International Journal of Business, Law, and Education
E-ISSN : 2747-1349
Publisher: IJBLE Scientific Publications Community Inc.
Volume 6, Number 1, 2025
https://ijble.com/index.php/journal/index

Criminalization of Lesbian, Gay, Bisexual and Transgender (LGBT) Behavior in Indonesia from the Perspectives of Maqashid Shari'ah and Utilitarianism

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ABSTRACT
This study aims to analyze the formulation of legal regulation for the criminalization of LGBT sexual behaviour in Indonesia through the perspectives of Maqashid Syari'ah and Utilitarianism. In a country with a Muslim-majority population, the LGBT phenomenon frequently raises a conflict between human rights protection and religious values. Using a normative juridical approach, this study examines legislation, legal theories, and relevant secondary data. Findings indicate that there is no explicit national regulation criminalizing LGBT behaviour. The Maqashid Syari'ah perspective emphasizes the protection of five fundamental principles: religion, life, intellect, lineage, and property. Meanwhile, Jeremy Bentham's Utilitarianism asserts that legal policy should maximize societal benefit. The study concludes that integrating these two approaches provides a balanced foundation for criminal policy formulation that upholds moral values and public interest without compromising justice and human rights.

Keywords:
Criminalization; LGBT; Maqashid Syari'ah; Utilitarianism; Criminal Law.

INTRODUCTION

Indonesia is a state governed by law, as explicitly affirmed in Article 1, paragraph (3) of the 1945 Constitution of the Republic of Indonesia. Within this legal framework, the formulation of laws and regulations must be grounded in the values of Pancasila as the state's foundational norm (staatsfundamentalnorm). These values serve as the foundation for establishing a national legal system encompassing the criminal justice system. Amidst the evolving social dynamics of Indonesian society, various contemporary issues have emerged that demand legal attention, one of which is the phenomenon of Lesbian, Gay, Bisexual, and Transgender (LGBT). The LGBT phenomenon in Indonesia has sparked intense public debate, particularly regarding the role of the state in recognizing, protecting, or even prohibiting what is often perceived as deviant sexual behaviour. On one side, there is an emphasis on protecting human rights, particularly the rights to identity and sexual orientation. On the other side, there is a strong push for the state to uphold moral and religious values that have long guided Indonesian society, particularly the Muslim majority.

In the context of criminal law, the state holds the authority to determine which behaviours constitute criminal acts through the process of criminalization. Criminalization is essentially a form of state intervention aimed at certain behaviours deemed harmful or detrimental to society. However, such intervention must adhere to the principles of justice, legal certainty, and utility. Therefore, any attempt to criminalize LGBT sexual behaviour must be thoroughly considered from philosophical, sociological, and juridical perspectives. To date, there is no national regulation that explicitly criminalizes LGBT sexual behaviour. The current Indonesian Penal Code

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(KUHP), as well as the Draft Criminal Code, does not classify homosexual conduct as a criminal offence unless it involves minors, coercion, or violence. A relatively explicit regulation is only found in Aceh through the Qanun Jinayat, which prohibits liwāṭh (male homosexual acts) and musāhaqah (female homosexual acts). However, even these provisions face challenges in terms of enforcement and procedural technicalities.

On the other hand, the Indonesian public generally rejects the presence and activities of LGBT groups. This rejection is rooted not only in religious doctrine, particularly Islam but also in moral norms and public health concerns. LGBT individuals are often associated with the spread of sexually transmitted diseases such as HIV/AIDS and syphilis. Beyond that, their presence is perceived as a threat to the social order and family values that have long been upheld in Indonesian society. These circumstances call for a criminalization policy that is not only based on the moral values of the majority but also capable of fulfilling universal legal principles. In this context, the approaches of Maqashid Shari'ah and Utilitarianism become relevant as theoretical foundations for formulating a policy on the criminalization of LGBT sexual behaviour in Indonesia.

Maqashid Shari'ah is an Islamic legal concept aimed at realizing public welfare and preventing harm through the protection of five essential values: religion (ad-dīn), life (an-nafs), intellect (al-‘aql), lineage (an-nasl), and property (al-māl). The criminalization of LGBT behavior can be analyzed based on the extent to which such conduct is seen as threatening these five values, such as corrupting lineage or causing moral degradation that negatively impacts broader society. Meanwhile, the utilitarian approach developed by Jeremy Bentham emphasizes the importance of generating the greatest benefit or happiness for the greatest number of people. From a utilitarian perspective, a criminalization policy is considered legitimate if it produces more social benefits than harms. Therefore, the formulation of criminalization policy regarding LGBT sexual behavior can be assessed through this approach to determine whether it leads to more social suffering or contributes to the collective good.

This research aims to answer two main questions: First, what is the current legal regulation concerning the criminalization of LGBT sexual behavior in Indonesia? Second, how should the criminalization policy be formulated based on the perspectives of Maqashid Shari'ah and Utilitarianism? This study is significant as it offers a normative alternative that integrates two perspectives: Islamic values through Maqashid Shari'ah, and rational Western thought through Utilitarianism. This combined approach is not only relevant for formulating policies that align with the character of Indonesian society, but it also serves as a reference for developing a national criminal law system that is inclusive and contextual.

Thus, this paper is expected to contribute to the development of legal scholarship, particularly in the fields of Islamic criminal law and legal philosophy, while also providing practical insights for policymakers in drafting fair and effective legislation to address LGBT-related issues.

METHOD

This study employed a normative juridical approach focusing on the analysis of legal norms and policies concerning the criminalization of LGBT sexual behavior in Indonesia. The research relied entirely on literature review using primary legal

materials (such as statutes and regulations), secondary materials (including academic books, journal articles, and theses), and tertiary materials (such as legal dictionaries and encyclopedias). The research procedure involved systematic and selective document analysis, examining statutory laws including the 1945 Constitution, the Indonesian Penal Code, the Human Rights Law, the Law on Legislative Drafting, and the Aceh Qanun Jinayat. A conceptual approach was used to examine key legal concepts, and a comparative approach was adopted to contrast Indonesia's legal stance with those of other countries, particularly Brunei Darussalam and selected Western European nations. Data were collected through library and digital research using national legal databases, online repositories, and academic publications. The materials were analyzed prescriptively and analytically to formulate normative recommendations. The analysis incorporated the framework of Maqashid Shari'ah and Utilitarianism to assess the justification and potential formulation of LGBT criminalization policies in Indonesia.

RESULTS AND DISCUSSION

This study seeks to formulate a legal policy for criminalizing LGBT sexual behavior in Indonesia, evaluated through the dual frameworks of Maqashid Syari'ah and utilitarianism. The research is unique in bridging Islamic legal theory and Western moral philosophy to offer a normative structure for penal legislation, addressing the normative void in Indonesian criminal law. The current Indonesian legal framework does not explicitly criminalize consensual homosexual or transgender behavior among adults. Article 292 of the old Criminal Code only applies to homosexual acts involving minors. The newly adopted Article 414 of the revised Criminal Code similarly fails to fully address adult consensual same-sex acts or transgender identity, creating a legislative gap that has prompted public and scholarly debate.

This regulatory ambiguity contrasts sharply with regional legislation, such as the Qanun Jinayat of Aceh, which explicitly criminalizes homosexual acts. However, that local regulation is limited to a specific religious demographic and jurisdiction, raising questions about its applicability in the broader national context. The research proposes six criteria for formulating LGBT criminalization under Indonesian law:

1. Subject of Crime: All competent individuals regardless of age or gender.
2. Object of Crime: Voluntary homosexual acts and non-medical transgender expressions.
3. Sanctions: Imprisonment with potential rehabilitation to reflect social correction.
4. Criminal Liability: Intent-based, excluding medical or psychological conditions.
5. Legal Procedure: Classified as general offense or absolute complaint-based.
6. Execution: Adheres to national criminal procedure and human rights limitations under Article 28J of the Constitution.

This formulation emphasizes an inclusive, constitutional, and restorative justice approach, differing from the *Qanun Jinayat*, which enforces corporal punishment with less emphasis on rehabilitative justice. From a Maqashid Syari'ah perspective, LGBT behavior contradicts five essential protections: religion (din), life (nafs), intellect ('aql), lineage (nasl), and property (mal). Criminalization is thus viewed as a legitimate safeguard for public morality and spiritual integrity.

Conversely, utilitarianism, as framed by Bentham, evaluates laws based on the greatest happiness principle. Survey data reveal that 87.6% of Indonesians consider

LGBT presence a social threat, suggesting collective discomfort or pain. Under Bentham's principle of maximizing public pleasure and minimizing pain, LGBT behavior is thus viewed as socially disruptive and non-beneficial in the Indonesian context. In contrast to studies by Umam (2024) and Prabowo (2023) that independently apply either Islamic or legal-theoretical approaches, this study's novelty lies in integrating Maqashid Syari'ah with utilitarianism for a more holistic formulation. It offers a legal construct that respects both religious values and the societal utility of law, absent in prior research.

While anticipating support for LGBT criminalization in religious discourse, the study also finds that public discomfort often stems more from perceived social disruption than theological disagreement. This reinforces the utilitarian argument while subtly shifting Maqashid emphasis toward social harmony (maslahah), thus refining how these two frameworks intersect in practice. This research has direct implications for policymakers seeking to balance legal clarity with sociocultural values. It argues for a codified yet rehabilitative criminal framework that aligns with both religious morality and secular public order. However, the study's normative-qualitative method limits its predictive capability and lacks empirical longitudinal validation. Future research should explore quantitative public opinion trends, comparative legislative impacts in Islamic-majority democracies, and jurisprudential evolution post-KUHP revision.

1. The Legal Regulation Model for Criminalizing LGBT Sexual Behavior in Indonesia

The analysis of the current legal framework in Indonesia reveals a significant gap in the explicit criminalization of consensual LGBT sexual behavior. Although Indonesian law, particularly Article 292 of the old Criminal Code (KUHP) and Article 414 of the new KUHP, criminalizes same sex acts involving minors, it remains silent regarding consensual same-sex relations among adults. This silence has created a legal vacuum that contributes to uncertainty and conflicting interpretations, both within the judiciary and among the public. Moreover, the legal position of transgender individuals is also ambiguous. While Indonesian law permits changes in gender identity under specific circumstances, such as those outlined in the Population Administration Act, there is no comprehensive regulation addressing the broader implications of gender identity, particularly in relation to public morality, social norms, or criminal liability.

Contrastingly, Aceh Province offers a localized model of criminalization through its Qanun Jinayat, which explicitly prohibits same-sex acts under Islamic law. However, this regulatory framework applies exclusively to Muslims in Aceh and cannot be uniformly extended to the national legal system. The disparity between regional and national regulations underscores the fragmented nature of Indonesia's approach to regulating LGBT behavior. This legal fragmentation has broader implications. Firstly, it reflects a tension between Indonesia's pluralistic legal system, combining elements of national, religious, and customary law and the global human rights discourse advocating for the protection of sexual minorities. Secondly, the absence of clear national legislation opens the door to legal uncertainty, potential judicial inconsistency, and increased vulnerability for both LGBT individuals and law enforcement authorities.

Given these circumstances, the need for a unified legal formulation is evident. Such a formulation must strike a balance between national values rooted in Pancasila

and religious morality, and Indonesia's constitutional obligations to uphold human rights. A model of regulation that incorporates principles of restorative justice, public morality, and constitutional limits may provide a path forward. Rather than replicating punitive models, the Indonesian state has the opportunity to create a distinct legal policy that integrates cultural, ethical, and legal considerations into a coherent framework for criminal law reform. Ultimately, this section of the research emphasizes the importance of legal certainty and doctrinal clarity in addressing LGBT-related issues in Indonesia. The lack of clear legal standards undermines the effectiveness of law enforcement and creates room for arbitrary interpretations that may harm both the social order and the rights of individuals. Thus, the formulation of LGBT criminalization policy must be guided by structured criteria, supported by constitutional principles, and tailored to the unique social context of Indonesia.

2. The Formulation of Criminalization for LGBT Sexual Behavior in Indonesia

The formulation of criminalization for LGBT sexual behavior in Indonesia demands a precise, principled, and culturally grounded legal framework. This section of the study addresses the normative criteria that should guide such regulation, emphasizing both the legal justification and practical implementation of criminal provisions targeting LGBT conduct. Based on the findings, six key elements were proposed for formulating the criminalization policy: (1) clear identification of the legal subject, namely all individuals with legal capacity; (2) specification of the criminal object, particularly consensual LGBT sexual acts that contradict prevailing social and moral norms; (3) determination of appropriate sanctions, which prioritize proportionality and potential rehabilitative measures over excessive punishment; (4) establishment of culpability principles that distinguish between intentional acts and those stemming from medical or psychological conditions; (5) procedural mechanisms for law enforcement, considering whether such offenses fall under general criminal prosecution or require a complaint-based system; and (6) alignment with constitutional rights and criminal procedure norms, particularly regarding Article 28J of the Indonesian Constitution which allows for certain restrictions on rights to maintain public order and morality.

The broader implication of this formulation is that Indonesia has the potential to develop a criminal policy that reflects its constitutional values, religious morality, and societal expectations without resorting to discriminatory or inhumane measures. Unlike the Qanun Jinayat in Aceh, which applies strict Islamic penalties, the proposed national framework emphasizes legal certainty, proportionality, and human rights compatibility. This reinforces Indonesia's commitment to becoming a rule of law state (rechtstaat) rather than a power-based state (machstaat). Furthermore, the formulation bridges the gap between ius constitutum (existing law) and ius constituendum (future law), providing a transitional model toward criminal law reform that is both principled and pragmatic. By proposing structured criteria, this research contributes to the discourse on legislative drafting and penal policy development, particularly in areas where law and morality intersect.

Importantly, the proposed formulation also addresses the sociopolitical complexity of the issue. It avoids blanket criminalization that may lead to rights violations or social alienation, and instead recommends a context-sensitive approach. This includes potential use of restorative justice and educational interventions alongside formal sanctions. In doing so, the formulation aligns with both Maqashid

Syari'ah, which seeks to protect religion, life, intellect, lineage, and property, and utilitarian goals of maximizing public benefit and minimizing social harm. In conclusion, the proposed legal formulation offers a viable alternative to the current legal vacuum, providing clarity, consistency, and moral legitimacy to future criminal law concerning LGBT behavior in Indonesia. It advocates for a rational and ethical legal structure that harmonizes national values with international human rights standards, setting a precedent for culturally responsive criminal law reform.

3. Maqashid Syari'ah and Utilitarianism Perspective

This section explores how the dual frameworks of Maqashid Syari'ah and utilitarianism can be applied to evaluate and support the criminalization of LGBT sexual behavior in Indonesia. The integration of these two philosophical and legal traditions offers a normative foundation that justifies legal regulation based on both moral values and social utility. From the perspective of Maqashid Syari'ah, LGBT behavior is viewed as contradicting the five essential objectives (al-dharuriyat) of Islamic law: the protection of religion (din), life (nafs), intellect ('aql), lineage (nasl), and property (mal). Sexual conduct outside the bounds of heterosexual marriage is believed to threaten lineage, moral order, and communal integrity. Therefore, criminalization is not only seen as legally permissible, but also as a moral imperative to preserve public virtue and prevent societal decay.

Utilitarianism, particularly as developed by Jeremy Bentham, provides a secular justification for the same legal conclusion. According to Bentham's principle of "the greatest happiness for the greatest number," laws should be formulated based on their capacity to maximize societal benefit and minimize harm. In this study, public discomfort and moral anxiety related to LGBT visibility are interpreted as forms of collective "pain." When such pain outweighs any perceived private pleasure or benefit, a utilitarian argument for legal restriction emerges. The broader implication of combining these perspectives is a more comprehensive justification for criminal law reform. Maqashid Syari'ah contributes the moral and theological rationale grounded in Indonesia's religious heritage, while utilitarianism offers a sociological and pragmatic lens that aligns with modern legal reasoning and public policy. Together, they legitimize a criminalization approach that is responsive to national values while maintaining logical coherence in legal philosophy.

Importantly, this synthesis also addresses potential criticisms from human rights frameworks. While Maqashid Syari'ah emphasizes obligations to divine law and community welfare, utilitarianism introduces a cost-benefit analysis that considers the broader implications of criminal law on public health, social stability, and governance. This combination opens space for proportionality in sanctions, the possibility of restorative rather than purely retributive justice, and the development of policies that aim to guide rather than punish. In contrast to previous studies that rely on a single theoretical model, this dual-perspective approach enriches the academic discourse by showing how Islamic legal traditions and Western moral philosophy can converge to inform a culturally grounded, yet normatively robust, penal policy. The practical insight is clear: Indonesian criminal law, when informed by both frameworks, can better reflect its pluralistic identity while reinforcing its moral and constitutional foundations.

CONCLUSION

In this section, the author presents a concise conclusion derived from the research findings concerning the formulation of criminalization policy for LGBT sexual behavior in Indonesia through the perspectives of Maqashid Syari'ah and utilitarianism. The research confirms that the absence of clear legal provisions addressing consensual LGBT conduct among adults has created a normative void in Indonesia's criminal justice system. The integration of Islamic legal objectives and utilitarian ethics provides a strong theoretical foundation for recommending a structured and principled legal framework to fill that gap. This study highlights that LGBT behavior, according to Maqashid Syari'ah, contradicts the five essential protections in Islamic law, justifying criminalization as a means of preserving public morality and societal harmony. From the utilitarian perspective, such behavior is perceived as generating social discomfort, thus failing to meet the criteria of maximizing public utility. Both perspectives converge on the necessity of legal intervention, although they differ in emphasis spiritual welfare versus pragmatic public interest.

The author proposes a legal formulation composed of six main components: the subject and object of crime, sanctions, liability principles, procedural classification, and implementation mechanism. This formulation is designed to ensure that any future regulation aligns with constitutional rights, social values, and principles of proportionality and legal certainty. However, this study is not without its limitations. The normative juridical method used here, while suitable for doctrinal analysis, lacks empirical grounding. This may reduce the study's external validity, particularly in terms of societal acceptance or actual policy effectiveness. Furthermore, the research is limited by its conceptual focus and does not include field data, which could have enriched the analysis through public or stakeholder perspectives. The absence of longitudinal data also restricts the ability to predict long term impacts of the proposed criminalization model.

These limitations, however, do not invalidate the relevance or urgency of the study. Instead, they invite further inquiry. Future research should incorporate empirical approaches, such as surveys, interviews, or case studies to validate the social assumptions underpinning both Islamic and utilitarian critiques of LGBT behavior. Comparative legal studies involving other Muslim majority countries with similar constitutional frameworks may also offer valuable insights for Indonesian legislators. Writing an academic article is a challenging yet fulfilling process. This research, originally written as a thesis, required careful conceptual mapping, critical engagement with contrasting legal theories, and a deep sensitivity to Indonesia's socio-legal context. Hopefully, this paper can serve as a meaningful reference for policymakers, scholars, and future researchers exploring the intersection of law, religion, and ethics. Producing a well-polished article is never an overnight endeavor; it demands time, reflection, and rigorous revision. With diligence and persistence, such scholarship can contribute not only to academic debate but also to public policy formulation.

Acknowledgment

The author gratefully acknowledges the guidance and support of Dr. Nur Chanifah, S.Pd.I., M.Pd.I. and Dr. Setiawan Noerdajasakti, S.H., M.H. as academic advisors throughout the research process. Appreciation is also extended to the Faculty of Law, Universitas Brawijaya, for providing academic support. Special thanks are due to

family and colleagues whose encouragement and assistance were invaluable to the completion of this study.

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