
Legalization of Same-Sex Marriage in Terms of Islamic Law: A Comparative Study of Indonesia and Germany

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Abstract

Marriage is the behavior of creatures created by God Almighty so that life in the natural world develops well. Marriage is recommended and regulated in Islam because it has a noble purpose. As time progresses, marriages which were initially only carried out by heterosexual couples are now seeing the emergence of the phenomenon of same-sex marriages or marriages by LGBT people. What is worrying is that the LGBT phenomenon is growing rapidly in Indonesia due to increasingly open freedoms. This raises pros and cons. Same-sex marriage in Indonesia, a Muslim-majority country, has caused controversy and is considered illegal deviant behavior. However, there are also several countries in the world that have legalized same-sex marriage, including Germany, where Muslims are a minority. In 2017, Germany officially passed regulations regarding same-sex marriage including the right to adopt children. This research aims to conduct a comparative analysis of the topic of same-sex marriage among LGBT actors in Germany and Indonesia using a socio-legal approach. This research has the results of a study that the phenomenon of same-sex marriage by LGBT people that occurs in Germany and Indonesia are two different things and cannot be equated. Several factors behind this are the socio-cultural context which causes society's reactions and the implementation of government regulations regarding same-sex marriage to be different.

1. Introduction

Marriage is recommended and regulated in Islam because it has a noble purpose. In general, marriage between a man and a woman is intended as an effort to maintain self-respect (*hifzh al 'irdh*) so that they do not fall into forbidden acts, maintain the continuity of healthy human life/offspring (*hifzh an nasl*) and establish a home life filled with love. between husband and wife and help each other to benefit together. Marriage is behavior creature created by God Almighty so that life in the natural world develops well. Marriage not only occurs among humans, but also occurs in plants and animals. Therefore, humans are rational animals, so marriage is one of the orderly cultures that follows the development of human culture in social life. In simple societies the marriage culture is simple, narrow and closed, in advanced (modern) societies the marriage culture is advanced, broad and open.¹

In general, marriages held in Indonesia are a process of uniting two people of different genders. However, as time progresses, it turns out that in several regions in other parts of the world, same-sex marriages can be carried out according to regulations in that area. Same-sex marriages are carried out by LGBT people.

Even though it is still quite taboo, historically the LGBT phenomenon has entered Indonesia since the 1960s. In fact, there are several parties who say that LGBT has existed in Indonesia since the 1920s. Until finally it developed very massively today. The LGBT phenomenon is growing rapidly in Indonesia due to increasingly open freedoms, so that open campaigns can be carried out by playing on human rights issues.²

With this openness, the LGBT community closing ranks to influence young people who have not been touched using various methods and what is more important is the existence of activists who are considered heroes for fighting for the existence of LGBT. In the West, a moral issue that continues to shake up and trigger great controversy to

¹ Ach Puniman, "Hukum Perkawinan Menurut Hukum Islam Dan Undang-Undang No. 1 Tahun 1974," *Jurnal Yustitia* 19, no. 1 (May 31, 2018): 85–94, <https://doi.org/10.53712/yustitia.v19i1.408>.

² Salina Abigail, "The GWL-INA: The Formation of a National Network of Gay Men, Transgender and MSM in Indonesia," *HIV Australia* 10, no. 2 (November 8, 2020): 43–46, <https://doi.org/10.3316/informit.906576825335812>.

this day is the issue of homosexuality, even within the Christian Church it is troublesome in determining moral boundaries regarding homosexuality. Homosexuality has been labeled as a dirty and immoral practice by religion, but has since become a humane practice and must be respected as part of respecting human rights.³

The Indonesian nation is a pluralistic nation. Indonesia has religious diversity and has made it a divine country in accordance with the first principle of Pancasila. In other words, Indonesia cannot be said to be a secular country. Because, in deciding many things, Indonesia still holds conservative values, so it often links them to religious values, including its connection to the LGBT phenomenon.⁴ Many people think that the LGBT phenomenon and same-sex marriage will affect the nation's future generations, therefore massive rejection has been carried out by many mass organizations and NGOs, including the Indonesian Ulema Council (MUI) and government officials at both the central and regional levels. The public's fear and/or concern regarding the development of the LGBT movement is not without reason, one of the concerns about the existence of an LGBT movement if it is allowed to exist in Indonesia is the legalization of same-sex marriage. Because a movement cannot exist without a target and final goal of its struggle. This is what is worrying if the existence of this group is allowed to live in society. We often hear the pros and cons of LGBT people in the mass media, both print and electronic. Those who are pro argue that LGBT is a human right and should not be discriminated against by anyone even if they are a minority. Meanwhile, those who oppose it argue that LGBT is a disease and sexual disorder that can be cured and is religiously considered Haram.⁵

Indonesia is one of the Muslim-majority countries that opposes same-sex marriage. Islamic law plays quite a role in determining boundaries regarding this matter. Islamic law is sharia which means the rules established by Allah for His people brought by the

³ Hasan Zaini, "LGBT Dalam Perspektif Hukum Islam," *Juris (Jurnal Ilmiah Syariah)* 15, no. 1 (March 18, 2017): 65–74, <https://doi.org/10.31958/juris.v15i1.489>.

⁴ J. Lestari, "Religious Pluralism in Indonesia: Challenges and Opportunities for National Unity," *Al-Adyan: Journal of Religious Studies* 1, no. 1 (2020): 29–38.

⁵ Elbina Mamla Saidah, "Penyimpangan Perilaku Seksual (Menelaah Maraknya Fenomena LGBT di Indonesia)," *AL-Ishlah: Jurnal Pendidikan* 8, no. 1 (June 17, 2016): 56–68, <https://doi.org/10.35445/alishlah.v8i1.32>.

Prophet SAW, both laws relating to belief (aqidah) and laws relating to amaliyah (actions) carried out by all Muslims.⁶

The phenomenon that is currently occurring is reminiscent of what happened to the people of Prophet Lut AS. Most of the followers of Prophet Luth (a.s.) were same-sex lovers, this kind of behavior was clearly cursed by Allah SWT so that the consequences of their actions were befallen. disaster which is really awesome. Therefore, it is clear that this act is one of the haram things that has no justification at all in the teachings of the Islamic religion. This is also explained a lot wellimplicit or explicitly in the Al-Qur'an, Hadith and even the MUI institute issued a fatwa regarding this sexual deviant behavior in MUI Fatwa No. 57 of 2014 concerning lesbians, gays, sodomy and sexual immorality.⁷

Apart from countries that are against same-sex marriage, it turns out that there are also several countries that have legalized same-sex marriage. One of these countries is Germany. Germany is a country where Muslims are a minority.

Even though LGBT has now been normalized in Germany, same-sex marriage has even been legalized in 2017. However, historically LGBT behavior has not been fully accepted by the Germany government. Especially after the war where the Nazis carried out a lot of persecution against sexual orientation minority groups. The Germany government, some of which is controlled by Christian parties with a conservative orientation, has caused the recognition of LGBT rights to be delayed compared to several other European Union countries.

However, as time progressed, the Germany government finally officially legalized same-sex marriage. So LGBT behavior is increasingly widespread in Germany. In fact, one of the famous politicians, former Berlin Mayor Klaus Wowereit, explicitly revealed himself to be gay. This indicates that Germany is quite open to accepting the aspirations of people who were initially considered to be sexual minority groups. Germany is part

⁶ Amran Suadi and Mardi Candra, *Politik Hukum: Perspektif Hukum Perdata Dan Pidana Islam Serta Ekonomi Syariah*, Cetakan ke-1 (Rawamangun, Jakarta: Prenadamedia Group, 2016).

⁷ Anisa Panggabean, "Penafsiran Muhammad Mutawalli Sya'rawi Tentang Homoseksual (Kajian Tafsir Tematik)." (Bachelor Thesis, Universitas Islam Negeri Sumatera Utara, 2019), <http://repository.uinsu.ac.id/7918/>.

of the European Union so it has a tendency to be more open to LGBT issues with a strong secular tradition. This includes freedom of religion.

Another consideration behind the Germany government passing the law regarding same-sex marriage is in the interests of social peace and achieving social unity. These are the rights of LGBT individuals, some of whom are protected by law. These include the right to carry out same-sex marriages and the right to adopt children

On the other hand, the Indonesian government's consideration for not recognizing same-sex marriages is based on religious norms that are closely tied to Indonesia. Religion is the first point in the foundation of the Indonesian state, namely Pancasila. Thus, behavior that is not in accordance with the religious teachings that apply in Indonesia, including Islam, will face a lot of rejection.⁸

This impact has resulted in LGBT individuals in Germany and Indonesia being very different. If LGBT people in Germany explicitly reveal their identity. Some LGBT people in Indonesia are more implicit and even tend to be covered up even though they try to show their identity, but there is no statement that confirms this. The discrimination experienced by LGBT people from the general public makes them considered a minority group in society.

However, as the times progress in an era of massive technological development, the presence of LGBT people is increasingly widespread. Even though they don't get recognition in Indonesia, some of them don't hesitate to show their existence on social media. Taking refuge under the equality of human rights is an expression often expressed by them. It should be noted that the socio-cultural context of Western countries and Indonesia, which are still strongly influenced by Eastern culture, are two different things. Not everything done by Western countries such as Germany is suitable for application in Indonesia. Therefore, the author wrote this article to comprehensively look at the LGBT phenomenon that occurs in Germany and Indonesia using a comparative approach.

⁸ Muwaffiq Jufri, *Metode Penyelesaian Konflik Agama: Optik Hukum, HAM, dan Nilai Kearifan Lokal* (Surabaya: Scopindo Media Pustaka, 2021).

2. Problem Statement

Based on the description of background above, describes the controversy and urgency of same-sex marriage by LGBT people in Indonesia a country with a Muslim majority religion and Germany a country where Muslims are a minority seen from the perspective of Islamic law. This problem is very important to be studied further because it relates to the paradigm of people's thinking with the actualization of deviant behavior if they do not get alternative solutions to the problem as soon as possible. This paper will discuss the phenomenon of same-sex marriage with a comparative study in Indonesia and Germany to find solutions to the widespread impact of multiculturalism.

3. Methods

This research aims to conduct a comparative analysis of the topic of same-sex marriage among LGBT actors in Germany and Indonesia using a socio-legal approach. This research will examine the relationship between law and reality in society regarding same-sex marriage among LGBT actors in Germany and Indonesia (law in action). The data for writing this research was also obtained through interviews with LGBT activities originating from credible news reports.

4. Philosophical Overview of Same-Sex Marriage

More than 20 countries have legalized same-sex marriage. However, the application of the principle of equality specifically in the issue of same-sex marriage in general is not appropriate, and same-sex marriage is not a human right in Indonesia when viewed from the perspective of the universality of cultural relativism from human rights.⁹ In recent years, according to Crehan and Rickenbacker, proponents of same-sex marriage have focused on arguments about "rights and equality".¹⁰

4.1. Germany

Germany began enacting same-sex marriage regulations on October 1, 2017. This regulation was officially ratified by the Bundestag, the Germany federal parliament.

⁹ Darla Cameron and Bonnie Berkowitz, "The State of Gay Rights Around the World," Washington Post, June 14, 2016, <https://www.washingtonpost.com/graphics/world/gay-rights/>.

¹⁰ Katherine Rickenbaker Margaret Gram Crehan, "The Changing Debate on Same-Sex Marriage in the United States," *Ann Arbor, MI: MPublishing, University of Michigan Library* 20 (Fall -Spring 2007 2006), <http://hdl.handle.net/2027/spo.ark5583.0020.001>.

However, the deviant behavior of homosexual couples in Germany started in the Roman Empire. The law applicable to homosexuals at that time was the death penalty. Then, under the pressure of the Nazis, homosexual couples got a lot of bullying which resulted in many casualties. After the controversy, same-sex marriage was reintroduced in Germany in 2001, it took about 16 years to legally legalize same-sex marriage regulations.¹¹ Before it was officially legalized in 2017, same-sex couples in Germany had been widely recorded statistically. Moreover, after legalizing this type of marriage, it is increasingly being carried out openly. The majority of Germans think that same-sex marriage should be allowed throughout Europe. In 2016, the Germany government acquitted 50,000 men on charges of homosexual behavior during the Nazi era and provided compensation with parliamentary approval. This was stated in a bill that was later ratified into law.¹²

The Germany government and pro-LGBT organizations are very supportive of “Ehe für Alle” (marry for all). This is evidenced by Germany which has legalized Germany family law, especially regulated by the Civil Code. Germany's consideration for legalizing same-sex marriage is also by looking at the three main functions of marriage, among others: 1) protecting individual freedom to marry; 2) establishing marriage as a fundamental objective value; 3) protecting the institution itself.¹³

This raises the pros and cons in Germany itself, especially the rejection of religious organizations. However, the government has always urged parties and religious organizations that previously did not approve the ratification of the same-sex marriage bill to approve the bill. Therefore, the political element in the ratification of this regulation is quite strong.¹⁴

¹¹ Michael Jankowski, “Slowly Adopting: The Impact of Same-Sex Marriage Legalisation on the Attitudes of Parliamentary Candidates in Germany,” *European Journal of Politics and Gender* 6, no. 1 (February 2023): 139–42, <https://doi.org/10.1332/251510821X16612491304936>.

¹² Meka Beresford, “Germany to Pay Out 30 Million Euros in Compensation to Men Convicted Under Historic Gay Sex Laws,” PinkNews | Latest lesbian, gay, bi and trans news | LGBTQ+ news, October 8, 2016, <https://www.thepinknews.com/2016/10/08/germany-to-pay-out-30-million-euros-in-compensation-to-men-convicted-under-historic-gay-sex-laws/>.

¹³ Jackie Jones, “The Prospects of Legal Recognition of Same-Sex Marriage in Germany,” ed. Jackie Jones, *Equal Opportunities International* 28, no. 3 (January 1, 2009): 221–32, <https://doi.org/10.1108/02610150910947771>.

¹⁴ Deutsche Welle, “Gay Couple Becomes First in Germany to Adopt Child,” *dw.com*, October 10, 2017, <https://www.dw.com/en/gay-couple-becomes-first-in-germany-to-adopt-child/a-40890149>.

The state cannot afford to include sexual anomalies in its legal practice because this would undermine its social fabric. As the Human Rights Commission points out, research in Germany confirms certain social dangers in the case of masculine homosexuality. This danger stems from the fact that masculine homosexuals are often a distinct socio-cultural group with a clear tendency to spread religion among adolescents and that the social isolation involving these adolescents is particularly marked.¹⁵

4.2. Indonesia

Same-sex marriage in Indonesia is still experiencing strong rejection. Even so, there are still some people who use social media facilities who try to provide rational responses related to LGBT so that this can be justified and legalized in the future. The religious aspect is an element that is often used as an excuse to oppose LGBT behavior, especially in Indonesia. This refers to Pancasila as the ideology of the Indonesian state, namely the principle 1 "Belief in the One Supreme God". Although Indonesia is not an Islamic country, Islam is the majority religion in Indonesia. Thus, the legal provisions of same-sex marriage cannot be justified in any context and condition. The views of religious LGBT supporters cannot be the reason that all kinds of behavior of these people, including same-sex marriage, are not recognized. According to them, even someone who doesn't follow any religion (atheist) in today's modern era is normal. So that the belief or religion cannot limit the scope of the rights of LGBT people.¹⁶

In addition, rights and equality are two things that are often discussed by LGBT activists for the recognition and acceptance of these people. The principle of equality is contained in the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights. However, the essence of equality treatment cannot be applied to all problems

¹⁵ Massimo Fichera, "Same-Sex Marriage and the Role of Transnational Law: Changes in the European Landscape," *German Law Journal* 17, no. 3 (June 1, 2016): 383-420, <https://doi.org/10.1017/S2071832200019817>.

¹⁶ Holy K.M. Kalangit and Heru Susetyo, "Perkawinan Sesama Jenis Dan Hak Asasi Manusia: Penerapan Prinsip Equality Dalam Putusan Obergefell, et.al. V. Hodges, USA Serta Analisis Mengenai Perkawinan Sesama Jenis Di Indonesia," *University Of Bengkulu Law Journal* 5, no. 2 (October 31, 2020): 177-200, <https://doi.org/10.33369/ubelaj.5.2.177-200>.

in Indonesia. So, an in-depth analysis process is needed to find out the relevance of same-sex marriage by LGBT people.¹⁷

Comprehensively, there are differences in the responses of two countries, namely Germany and Indonesia in responding to same-sex marriage. The introduction of LGBT in Germany had begun even when the Roman Empire continued to grow in the era of Nazi rule until its legalization in 2017. Indonesia with a majority of devout religious adherents made the issue of same-sex marriage never get recognition and acceptance at the time of the kingdom's glory in the archipelago before independence until after the current independence.

5. Juridical Review of Same-Sex Marriage

5.1. Germany

Same-sex couples have previously been recognized and registered in partnership for marriage, this came into force in 2001. However, the form of this partnership right is that same-sex couples may not get some rights such as marriage by heterosexual couples. This includes the right to adopt children.¹⁸ Since then, many couples have registered their marriages in partnership as "*eingetragene Lebenspartnerschaft*".¹⁹

In 2011, the federal constitution of the Germany courts ruled that transgenders have the option to change their gender identity on official documents if they have had sex reassignment surgery or sterilization. Another problem that arises is the waiting time for submitting an application, which is often considered by the community to be quite long.²⁰

In 2013, the Constitutional Court ruled on "consecutive adoption". If one of the homosexual couples adopts a child, then the other partner has the right to become the adoptive mother/father. In 2017, same-sex marriage was legalized with full adoption rights. Previously, the right to adopt children faced many problems, especially the

¹⁷ Kalangit and Susetyo.

¹⁸ Beresford, "Germany to Pay Out 30 Million Euros in Compensation to Men Convicted Under Historic Gay Sex Laws."

¹⁹ Mirko K. Braack and Nadja Milewski, "An Explorative Approach to the Cross-Section of International Migration and Sexual Preference: Same-Sex Couples in Germany," *Genus* 76, no. 1 (October 6, 2020): 33, <https://doi.org/10.1186/s41118-020-00102-6>.

²⁰ Jankowski, "Slowly Adopting."

difficulty of obtaining an official acknowledgment of a birth certificate, where the parties usually listed on the birth certificate were the biological parents of the child, so non-biological/homosexual parents were not registered.²¹

The Germany government is trying to give homosexual couples the same rights as heterosexual couples. This is also based on the principle of tolerance and the process of modernization. However, at first, this caused opposition, especially from religious organizations in Germany including the Muslim parliament and the Christian Democratic Union (CDU). However, in the end, the consistency that had been maintained had to be pressed with various pressures with the official passing of the law on same-sex marriage in Germany. In fact, the vote held by the Germany government itself is a vote of conscience with the majority of supporters of LGBT organizations.

Another reason is that many politicians are competing to side with one another in favor of same-sex marriage in order to get a large number of votes from the LGBT community in the parliamentary elections. Currently, conservative parties tend to be more in favor of same-sex marriage after its legalization.²²

5.2. Indonesia

Here are some regulations in Indonesia regarding legal marriages, including:

- 1) Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, Article 7 states that "Marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years."
- 2) Law Number of 1974 concerning Marriage, Article 1 states that "Marriage is an inner and outer 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".²³

²¹ Deutsche Welle, "Gay Couple Becomes First in Germany to Adopt Child."

²² Jankowski, "Slowly Adopting."

²³ Republic of Indonesia, "Law Number 1 of 1974 Concerning Marriage" (1974).

- 3) Law Number 23 of 2006 concerning Population Administration, Article 34 paragraph (3) states that "Quotes of Marriage Certificates as referred to in paragraph (2) are given to husband and wife respectively".²⁴
- 4) Book II on the Comprehensive Manuscript of Amendments to the 1945 Constitution concerning the Foundations/Fundamentals of the State, states that "The ideal of God Almighty as the first principle is a solid basis for giving living space to the religious character of the Indonesian nation. This precept is also a guarantee of freedom of religion."²⁵

Overall, Germany society wants equal marriage rights for homosexual and heterosexual couples which are legalized by the Germany government in the form of regulations so that they are legally valid. The religious values inherent in the Indonesian people make same-sex marriage something so taboo that it is very difficult and even express rejection will appear if there are parties who intend to realize same-sex marriage in Indonesia. The consistency of the Indonesian people from various layers starts from the grassroots, namely the community to the top of the government. The principle that is held legally in Indonesia is that marriage is an attachment/relationship between two human beings, a man and a woman, which can then be legally and legally declared by the issuance of a marriage certificate.

The widespread spread of LGBT culture and same-sex marriage raises deep concern for many Indonesians. Moreover, the open acknowledgment and the increasingly rampant existence are feared to damage the younger generation.

6. An Overview of Islamic Law Against Same-Sex Marriage

6.1. Al-Qur'an

Here are some verses of the Qur'an regarding same-sex marriage:

- 1) QS. An-Naml (27): 54-55

وَلَوْ طَآ اذْ قَال لِقَوْمِہٖ اَتَاۡتُوۡنَ الْفَآحِشَةَ وَاَنْتُمْ تُبۡصِرُوۡنَ ؕ اَۤیۡنَکُمْ لَتَاۡتُوۡنَ الرِّجَالَ شَهْوَةً مِّنۡ دُوۡنِ النِّسَاۡءِ ۗ اَلۡیۡسَآءِ ۙ اِنَّکُمْ قَوْمٌ
تَّجۡہَلُوۡنَ ۝۵

²⁴ Republic of Indonesia, "Law Number 23 of 2006 Concerning Population Administration" (2006).

²⁵ Kalangit and Susetyo, "Perkawinan Sesama Jenis Dan Hak Asasi Manusia."

Translation (English Sahih International):

“(54) And [mention] Lot, when he said to his people, "Do you commit immorality while you are seeing? (55) Do you indeed approach men with desire instead of women? Rather, you are a people behaving ignorantly."

2) QS Asy-Syu'ara' (26): 165-166

اتَأْتُونَ الذُّكْرَانَ مِنَ الْعَالَمِينَ ۖ ١٦٥ وَتَذَرُونَ مَا خَلَقَ لَكُمْ رَبُّكُمْ مِنْ أَزْوَاجِكُمْ بَلْ أَنْتُمْ قَوْمٌ عَادُونَ ١٦٦

Translation (English Sahih International):

“(165) Do you approach males among the worlds. (166) And leave what your Lord has created for you as mates? But you are a people transgressing."

3) QS Al-A'raf (7): 80-82

وَلَوْطًا إِذْ قَالَ لِقَوْمِهِ اتَّاتُونِ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ الْعَالَمِينَ ٨٠ إِنَّكُمْ لَتَأْتُونَ الرِّجَالَ شَهْوَةً مِنْ دُونِ
النِّسَاءِ ۗ بَلْ أَنْتُمْ قَوْمٌ مُّسْرِفُونَ ٨١ وَمَا كَانَ جَوَابَ قَوْمِهِ إِلَّا أَنْ قَالُوا أَخْرِجُوهُمْ مِنْ قَرْيَتِكُمْ إِنَّهُمْ أَنَاسٌ يَنْتَظِرُونَ

٨٢

Translation (English Sahih International):

“(80) And [We had sent] Lot when he said to his people, "Do you commit such immorality as no one has preceded you with from among the worlds? (81) Indeed, you approach men with desire, instead of women. Rather, you are a transgressing people. (82) But the answer of his people was only that they said, "Evict them from your city! Indeed, they are men who keep themselves pure."

6.2. Hadith

Here are some hadiths regarding same-sex marriage:

- 1) *The Hadith of Jabir Ibn Majah*, "Indeed, what I fear most (overwhelm) my people are the actions of the people of Lut".²⁶ Tirmizi said, "This hadith is Hasan Garib", Hakim said, "This hadith is authentic isnad").

²⁶ Imam Muhammad bin Yazid Ibn Majah al-Qazvini, "The Chapters on Legal Punishments," in *Sunan Ibn Majah*, n.d.: 2563; See also, Imam Abu `Isa Muhammad at-Tirmidhi, "The Book on Legal Punishments (Al-Hudud)," in *Jami` At-Tirmidhi*, n.d.: 1457.

2) *Hadith narrated by Ahlus Sunan and authenticated by Ibn Hibban and others.*

Imam Ahmad is of the opinion that this hadith and this hadith are in accordance with the conditions of two Shaykhs (Bukhari and Muslim). They also postulated with what was narrated from Ali that he stoned the person who did this act. Imam ash-Shafi'i said, "So, with this (postulate), we punish people who commit gay acts by stoning, whether he is a married person or not." Likewise, a narration from Khalid bin Walid that he found in some parts of Arabia a man who had intercourse as he had sex with a woman. Then, he wrote (a letter) to Abu Bakar ash-Siddiq about it, then Abu Bakr asked the opinion of his companions. Regarding this, the opinion of Ali bin Abi Talib is the strongest. "There is not a single Ummah from the (previous) Ummah who did this act, except for only one Ummah (namely the people of Lut) and indeed you already know what Allah did to them, I think that they should be burned with fire." Then Abu Bakr wrote to Khalid, then Khalid burned the man. Abdullah bin Abbas said, "He (gay perpetrator) was raised to the top of the tallest building in a village, then thrown from him with a shoulder down position, then stoned." Abdullah bin Abbas took this kind of punishment from the punishment that Allah inflicted on the people of Lut and it was Abdullah bin Abbas who narrated the words of the Prophet: "Whoever among you finds someone who does what the people of Lut do, then kill the culprit and his partner."²⁷ This hadith was narrated by al-Imam Ahmad 1/300 and see Sahih al-Jami': 6565. Abu Hurairah narrates, "There are four groups who in the morning they are in the wrath of Allah and in the evening, they are in His wrath." Abu Hurairah said, "Who are they, O Messenger of Allah?" He replied, "Men who resemble women, women who resemble men, those who have sex with animals, and men who have sex with men." This hadith was issued by al-Tabrani and al-Baihaqi with a chain in which there is Muhammad bin Salam al-Khuza'i, his condition is unknown, from his

²⁷ Imam Muhammad bin Yazid Ibn Majah al-Qazvini, "The Chapters on Legal Punishments.": 2561

father, from Abu Hurairah. Al-Bukhari said, "Muhammad bin Salam has not followed his hadith."²⁸

Based on several hadiths above, the core of the discussion is that relationships between people of the same sex, such as men having sex with members of the same gender, namely men, are absolutely not permitted. Likewise with women who have sexual relations with members of the same sex.

In the current era of globalization and modernity, this behavior can lead to relationships and even same-sex marriage. The perpetrators of same-sex marriages are called LGBT people. In order to avoid the wrath of Allah SWT for committing deviant behavior and violating nature, humans need to control their desires so that they do not like people of the same sex. On the other hand, to have offspring, humans can have a marriage relationship with a heterosexual partner.

6.3. Ulama's Perspective

Here are some of Ulama's perspectives regarding same-sex marriage:

- 1) Opinion of Imam Ash-Shirazi in the book *Al-Muhadzdzab* as follows: "Liwath" (intercourse into the anus) is forbidden because of the word of Allah SWT.: "And (remember the story of) Lut, when he said to his people: "Why do you do "fahishah" (very vile) deeds that have never happened to anyone from the people of the worlds" (Surah Al-A'raf: 80). In this verse Allah SWT refers to liwath with the word "fahisyah" (heinous deeds). And Allah says: "And do not approach the evil deeds, whether visible in between or hidden, and do not kill the soul that Allah has forbidden except for something that is right. That is what Allah has commanded you so that you may understand" (Surah Al-An'am: 151) And also because Allah (SWT) tortured the people of Lut with a torment that has never been inflicted on anyone because of their "fahishah" also a proof for the prohibition of "liwath". Whoever does it, and he is one of those who are

²⁸ Syamsuddi Muhammad Ibn Ahmad Az- Zahabi, *Mizan Al- I'tidal Fi Naqdi Ar-Rijal* (Beirut: Dār al-Kutub al-Ilmiyyah, 1995).

subject to "hadd" adultery, then the punishment for hadd adultery is obligatory for him".²⁹

- 2) Opinion of Imam al-Nawawi in *Al-Minhaj Syarh Sahih Muslim*: "As for the statement of the Prophet SAW. Regarding that, it is not for a man to struggle with another man in one dress, and similarly, for a woman and another woman, it is a prohibition that contains a forbidden law, if it is in direct contact without a layer between the aurat of the two. This is the argument for the prohibition of touching the genitals of the same sex in any part. This law is the agreement between the scholars."³⁰
- 3) Fatwa of the Indonesian Ulema Council Number 57 of 2014 Regarding Lesbians, Gays, Sodomy, and Obscenity, the second point (legal provisions) is as follows:³¹
 - a. Sexual relations are only permitted for someone who has a husband-and-wife relationship, namely a male and female couple based on a legal marriage according to syar'i.
 - b. Sexual orientation towards the same sex is a disorder that must be cured and deviations must be straightened out.
 - c. Homosexuality, both lesbian and gay, is unlawful and is a form of crime (jarimah).
 - d. Homosexual perpetrators, both lesbian and gay, including bisexuals, are subject to hadd and/or ta'zir punishments by the authorities.
 - e. Sodomy is haraam and is a heinous act that brings great sin (fahishah).
 - f. Perpetrators of sodomy are subject to ta'zir punishment whose maximum sentence is the death penalty.
 - g. Homosexual activity other than by means of sodomy (liwath) is unlawful and the perpetrator is subject to ta'zir punishment.
 - h. Obscene activities, namely sexual desire vents such as touching, squeezing, and other activities without legal marriage ties, which are carried out by

²⁹ Al-Imam al-Allamah Abu Zakaria Yahya bin Syaraf an-Nawawi ad-Dimasyqi, *Al-Majmu' Syarh Al-Muhadzab Li Al-Syairazi* (Kairo: Al-Maktabah at-Taufiqiyah, n.d.).

³⁰ Al-Imam al-Allamah Abu Zakaria Yahya bin Syaraf an-Nawawi ad-Dimasyqi, *Al-Minhaj Syarhu Shahih Muslim Ibni Al-Hajjaj*, Cet. II, vol. 4 (Bairut, 1392).

³¹ Indonesian Ulema Council, "Fatwa of the Indonesian Ulema Council Number 57 of 2014 Concerning Lesbians, Gays, Sodomy and Obscenity" (2014).

someone, whether committed to other sexes or the same sex, to adults and legal children.³²

Table 1. *Media Comparative table of philosophical, juridical and religious analysis of same-sex marriage in Germany and Indonesia*

Substance	Germany	Indonesia
Anti-discrimination laws	<p>General Law on Equal Treatment (German: <i>Allgemeines Gleichbehandlungsgesetz</i>)</p> <p>This regulation contains a prohibition on discrimination based on sexual orientation and gender identity in employment, education, health services and the provision of goods and services.</p>	<p>Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination</p> <p>This regulation contains the elimination of racial and ethnic discrimination in Indonesia.</p> <p>However, until now there are no regulations regarding anti-discrimination that lead to the protection of sexual behavior rights.</p>
Legal basis for same-sex marriage	<p>The same-sex marriage law was passed by the Bundesrat on July 7 2017.</p>	<p>Same-sex marriage is not legal in Indonesia. In the regulations of Law no. 16 of 2019 in article 7 explains that marriage only occurs between men and women who have reached the age of 19 years.</p>
Socio-cultural context of LGBT issues	<p>During the Nazi regime and post-war Germany, it cannot be denied that this gave rise to the struggle for human rights due to the persecution that was often carried out against sexual orientation minority groups. As time went by, the Germany government was dominated by the Christian Democratic Party which held quite conservative values.</p> <p>However, finally in 2017 a well-known Germany politician from the Christian Democratic Union of Germany (CDU) party, who is quite opposed to same-sex</p>	<p>Based on Pancasila as the basis of the Indonesian state, Indonesia is a divine country.</p> <p>These socio-cultural values are one of the reasons that same-sex or LGBT marriage has not been legalized in Indonesia.</p> <p>Indonesia is one of 14 countries that expressed their disagreement with LGBT rights in the UN resolution.</p> <p>To date, this government policy is in line with the conservative values that still dominate Indonesian society.</p>

³² Indonesian Ulema Council.

	<p>marriage, decided to carry out a conscience vote.</p> <p>Thus, a decision was reached that same-sex marriage was legalized along with the right to adoption.</p> <p>Therefore, Germany society is also quite open to the social phenomenon of same-sex marriages that occur among LGBT people.</p>	
Legal recognition of gender identity	Germany has 3 recognized genders, including masculine, feminine and neutral.	Indonesia is legally positive, only recognizing 2 genders, namely men and women.
Community normative interviews about LGBT (LGBT perpetrators)	<p>One opportunity to interview several LGBT individuals in Germany, one of whom argued that: "even though we had to fight for our rights so much more than 30 years ago, it's still important to have pride. and of course, you never know when the political situation will change".</p> <p>Based on this opinion, it can be interpreted that even though it has been legalized by the state, LGBT individuals still want to fight for other rights that they can obtain.</p> <p>Apart from that, the former Mayor of Berlin, Klaus Wowereit, also explicitly revealed that he is gay.</p>	<p>Until now, LGBT actors in Indonesia usually do not explicitly express their opinions. This is due to the many acts of discrimination they experience.</p> <p>However, the perspective of Indonesian LGBT actors can be seen in the case studies that can be studied.</p> <p>One of the case studies that occurred in the field was that in 2020 there were 15 members of the TNI and Polri who were fired due to being homosexual.</p>
Normative community interviews about LGBT (ordinary non-LGBT people)	<p>The passing of the same-sex marriage law opened the door for Germany society to normalize same-sex marriages by LGBT individuals.</p> <p>In research published in 2023, it was stated that the majority of Germany society supports marriage equality in Germany</p>	<p>One of the interview opportunities conducted with several Indonesian general public, several opinions: "LGBT violates norms", "Indonesia is mostly Muslim, so LGBT is still taboo" "Different religious views are a big sin".</p>

<p>Legal response to LGBT case studies (How law affects individuals' lives in terms of social acceptance, access to services, and legal protection)</p>	<p>The Equal Treatment Law in Germany has been in effect since August 2006. Based on this regulation, people's rights are protected by law to obtain discrimination based on grounds of race or ethnicity, gender, religion or belief, disability, age or sexual orientation can be anticipated.</p>	<p>To date, there are no Indonesian regulations governing anti-discrimination regarding sexual orientation rights The regulations regarding discrimination are intended to protect racial or ethnic rights in Indonesia. The impact of the absence of clear regulations is discrimination against LGBT actors and they do not receive legal protection.</p> <p>Some LGBT individuals and groups often experience discrimination and stigmatization in Indonesian society.</p> <p>State law does not specifically protect the LGBT community from discrimination and hate crimes.</p> <p>In fact, the principle of legality in criminal law in Indonesia determines that no act can be punished if there is no clear legal basis.</p>
<p>Religious survey</p>	<p>Germany is a secular country that separates state and religious affairs.</p>	<p>Indonesia is a divine country. Regarding sexual orientation, there is a lot of guidance in Islamic legal sources such as the Al-Qur'an and Hadith.</p>

Source: Primary Data Processed in 2021

5. Conclusion

Comparison of the legalization of same-sex marriage in two countries, namely Germany and Indonesia, found many differences. Germany already has legal protection for LGBT rights by legalizing same-sex marriage, so that in reality LGBT individuals in Germany are able to explicitly show their identity. Meanwhile, Indonesia currently does not have a legal basis regarding LGBT because the country still strongly opposes and does not recognize LGBT behavior, including same-sex marriage, which in reality has an impact

on LGBT people still being a very minority group and often facing intimidation and discrimination in society.

The application of regulations and the different reactions of society between Germany and Indonesia originate from the socio-cultural context of the LGBT phenomenon which is not the same. The past incidents of persecution of sexual orientation minority groups during the war by the Nazis in Germany, caused many people in Germany to try to prioritize human rights. One way is to generalize the phenomenon of same-sex marriage. Meanwhile, Indonesia is a divine country with a majority of Muslims who uphold conservative values and prioritize religious values in the context of daily life, especially LGBT and same-sex marriage, so it is very difficult to fight for LGBT rights in Indonesia.

Regarding the discrimination that LGBT people in Indonesia often still experience, according to the Government and legal experts, these individuals should still have the right to obtain their rights as Indonesian citizens, such as education, decent housing, and so on. However, this does not apply to activities that can develop LGBT behavior in these people and even violate human nature. LGBT people are not all loyalists, some of them can actually be cured to be normal and have normal families and heterosexual partners.

Therefore, taking into account differences in concepts, socio-cultural context background, regulations, and public reactions, the LGBT phenomenon and same-sex marriage in Germany cannot be directly applied in Indonesia. As a solution, in order to save the nation's generation, the government must be more sensitive in being aware of indications of deviant sexual orientation possessed by individuals who have tendencies towards LGBT so that they can immediately be given the treatment and religious values they need.

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