pancasila* (Jakarta: GramediaPustaka Utama, 2011). Hlm 40

¹⁸ Roeslan Abdulgani, *Pengembangan Pancasila Di Indonesia* (Jakarta: Idayu Press, 1977). Hlm 102

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perspective, behaviors that contradict these foundational values are considered inconsistent with the ideological framework of the state. Furthermore, the first principle affirms Indonesia's character as a religious nation that officially recognizes six religions. None of these religions, according to their authoritative teachings, legitimize LGBT behavior. Consequently, efforts to legalize LGBT practices conflict not only with religious norms but also with Pancasila as the source of state law. Imposing such legalization risks generating social tension; therefore, the regulation of this issue must be approached through a comprehensive and systematic application of Pancasila's principles.

Moreover, the majority of Indonesians are Muslims. However, even though Indonesian Muslims are the majority, Muslims still willingly accept Pancasila, which is considered to contain Islamic values. Differences in religion or belief should not be used as an excuse to discriminate against someone because issues of religion and belief are matters of guidance. One of the principles of justice is not to treat oneself against someone based on lineage or blood. However, what is most important for scientific studies is the causal relationship between the various positions and functions of Pancasila.¹⁹

Therefore, there need to be efforts to inherit this important culture through Pancasila education, which is implemented in formal education (schools). As the basis of the state, Pancasila has juridical binding power. All arrangements of national and state life that conflict with Pancasila as a juridical-constitutional rule are basically invalid and must be revoked and abolished. Thus, the establishment of Pancasila as the basis of state philosophy means that the nation's morals have become the state's morals based on the religion contained in Pancasila. The elements for the formation of Pancasila came from the Indonesian people themselves.

¹⁹ Komaruddin Hidayat Dkk, *Kontroversi Khilafah, Islam, Negara, Dan Pancasila*, pertama (Jakarta: Mizan, 2014). Hlm 109

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The history of Indonesia proves that the noble value of diversity in the nation that has been created is a wealth that cannot be matched by the philosophy of any other country, so it must be maintained. In Indonesia, people never stop believing in God; this is proven by the existence of places of worship that are considered holy, holy books from various religious teachings, religious ceremonies, religious education, etc., which are manifestations of the noble values of Pancasila, especially the sila.

The efforts of some mass organizations to legalize LGBT in Indonesia are, of course, very contrary to the basic ideology of Pancasila, especially the first and second principles. If Pancasila is referred to as national identity, Pancasila is able to provide a sign or characteristic that is inherent in society, especially in the first principle of 'Belief in One Almighty God'.²⁰ This is what drives the public's statements regarding the values contained in Pancasila. For example, the value of 'Belief in the Almighty God' has a very broad meaning and does not take sides towards a particular religion, group, or individual.²¹ So that every behavior of the Indonesian people must be affiliated with Pancasila. LGBT behavior is very contrary to elements of Pancasila.

However, this first principle implies that Indonesia is a religious country. As we know, there are six religions recognized by the state: Islam, Catholic Christianity, Protestant Christianity, Hinduism, Buddhism, and Confucianism. Of these six recognized religions, not a single religion in its holy book legalizes LGBT. So, if there are parties who plan to legalize LGBT, apart from being in conflict with religion, it will also be in conflict with the source of state law, namely Pancasila. If it continues to be forced, it is possible that there will be social conflict.

²⁰ Abdulgani, *Pengembangan Pancasila Di Indonesia*. Hlm 121

²¹ Indra Gunawan Purba Ervina Sari Sipahutar, Warsiman , Anjani Sipahutar, "PENYULUHAN HUKUM TENTANG LARANGAN LESBIAN, GAY, BISEKSUAL, DAN TRANSGENDER (LGBT) Di INDONESIA BERDASARKAN HUKUM ISLAM DAN HAM Di SEKOLAH MADRASAH ALIYAH NEGERI, KECAMATAN KABANJAHE, KABUPATEN KARO," *Deputi* 3, no. Januari (2023): 157–60.

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Therefore, it is necessary to apply the Pancasila points comprehensively and systematically in regulating them. Moreover, the majority of Indonesians are Muslims. However, even though Indonesian Muslims are the majority, Muslims still willingly accept Pancasila, which is considered to contain Islamic values. Differences in religion or belief should not be used as an excuse to discriminate against someone because issues of religion and belief are matters of guidance. One of the principles of justice is not to treat oneself against someone based on lineage or blood.²²

Meanwhile, in the beliefs of the people, it is very clear what the law is for LGBT people. As the Word of Allah SWT calls this act a heinous act (*fahisy*) and beyond the limits (*musrifun*), As Allah explains in the Koran:

"And we have also sent Luth to his people."(Remember) when he said to them, "Why are you doing those faahisyahi (abominable) deeds, which no one (in this world) has ever done before you? In fact, you come to men to vent your lust (on them), not on women; in fact, you are a people who transgress limits." (TQS. Al 'Araf: 80-81)

LGBT *Liwath* (gay) and *Sihaaq* (lesbian) are acts carried out by men by inserting their dzakar (penis) into the anus of another man. The *Liwath* people is a word (naming) that is synonymous with the people of the Prophet Luth a.s. because the people of the Prophet Luth a.s. were the people who first carried out this act. Later in history, the people of Prophet Luth who had committed sodomy were known as the Sodomites.²³ Meanwhile, *Sihaaq* (lesbian) is a passionate love relationship between one woman and another woman. The two women rub their body parts (*farjii'*) against each other until both of them feel the pleasure of the relationship.²⁴ According to Imam al-Shirazi, in verse 80 of al-A'raf, Allah refers

²² Kaelan, *Filsafat Pancasila, Pandangan Hidup Bangsa Indonesia* (Yogyakarta, : 2009 (Yogyakarta: Paradigma, 2009). Hlm 40-41

²³ Vivi Hayati, "LGBT Dalam Perspektif Hukum Positif Dan Hukum Islam (Suatu Kajian Kritis Perkembangan LGBT Di Aceh)," *Samudera Keadilan* 14, no. 2 (2019): 290.

²⁴ Sayyid Sabiq, *Fiqh Sunnah, Jilid 4* (lebanon: Daar Al-Ma'arif, 1987). Hlm 51

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to the act of liwāth (sexual intercourse between men) as fahishah a vile and immoral deed. This serves as evidence of its prohibition. Anyone who commits such an act is considered to have committed zina (fornication) and is therefore subject to the ḥadd punishment prescribed for zina. In addition to the Qur'anic evidence, numerous hadiths also clearly prohibit homosexual acts, whether between men (gay) or between women (lesbian).²⁵ The Prophet Muhammad SAW said in a hadith narrated by Abu Musa :

"When a man has intercourse with another man, both have committed fornication; and when a woman has intercourse with another woman, both have committed fornication."

Of course, their actions deviate from religious norms and the Indonesian state, which, in the definition of marriage, is two couples of different types who like each other and want to produce offspring. Other religions, such as Catholic Christianity, for example, also reject LGBT. In the 1983 Code of Canon Law (KHK), Canon 1055 reads, "The marriage agreement, by which a man and a woman establish togetherness throughout their lives, from its natural nature, is directed at the welfare of husband and wife and at the birth and education of children; by Christ the Lord, marriage between baptized persons is elevated to the dignity of a sacrament.

The trilogy of Christian marriage: marriage is built on the principles of monogamy (one to one), heterosexual ties (man to woman), and lifelong commitment, not a contract. In fact, in the Jewish religion, the prohibition of homosexuality is explained in Leviticus 18:22 and 20:13.

Although there are some LGBT groups that claim that their existence is due to genetic factors, the "Gay Gene" theory, which was put forward by Dean Hamer in 1993, However, the theory initiated by Dean, as a gay man, later undermined the results of his own research. Dean admits that his research does

²⁵ Rustam Dahir Karnadi Apollo Harahap, "LGBT DI INDONESIA: Perspektif Hukum Islam, HAM, Psikologi Dan Pendekatan Maṣlaḥah," *Al-Ahkam* 26 (2016): 223–48.

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not support the idea that genes are the main or determining factor that gives rise to homosexuality.²⁶

The Interpretation of The Second Principle of Pancasila That Contains Islamic Law

If we review again what is contained in the second principle, "just and civilized humanity", then we can find the word 'human', which is the basis of the word 'humanity', namely something related to the nature of humans and what and who they are. What is intended to be emphasized by this humanitarian principle (the second principle of Pancasila) is that the nature and dignity of humans must be used as a moral reference in formulating and implementing policies for the Indonesian nation and state. Regarding this matter, Wahbah Zuhaili wrote, "Human dignity is the natural right of every human being that is protected by Islam as the basis of ethics and social order". No one may have their rights violated, their blood shed, or their dignity simply degraded; it doesn't matter whether he is a person who is considered good or bad, Muslim or non-Muslim.

The humanity referred to in Pancasila is humanity that is fair to oneself, to others, and to God.²⁷ In fact, one of the fatwas issued by the Indonesian Council of Ulama (Majelis Ulama Indonesia/MUI) concerning LGBT issues is Fatwa No. 57 of 2014, which declares that homosexual acts are haram (forbidden) and sets forth several related legal provisions. According to this fatwa, homosexuality, whether in the form of lesbianism or male homosexuality is prohibited (haram) and categorized as a criminal act (jarimah). Individuals engaging in LGBT acts are subject to hadd or ta'zir punishments imposed by the legitimate authorities.

²⁶ Miskari, "Wacana Melegalkan LGBT. "di Indonesia (Studi Analisis LGBT Dalam Perspektif HAM Dan Pancasila)."

²⁷ Fokky Fuad Wasitaatmadja, *Falsafah Pancasila, Epistemologi Keislaman Dan Kebangsaan*. Hlm 68

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The penalty becomes more severe when the victim is a minor, in which case the perpetrator may face aggravated punishment, including the death penalty.²⁸

Therefore, just and civilized humanity contains the principle of humanity, or internationalism, which is manifested in good relations between people and nations without being trapped in narrow tribal egos. Meanwhile, what is meant by civilized is that human dignity is upheld as highly as possible. So that the explanation of human principles is to recognize the equality of humans and their rights and obligations among others, to love each other, to develop an attitude of tolerance, not to be arbitrary towards others, to uphold human values, to have the courage to defend truth and justice, and to see oneself as part of humanity, the consequence of which is to develop cooperation with other nations and mutual respect.²⁹

In the researcher's view, Pancasila is a representation of religious values in the context of respecting human dignity without distinction of race, religion, belief, or culture. Human life is sacred and cannot be violated, and every effort must be made to protect its safety. Islam gives humanity the freedom to associate, form friendship, and cooperate with anyone without coercion from other parties. Everyone has the right to be treated in accordance with the law, and only in accordance with the law. Everyone has the right and obligation to defend the rights of others and the rights of the community in general. In defending personal and public rights, everyone must not be discriminated against.³⁰

Thus, glorifying humans as manifestations of God's representatives, fellow creatures of God, and His caliphs essentially means glorifying God as the Creator, God Almighty. Likewise, humiliating humans and humanity is an insult

²⁸ Fatimah Fatimah Nur Azizah, "Analisis Peran Fatwa MUI No. 57 Tahun 2014 Terhadap Pembentukan Kebijakan Hukum Islam Di Indonesiastudi Kasus Tentang Isu Kontemporer (Perihal LGBT)," *Educatio* 9, no. 2023 (2023): 551–57.

²⁹ Irfan, "LGBT Phenomena in Indonesia: A Pancasila Perspective."

³⁰ Hamdan Arief Hanif, "GBT Dalam Perspektif Hukum Keluarga Islam."

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to Allah SWT.³¹ In the life of the Indonesian nation and state, for whatever reason, there must be no harassment of Indonesian human dignity because it will collide with Pancasila.³²

Pancasila is the most important and fundamental discovery of the Indonesian people, providing a foundation for life in society and the state. The point is that Pancasila is not just the basis of the state but more than that. Pancasila is a philosophy of life for the entire Indonesian people and nation. The momentum of Pancasila's birthday is very important for reaffirming it. Our commitment to Pancasila, the affirmation of Pancasila, is a strategic step because it is in itself an affirmation of the 1945 Constitution and a commitment to maintain the integrity of the Republic of Indonesia both geographically, politically, economically, and culturally. The affirmation of Pancasila is also an affirmation of maintaining the spirit of unity in diversity as a pillar of this nation.³³

The values contained in the first Pancasila principle, in relation to the definition of value as explained above, are classified as spiritual values, but spiritual values recognize the existence of material and vital values. In other words, Pancasila, which is classified as a spiritual value, contains other values in a complete and harmonious manner, including material values, vital values, truth values, reality, aesthetic values, and ethical, moral, and religious values. This can be seen in the systematic, hierarchical arrangement of the principles of Pancasila, starting from the first principle of belief in the Almighty God to the principle of social justice for all Indonesian people.³⁴

³¹ Huzaemah Tahido Yanggo, "Penyimpangan Seksual (Lgbt) Dalam Pandangan Hukum Islam," *Misykat* 2, no. 3 (2018): 3.

³² As'ad Said Ali, *Negara Pancasila Jalan Kemaslahatan Berbangsa*. Hlm 107

³³ Yudi Latif, *Wawasan Pancasila* (Jakarta: Mizan Pustaka, 2018). Hlm 85

³⁴ Muhammad Halkis, *Konstelasi Politik Indonesia: Pancasila Dalam Analisis Fenomenologi Hermeneutika* (Jakarta: Yayasan Pustaka Obor Indonesia, 2017). Hlm 121

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Pancasila is the basis of the Indonesian state. When Ir. Soekarno established that as the basis of the state, there were certainly many considerations in it, which then contained the five philosophical values contained in it, which became known as Pancasila. Of course, it has fulfilled the criteria and desires of the Indonesian people, even the teachings of Islam, which incidentally means that the largest religion in this country is Muslim.³⁵

Pancasila, with so many tribes, languages, cultures, and religions, is able to accommodate all of them in one unified frame. This indicates that our country has a religious basis because everything is included in the teachings of Islam and other religions. Because in fact, Islamic and non-Islamic teachings really respect differences, uphold justice, and are very open. In relation to international law, or human rights (HAM), Indonesia has certain limitations relating to human rights.³⁶

LGBT people did not immediately enter Indonesia to legalize their marriages in the name of human rights and were immediately accepted. Pancasila and UUD 45 will always be the stronghold of the Indonesian nation, because Pancasila is the basis of the state, the state ideology, and the philosophy of the Indonesian people in navigating national and state life. Every western culture and tradition enters Indonesia, especially if western products conflict with the values of Pancasila. And, LGBT is part of western propaganda products, which should not be given space to develop in Indonesia.³⁷

Allowing LGBT people to develop means creating the seeds of conflict in Indonesian society, so that before anarchy and violence occur, the government and society must prevent LGBT propaganda from entering Indonesia. However,

³⁵ Kaelan, *Filsafat Pancasila*, III (Yogyakarta: PARADIGMA, 2009). Hlm 119

³⁶ Nawang Kalbuana Alwazir Abdusshomad, Benny Kurnianto, "LGBT Dalam Perspektif Islam, Sosial Kewarganegaraan Dan Kemanusiaan," *Jurnal Intelektualita: Keislaman, Sosial, Dan Sains* 12, no. 1 (n.d.): 59–64.

³⁷ Miskari, "Wacana Melegalkan LGBT. "di Indonesia (Studi Analisis LGBT Dalam Perspektif HAM Dan Pancasila)."

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as time goes by, international law (red-HAM) wants to regulate a legitimate country. Human rights are considered the solution to every problem that is deemed unable to be resolved by the state, especially matters relating to the rights of LGBT people. However, in reality, human rights and the target country (Indonesia) are often not in line. Therefore, LGBT people must continue to be excluded because it is not in accordance with the nation's ideals and the state philosophy of Pancasila, which is full of virtue and nobility.³⁸

D. Conclusion

The Conclusion from the analysis above, it can be concluded that there exists a fundamental contradiction between the efforts to legalize same-sex marriage (LGBT) in Indonesia and Pancasila as the state's foundational ideology and national worldview. Pancasila has long been recognized as a representation of the religions that live and develop in Indonesia, including Islam as the majority religion of the Republic of Indonesia. Through a comprehensive literature review, this study demonstrates that Pancasila explicitly rejects the legalization of LGBT practices, as such legalization is considered to be in conflict with the moral, religious, and cultural values embedded within Indonesian society and reflected in Pancasila itself.

Efforts to legitimize LGBT practices are often framed under the pretext of international human rights (HR). However, every nation has its own contextual boundaries in the application of human rights, adjusted to its cultural, religious, and philosophical foundations. Indonesia interprets human rights differently from the universal concept freedom is not absolute but is constrained by moral and religious norms, as well as by the rights of others. Therefore, the rejection of LGBT legalization within the framework of Pancasila and Islamic law particularly given that same-sex marriage contradicts Islamic teachings cannot

³⁸ Harahap, "LGBT DI INDONESIA: Perspektif Hukum Islam, HAM, Psikologi Dan Pendekatan Maṣlaḥah."

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be deemed as a violation of human rights. Rather, it represents the application of human rights within the Indonesian context.

Furthermore, the legalization of same-sex marriage is incompatible with the principles of Pancasila and the 1945 Constitution (Undang-Undang Dasar 1945). Both instruments serve as the moral and legal foundation of national life. The LGBT movement, often associated with global human rights propaganda, contradicts the religious and Eastern cultural character of the Indonesian nation. The pro-LGBT campaigns supported by international human rights institutions are often perceived as a new form of cultural imperialism, through which Western nations attempt to impose liberal and secular values upon societies with fundamentally different moral and religious systems. As a sovereign nation, Indonesia retains the right to reject such agendas, as they are inconsistent with its national identity.

This rejection becomes even clearer when viewed through the first and second principles of Pancasila: "Belief in One Supreme God" (Ketuhanan Yang Maha Esa) and "Just and Civilized Humanity" (Kemanusiaan yang Adil dan Beradab). Indonesia has declared itself a religious state, and all officially recognized religions Islam, Catholicism, Protestantism, Hinduism, Buddhism, and Confucianism collectively prohibit LGBT practices. Therefore, the legalization of LGBT acts would constitute a violation of the divine principle that serves as the primary foundation of Indonesian nationhood.

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REFERENCES

Abdulgani, Roeslan. *Pengembangan Pancasila Di Indonesia*. Jakarta: Idayu Press, 1977.

Alwazir Abdusshomad, Benny Kurnianto, Nawang Kalbuana. "LGBT Dalam Perspektif Islam, Sosial Kewarganegaraan Dan Kemanusiaan." *Jurnal Intelektualita: Keislaman, Sosial, Dan Sains* 12, no. 1 (n.d.): 59–64.

As'ad Said Ali. *Negara Pancasila Jalan Kemaslahatan Berbangsa*. Pertama. Jakarta: Pustaka LP3ES, 2009.

Asshiddiqie, Jimly. *Constitutional Law and Pancasila*. 3rd ed. Jakarta: Konstitusi Press, 2010.

Desi Apriani, Hendry Andry, Esy Kurniasih, Anggraini Dwi Milandry. "Jurnal Pengabdian MasyarakatI-Com: Indonesian Community JournalVol.3No. 4Desember 2023, Hal. 2003-2011E-ISSN : 2809-2031 (Online) | P-ISSN : 2809-2651 (Print)THIS WORK IS LICENSED UNDER A CREATIVE COMMONS ATTRIBUTION 4.0 INTERNATIONAL LICENSE2003Sosialisa." *Pengabdian MASYarakat* 4, no. 1 (2023): 2003–11.

Dkk, Komaruddin Hidayat. *Kontroversi Khilafah, Islam, Negara, Dan Pancasila*. Pertama. Jakarta: Mizan, 2014.

Ervina Sari Sipahutar, Warsiman , Anjani Sipahutar, Indra Gunawan Purba. "PENYULUHAN HUKUM TENTANG LARANGAN LESBIAN, GAY, BISEKSUAL, DAN TRANSGENDER (LGBT) Di INDONESIA BERDASARKAN HUKUM ISLAM DAN HAM Di SEKOLAH MADRASAH ALIYAH NEGERI, KECAMATAN KABANJAHE, KABUPATEN KARO." *Deputi* 3, no. Januari (2023): 157–60.

Fokky Fuad Wasitaatmadja. *Falsafah Pancasila, Epistemologi Keislaman Dan Kebangsaan*. 1st ed. Depok: Premedia Group, 2018.

Halkis, Muhammad. *Konstelasi Politik Indonesia: Pancasila Dalam Analisis Fenomenologi Hermeneutika*. Jakarta: Yayasan Pustaka Obor Indonesia, 2017.

Hamdan Arief Hanif, Indah Listyorini. "GBT Dalam Perspektif Hukum Keluarga Islam." *ABHATS: Jurnal Islam Ulil Albab* 5, no. Sepptember (2024): 13–24.

Harahap, Rustam Dahar Karnadi Apollo. "LGBT DI INDONESIA: Perspektif Hukum Islam, HAM, Psikologi Dan Pendekatan Maṣlaḥah." *Al-Ahkam* 26 (2016): 223–48.

Hayati, Vivi. "E-ISSN : 2615-7845Volume 14, Nomor 2, Juli-Desember 2019 ~ 290 ~ LGBT DALAM PERSPEKTIF HUKUM POSITIF DAN HUKUM

A Legal Analysis of LGBT Marriage Efforts Within the Context of Pancasila

ISLAM (Suatu Kajian Kritis Perkembangan LGBT Di Aceh)." *Jurnal Hukum P-ISSN : Samudra Keadilan* 14, no. Juli-Desember (2019): 290–301.

— . "LGBT Dalam Perspektif Hukum Positif Dan Hukum Islam (Suatu Kajian Kritis Perkembangan LGBT Di Aceh)." *Samudera Keadilan* 14, no. 2 (2019): 290.

Herlambang, R. "Same-Sex Marriage and Indonesian Positive Law: A Constitutional Analysis." *Indonesian Journal of Constitutional Law*, 7, no. 1 (2020): 45–60.

Imam Nakhe'I. "LGBT PERPSPEKTIF ISLAM." *Jurnal Lisan Al-Hal* Volume 4, (2012): 6.

Irfan, M. N. "LGBT Phenomena in Indonesia: A Pancasila Perspective." *Journal of Indonesian Legal and Social Studies* 4, no. 2 (2019): 123–138.

Kaelan. *Filsafat Pancasila, Pandangan Hidup Bangsa Indonesia* (Yogyakarta, : 2009. Yogyakarta: Paradigma, 2009.

— . *Filsafat Pancasila*. III. Yogyakarta: PARADIGMA, 2009.

Latif, Yudi. *Negara Paripurna, Historisitas, Rasionalitas, Dan Aktualitas Pancasila*. Jakarta: GramediaPustaka Utama, 2011.

— . *Wawasan Pancasila*. Jakarta: Mizan Pustaka, 2018.

Mamudji, Soerjono Soekanto dan Sri. *Penelitian Hukum Normatif Suatu Tinjauan Singkat*. Jakarta: PT. Raja Grafindo Persada, 2009.

Miskari. "Wacana Melegalkan LGBT. "di Indonesia (Studi Analisis LGBT Dalam Perspektif HAM Dan Pancasila)." *Raheema*, 2017, 44.

Mulyana, Dedy. , *Metodelogi Penelitian Kualitatif* (: 2004. Bandung: Remaja Rosdakarya, 2004.

Nur Azizah, Fatimah Fatimah. "Analisis Peran Fatwa MUI No. 57 Tahun 2014 Terhadap Pembentukan Kebijakan Hukum Islam Di Indonesiastudi Kasus Tentang Isu Kontemporer (Perihal LGBT)." *Educatio* 9, no. 2023 (2023): 551–57.

Sabiq, Sayyid. *Fiqh Sunnah, Jilid 4*. lebanon: Daar Al-Ma'arif, 1987.

Subekti,dkk. *Kitab Undang-undang Hukum Perdata*. Cet. ke-28. Jakarta : Pradaya Paramita (1996)

Sudirman, Rahmat.. *Konstruksi Seksualitas Islam Dalam Wacana Sosial; Peralihan Tafsir Seksualitas* (1999) Cet. ke-1. Yogyakarta : Media Pressindo.

Sugiyono. , *Memahami Penelitian Kualitatif* (Bandung, Alfabetia : 2005. Bandung:

A Legal Analysis of LGBT Marriage Efforts Within the Context of Pancasila

Alfabeta, 2005.

Tijani Abd.Qadir Hamid.. Pemikiran Politik Dalam Al-Qur'an, Cetakan Pertama. Jakarta: Gema Insane Press. (2001)

Toba Sastrawan Manik, Dwi Riyanti, and Mukhamad Murdiono. "EKSISTENSI LGBT DI INDONESIA DALAM KAJIAN PERSPEKTIF HAM, AGAMA, DAN PANCASILA." *JURNAL KEWARGANEGARAAN* 18 (2021): 84.

Wawan Setiawan, Yudhitiya Dyah Sukmadewi. "PERAN PANCASILA PADA ERA GLOBALISASI" KAJIAN TERHADAP PANCASILA DAN FENOMENA LGBT (LESBIAN,GAY,BISEXUAL,TRANSGENDER) DI INDONESIA." *Jurnal Dinamika Sosial Budaya* 19 (2017): 129.

Wahbah Zuhaili,. *al-fiqh al-Islami wa Adillatuh*. Jilid VI. Beirut : Dar al-Fikr (2004)

Yakan, Fathi al- -Jins, penerj. Syafril Halim, Islam dan Seks .Jakarta: Al-Hidayah (1989)

Yanggo, Huzaemah Tahido. "Penyimpangan Seksual (Lgbt) Dalam Pandangan Hukum Islam." *Misykat* 2, no. 3 (2018): 3.

Yudi latif. 2002. Negara Paripurna Historis, Rasionalitas, dan Aktualitas Pancasila. Cetakan Keempat.

Zuhdi, Masjfuk, Masail Fiqhiyah.Jakarta : Toko Gunung Agung (1996)

Zunli Nadia. Waria Laknat atau Kodrat. Yogyakarta: Pustaka Marwa, (2005)