Lesbian Gay Bisexual Transgender Queer Questioning, Intersex Asexual Allies Pansexual in the Perspective of the Applicable Law in Indonesia

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Abstract

This study aims to examine Indonesia's legal perspective on the LGBTQQIAAP community, both in existing laws and in the legislative drafts currently under discussion. This research employs a normative legal approach with a juridical-normative method, focusing on the analysis of legislation, legal doctrines, and expert opinions related to this issue. The data utilized include primary legal sources such as laws and legislative drafts, as well as secondary legal materials from literature, journals, and other academic sources. The findings indicate that the LGBTQQIAAP community in Indonesia still faces significant legal challenges that hinder the recognition and protection of their rights. Although there is no national law explicitly criminalizing their existence, various regulations and legal interpretations are often used to restrict their rights, particularly in aspects of freedom of expression and the right to live without discrimination. Legislative drafts such as the RKUHP (Revised Criminal Code) and the Family Resilience Bill have the potential to worsen this situation by reinforcing discriminatory social norms and restricting individual freedoms based on gender identity and sexual orientation. Therefore, legal reforms that are fair and based on human rights are necessary, along with educational efforts to ensure that policies reflect not only the norms of the majority but also provide equal protection for all Indonesian citizens.

1. Introduction

Phenomenon *LGBTQQIAAP* (*Lesbian, Gay, Bisexual, Transgender, Queer, Questioning, Intersex, Asexual, Allies, Pansexual*) has become one of the global issues that has created various polemics in various countries, including in legal aspects. The existence of these communities has sparked debates about human rights, legal recognition, and protection of individuals who identify as part of the group. In various parts of the world, laws regarding the rights and protection of *LGBTQQIAAP* It has a very wide variety, ranging from full legalization with equal rights, to strict criminalization with the threat of severe punishment (Wijayanto & Putri, 2022).

Historically, sexual orientation and gender identity that differ from heterosexual norms have experienced discrimination in various societies. In ancient law, many civilizations had a negative view of homosexual behavior or non-binary gender identity. For example, in Europe in the Middle Ages, Catholic church law forbade the practice of homosexuality and considered it a punishable sin. In fact, some countries such as the United Kingdom once had very strict sodomy laws, which prohibited same-sex relations and provided severe penalties for the perpetrators. With the times, the emergence of the human rights movement and the increasing awareness of gender diversity and sexual orientation pose new challenges for the modern legal system (Verdianto et al., 2023).

In the contemporary era, laws in various countries have begun to undergo changes in responding to the existence of communities *LGBTQQIAAP*. In some countries such as Canada, the Netherlands, and Germany, the rights of individuals belonging to this group have been fully recognized, including in the aspects of marriage, child adoption, employment, and legal protection from discrimination. the United States, for example, through the Supreme Court's ruling in a *Obergefell v. Hodges* In 2015, legalizing same-sex marriage statewide, provided a stronger legal basis for this community. In addition, Nordic countries such as Sweden and Norway have long implemented inclusive policies that provide equal rights for individuals *LGBTQQIAAP* (Salsabila & Putri, 2023).

However, on the other hand, there are still many countries that still maintain a conservative view of this group. Some countries in the Middle East, Africa, and Asia still enact laws prohibiting same-sex relationships. In fact, some of them still apply severe punishments such as imprisonment, whipping, and the death penalty for individuals who are considered to violate social and legal norms related to sexual orientation or gender identity. Countries such as Saudi Arabia, Iran, and Brunei Darussalam, for example, have very strict laws regarding homosexuality, with the threat of the death penalty for the perpetrators. In Indonesia, the debate over rights *LGBTQQIAAP* It is also still ongoing, with the absence of explicit laws prohibiting homosexuality, but the emergence of various regional regulations that criminalize behavior that is considered deviant from the prevailing social norms (A. E. Putri, 2023).

Legal aspects related to *LGBTQQIAAP* includes not only recognition of their rights, but also protection from discrimination and violence. In some countries, anti-discrimination laws have been implemented to protect these groups in various aspects of life, including employment, education, health, and public services. Laws such as *Equality Act* in the UK and *Civil Rights Act* in the United States has been updated to include protections for individuals *LGBTQQIAAP* from discriminatory actions. However, in many countries, these communities

still face major challenges, such as bullying, gender-based violence, and social exclusion that often do not receive adequate legal protections (D. W. D. Putri, 2022).

Legal issues related to *LGBTQQIAAP* It is also inseparable from the perspective of religion and culture. Many countries with strong religious backgrounds have legal approaches that are based on conservative moral teachings. In Muslim-majority countries, for example, sharia law is often used as a basis for criminalizing homosexual behavior or non-conventional gender identity. Meanwhile, in some countries with strong Christian backgrounds, moral and theological arguments are often used in the formulation of related legal policies *LGBTQQIAAP*. On the other hand, some countries with more open cultures, such as the Netherlands and Canada, place more emphasis on individual rights and equality as key principles in their laws (Pratiwi et al., 2022).

In international law, various organizations and institutions have sought to fight for the rights of *LGBTQQIAAP*. United Nations (UN) through *United Nations Human Rights Council (UNHRC)* has published numerous reports and resolutions highlighting the importance of legal protection for individuals *LGBTQQIAAP*. The Universal Declaration of Human Rights is also the basis for countries to develop more inclusive policies. However, the implementation of this policy still faces various obstacles, especially in countries that still maintain discriminatory laws against these communities (Novita, 2021).

As the discourse on rights develops *LGBTQQIAAP*, the legal challenges faced are also increasingly complex. Some of the issues that are still up for debate include adoption rights for same-sex couples, gender recognition in official documents, and legal protections for transgender individuals in the health and employment systems. In addition, technological advances and social media also have an impact on the dissemination of information and social movements that fight for rights *LGBTQQIAAP*, while increasing the risk of digital-based hate speech and discrimination (Mahardika, 2024).

With the complexity of related legal issues *LGBTQQIAAP*, a comprehensive approach is needed in policy formulation that can accommodate human rights, social values, and legal norms that apply in each country. Dialogue between policy makers, human rights activists, religious communities, and civil society is crucial in formulating fair and inclusive regulations. In the midst of sharp differences of opinion on the legal status of the community *LGBTQQIAAP*, the main challenge for the global legal system is to find a balance between the protection of individual rights and respect for diverse cultural and religious values in different countries (Lens & Ray, 2023).

Issues *LGBTQQIAAP* In the legal perspective it is not only about recognition or criminalization, but also about how a country adapts the law to social developments, societal values, and universally recognized human rights principles. Going forward, the debate on community-related legal regulation will continue to grow as awareness of the importance of inclusivity and equality in the modern legal system grows (Labina et al., 2024).

The existence of *LGBTQQIAAP* groups in Indonesia is still a topic of debate, both in terms of social, cultural, and legal. Although this community has existed for a long time in various forms of local cultural expression, such as *bissu* in Bugis or *warok-gemblo* in Ponorogo, the public's view of this group has changed significantly along with the entry of the influence of colonialism, religion, and the development of globalization. On the one hand, there are groups that support the rights of *LGBTQQIAAP* groups as part of human rights. However, on the other hand, there are also groups that reject their existence on the grounds

that they are contrary to social norms, cultural values, and laws that apply in Indonesia.

Juridically, Indonesia's positive law does not explicitly recognize the existence of *LGBTQQIAAP,* nor does it specifically prohibit it except in certain regional regulations. Law Number 1 of 1974 jo Law Number 16 of 2019 concerning Marriage clearly states that a valid marriage is between a man and a woman. In addition, the Criminal Code in Articles 281-283 regulates the prohibition of acts that violate morality in public spaces, which is often the basis for law enforcement officials to take action against *the LGBTQQIAAP* community in certain cases. However, there is no national regulation that comprehensively regulates the legal status, rights, or limitations of this group in Indonesia, thus creating legal uncertainty that has the potential to harm various parties.

In this study, it aims to analyze how the existence of *LGBTQQIAAP* groups is viewed from the perspective of the applicable laws in Indonesia. This research also aims to explore the extent to which draft laws and regulations that are being or have been proposed are related to *LGBTQQIAAP,* as well as how they are applied in legal practice in various regions. Thus, this study is expected to provide a clearer picture of the legal position of *LGBTQQIAAP* groups in Indonesia and offer more appropriate and equitable policy recommendations.

One of the *research gaps* in the study of *LGBTQQIAAP* laws in Indonesia is the lack of studies that specifically address the differences in legal approaches between the central and local governments, as well as how the current laws are applied unevenly to these communities. Many studies have focused more on the social and psychological aspects of *LGBTQQIAAP,* but not many have discussed in depth the regulatory and legal implementation aspects in concrete cases. In addition, the study of existing law is often limited to normative analysis of the laws in force without considering the legal realities faced by these communities in their daily lives. Therefore, this research will fill this *gap* by examining how existing laws are applied, both from the perspective of criminal law, civil law, and customary law in Indonesia.

The urgency of this research is very high considering the increasing debate about the rights of *LGBTQQIAAP* groups in Indonesia, both in the legal, social, and political realms. With the widespread use of social media and the internet, this issue is increasingly discussed in society, often with inaccurate narratives or full of misinformation. The government and law enforcement officials also face a dilemma in handling *LGBTQQIAAP* related cases, considering the lack of clear and comprehensive regulations. On the one hand, pressure from conservative groups wants an explicit ban on behavior that is considered deviant. However, on the other hand, pressure from human rights organizations and the international community is demanding legal protection for *LGBTQQIAAP* groups in Indonesia. Thus, this study is very important to provide an objective and in-depth law-based analysis of the position of *LGBTQQIAAP groups* in the Indonesian legal system, so that it can be a reference in the formulation of fairer and more realistic policies in the future.

2. Research Method

This study uses normative legal methods (*Normative Legal Research*) which focuses on the norms and legal rules applicable in Indonesia related to *LGBTQQIAAP*. The approach used includes the approach of laws and regulations (*Statute approach*), legal principles (*Legal principles approach*), and legal concepts (*conceptual approach*) (Suyanto, 2023).

This study uses secondary data consisting of:

1. Primary Legal Materials: Law No. 1 of 1974 jo Law No. 16 of 2019, Criminal Code

Articles 281-283, and Qanun Aceh No. 6 of 2014.
2. Secondary Legal Materials: Legal literature, scientific journals, and academic opinions related to *LGBTQQIAAP regulations*.
3. Tertiary Legal Materials: Legal dictionaries and encyclopedias as additional references.

Data was collected through literature studies by examining legal documents and scientific literature, as well as using *snowball sampling* techniques to develop information sources gradually.

The analysis was carried out by juridical-normative and descriptive-qualitative methods, which examined the rules of law and their application in practice. This approach aims to understand the legal position *of LGBTQQIAAP* in Indonesia and its implications for applicable regulations and policies.

3. Results and Discussion

A. LGBTQQIAAP in the perspective of the applicable laws in Indonesia

Indonesian law does not explicitly criminalize identity *LGBTQQIAAP*, but some regulations set certain restrictions that have implications for the legal status of this group (Hidayat, 2021).

a. Marriage Law

Law Number 1 of 1974 and Law Number 16 of 2019 concerning Marriage expressly define that a valid marriage is a marriage between a man and a woman. Article 1 of Law No. 1 of 1974 states:

"Marriage is an innate bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the One Godhead."

This definition precludes the possibility for same-sex couples to obtain legal recognition in the form of marriage. In addition, Article 2 Paragraph (1) of the Marriage Law also emphasizes that marriage must be valid according to their respective religions and beliefs, which in the teachings of religions recognized in Indonesia do not recognize same-sex marriage.

b. Criminal Code (KUHP)

The Criminal Code does not have a specific article that explicitly prohibits same-sex relationships or identities *LGBTQQIAAP*. However, several articles in the Criminal Code are often used to ensnare individuals from this community, especially related to decency and public order (Hanif & Listyorini, 2024).

1) Articles 281-283 of the Criminal Code regulate criminal acts related to decency in public spaces, which are often used to ensnare individuals who are considered to violate the norms of decency.
2) Article 292 of the Criminal Code prohibits sexual relations between adults and minors of the same sex, although it does not directly prohibit homosexuality between equal adults.

c. Qanun Aceh No. 6 of 2014 concerning the Law of Jinayat

Aceh Province, which implements *Sharia* law, has stricter regulations regarding *LGBTQQIAAP behavior*. Qanun Aceh No. 6 of 2014 stipulates that same-sex relationships fall into the category of *liwath* (sodomy) or *musahaqah* (lesbianism), which can be punished with flogging up to 100 times or a fine in the

form of gold.

d. Other Local Regulations Governing LGBTQQIAAP

In addition to Aceh, several other regions in Indonesia also implement local regulations that prohibit or limit the existence of *LGBTQQIAAP* groups. Some regions have issued regulations that prohibit the dissemination of information about homosexuality or prevent activities deemed to favor this community.

Indonesia is a country that has ratified various international instruments on human rights, such as: (Hamzah & Maharani, 2021)

a. Law Number 39 of 1999 concerning Human Rights
b. International Covenant on Civil and Political Rights (ICCPR)
c. International Convention on Economic, Social and Cultural Rights (ICESCR)

In principle, the right not to be discriminated against should include all citizens, including individuals in the *LGBTQQIAAP* community. However, the implementation of international legal norms in national law is still limited, as most policies still maintain the norms of decency that apply in society.

Although Indonesian law does not explicitly criminalize the existence of a group *LGBTQQIAAP*, there are various legal and social challenges they face: (Fazillah, 2024)

a. Discrimination in the World of Work and Education
   Many *LGBTQQIAAP* individuals experience discrimination in the workplace, such as difficulty getting a job or termination due to their sexual orientation or gender identity. Similarly in the world of education, *LGBTQQIAAP* individuals often face bullying and stigma that can affect their psychological development.
b. Lack of Legal Protection
   The absence of laws specifically protecting *LGBTQQIAAP* groups from discrimination makes them more vulnerable to violence and social persecution.
c. The Use of Morality Articles as a Tool of Criminalization
   Some *LGBTQQIAAP* individuals are often subject to the morality clause in the Criminal Code, even though they do not commit specific unlawful acts.
d. Social and Cultural Pressures
   Indonesian society still upholds religious and cultural norms that reject the existence of *the LGBTQQIAAP* community. This causes individuals in this group to often feel isolated and do not have access to social or psychological support.

In comparison, some countries have provided legal protections for communities *LGBTQQIAAP*: (Bhineka et al., 2021)

a. The United States and Canada have legalized same-sex marriage as well as provided legal protections against discrimination based on sexual orientation and gender identity.
b. Thailand is in the process of considering legal recognition of rights for same-sex couples, although there are no final regulations yet.
c. Malaysia has similar regulations to Indonesia, with *Sharia law* prohibiting same-sex relationships.

In the Indonesian legal system, *the LGBTQQIAAP* community lacks clear legal protections and often faces discrimination based on social norms and morality. Marriage laws, the Criminal Code, and certain regional regulations limit their rights, while there are no regulations that provide protection against the discrimination they experience.

In the midst of increasingly inclusive global changes to *LGBTQQIAAP* rights, Indonesia still maintains religious and culturally based norms in its legal system. Therefore, discussions related to fairer regulations and in accordance with human rights principles need to continue to be carried out to find a balanced solution between social norms and individual rights in society.

B. LGBTQQIAAP in the draft law in Indonesia

Several bills that contain provisions related to *LGBTQQIAAP* groups include the Draft Criminal Code (RKUHP), the Family Resilience Bill, and various draft regional regulations that propose restrictions on this community.

1) Draft Criminal Code (RKUHP)

a. Articles That Have the Potential to Criminalize LGBTQQIAAP

In the RKUHP which was drafted to replace the Dutch colonial heritage Criminal Code (KUHP), there are several articles that have the potential to criminalize individuals in the *LGBTQQIAAP community*.

a) Article 417 of the RKUHP stipulates that sexual relations outside of marriage can be subject to a maximum prison sentence of one year. Since Indonesia only recognizes marriage between a man and a woman under the Marriage Law, this article can indirectly be used to ensnare same-sex couples.

b) Article 421 of the RKUHP regulates the criminal offense of immorality committed against minors, but this provision is often interpreted broadly to target *LGBTQQIAAP* individuals, even if the relationship occurs voluntarily between adults.

The provisions in the RKUHP show that Indonesian law is still based on conservative moral norms without considering the protection aspect of *LGBTQQIAAP groups*.

2) Family Resilience Bill

The Family Resilience Bill is one of the most controversial bills because it contains provisions that explicitly deny the existence of individuals *LGBTQQIAAP* (Mahardika, 2024).

a. Articles Governing LGBTQQIAAP

This bill emphasizes the concept of family in the traditional sense, namely a family consisting of a man and a woman in a marriage bond, as well as children born from the relationship. Here are some of the provisions related to *the LGBTQQIAAP* community:

a) Article 33 Paragraph (2) of the Family Resilience Bill states that deviations from sexual orientation and gender identity, including homosexuality and transgenderism, are considered "disorders" that must be rehabilitated.

b) Articles 85-86 stipulate that any individual who experiences "sexual deviation" is obliged to report and undergo rehabilitation in an institution

appointed by the government.

This provision is particularly problematic because it considers different sexual orientations and gender identities as a form of disease that must be "cured", contrary to the scientific views and recommendations of world health organizations, such as *the World Health Organization (WHO)* and *the American Psychological Association (APA).*

3) Draft Regional Regulations Targeting LGBTQQIAAP

In addition to regulations at the national level, several regions in Indonesia have proposed draft regional regulations (Perda) that limit the existence of communities *LGBTQQIAAP*. Some examples of rules that have been enacted or are in the discussion stage include: (Abidin & Khamim, 2024)

a. Prohibition on the campaign or dissemination of information about LGBTQQIAAP, as proposed in some provinces and cities, on the grounds of maintaining morals and public order.
b. The prohibition of entertainment venues or communities deemed to support LGBTQQIAAP, which can lead to further discrimination against individuals within this group.
c. The application of sharia law in several regions criminalizes same-sex relationships, such as the one that applies in Aceh through Qanun Jinayat.

With the proliferation of bills that have the potential to limit the rights of *LGBTQQIAAP* individuals, there are several serious implications to consider:

1) Threats to Human Rights

Indonesia has ratified a number of international instruments on human rights, including: (Bariah et al., 2022)

a. International Covenant on Civil and Political Rights (ICCPR)
b. International Covenant on Economic, Social and Cultural Rights (ICESCR)

However, the bills proposed appear to contradict the principle of non-discrimination in these instruments. If a bill like the Family Resilience Bill is passed, then Indonesia could be considered a violation of its commitment to the protection of human rights.

2) Growing Stigma and Discrimination

The passage of laws that discriminate against *the LGBTQQIAAP* community could exacerbate existing social stigma. A provision requiring the "rehabilitation" of *LGBTQQIAAP* individuals will only reinforce the notion that sexual orientation and different gender identities are disorders or diseases, even though modern scientific approaches have rejected this view.

In addition, the threat of criminalization of *the LGBTQQIAAP* community can worsen the psychological condition of individuals in this group, increase the risk of mental disorders, and decrease access to health services and legal protection.

3) Increasing Violence and Persecution

If laws criminalizing or restricting *the LGBTQQIAAP* community are passed, the likelihood of violence and persecution against this group will increase. Law enforcement officials can use these laws as a tool to target *LGBTQQIAAP* individuals, which can lead to human rights abuses such as arbitrary arrest,

extortion, or torture.

Bills in Indonesia, such as the RKUHP and the Family Resilience Bill, reflect a conservative legal stance and have not provided protection for *the LGBTQQIAAP community*. On the contrary, some of the provisions in this bill actually have the potential to increase discrimination and worsen existing social stigma.

Globally, more and more countries are starting to provide legal protections for *the LGBTQQIAAP* community, while Indonesia still maintains a more restrictive approach. Therefore, there is a need for broader discussions and a human rights-based approach in the drafting of future regulations so that the laws applied can be more inclusive and fair for all citizens, without exception.

4. Conclusion

Based on the above data and analysis, it can be concluded that regulations regarding *the LGBTQQIAAP* community in Indonesia are still in the gray area, where there are no explicit laws criminalizing different sexual orientations and gender identities, but various bills that have been or are being discussed show discriminatory tendencies that further narrow the living space of this group. The Draft Criminal Code (RKUHP) and the Family Resilience Bill contain articles that can be indirectly or directly used to target *LGBTQQIAAP individuals*, either through the criminalization of same-sex relationships or efforts to impose rehabilitation that are contrary to human rights principles. In addition, the emergence of various draft regional regulations that limit freedom of expression and community movement space further emphasizes that the existence of *LGBTQQIAAP* groups in Indonesia is still considered a threat to conservative social norms. The impact of these discriminatory regulations is widespread, including increased social stigma, fear, and potential violence and persecution of *LGBTQQIAAP* individuals, which can ultimately worsen their psychological, social, and economic well-being. In addition, Indonesia, which has ratified various international treaties on human rights, such as the *International Covenant on Civil and Political Rights (ICCPR)* and *the International Covenant on Economic, Social and Cultural Rights (ICESCR),* should give more consideration to a legal approach based on the principles of non-discrimination and protection of the rights of minorities, including *LGBTQQIAAP* groups. Therefore, more inclusive and human rights-based legal reforms are needed, as well as efforts to increase public awareness so that the regulations drafted not only take into account conservative moral norms, but also provide equal protection guarantees for all Indonesian citizens, without exception.

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