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Eradicating the Spread of LGBT Through Maqashid Ash-Shari'ah Based Family Law: A Transcendental Prophetic Review

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Abstract

Islam regulates human behavior, including biological relationships and offspring preservation. LGBT individuals face discrimination in society, with 3% of Indonesians being LGBT. LGBT activists often seek human rights that contradict Islamic law, accusing Islam of obstructing freedom of opinion. Islam disagrees with curbing natural sexual instincts, viewing them as gifts from Allah. This study aims to analyze the phenomenon of Lesbian, Gay, Bisexual, and Transgender (LGBT) as a moral deviation in Maqashid Ash-Shari'ah society under the perspective of, or seeking the purpose and wisdom of Islamic Rules related to this deviant phenomenon. Generally, this study explores the meaning of Islam in responding to deviations in humanity, including the LGBT which was classified as deeds cursed by Allah SWT.

Keywords: family law, legal policy, maqashid ash-shariah, transcendent-prophetic review.

Introduction

Islam has a comprehensive (*kāffah*) arrangement of life in regulating the life of mankind, including in terms of biological relationships to preserve offspring. Human nature is preserving offspring and forming a harmonious family to achieve common goals. Islam is present as a human guideline that invites goodness and prevents evil (*amār ma'rūf nahi munkar*). However, not all humans are destined to receive Islamic guidance (*hidāyah*). Some disbelieve and defy the commandments of God and against their nature (Sulistiani, 2019).

Talking about LGBT, nowadays there are various kinds of people. Now what is in the spotlight is that humans behave sexually that deviate from the usual behavior. So it raises pros and cons in response to this. Generally, people still adhere to what is called *akhlāq* and morals, so deviant sexual behavior is of course something strange. In life, every human has the same degree of honor and dignity and the same rights before the law. The high and low degree of human beings comes from God who created them, not from human gifts (Habibah, 2023).

Lesbian, Gay, Bisexual, Transgender (hereinafter abbreviated as LGBT) has become a dark phenomenon in society. Currently, the LGBT phenomenon has become an issue that is widely discussed in Indonesian society with the rampant promotion or advertising of LGBT people on social media. Recruitment propaganda by LGBT people has touched various social media, and even LGBT groups have spread to campuses, schools, and other public places. Various



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independent domestic and foreign survey agencies have stated that in Indonesia there are 3% of LGBT people in the total population (Hasnah & Alang, 2019).

Often LGBT activists take refuge behind human rights that are contrary to Islamic law. Islam is the highest religion in upholding human rights more than any religion. Meanwhile, LGBT activists have accused Islam of obstructing freedom of opinion regarding human sexual orientation (Fitriana et al., 2021). Those are kind of hypocrisy of the LGBT activists who always voicing their “human rights”, but do not respect the rights of Allah SWT that they should obey and worship. It can be identified that most LGBT activists come from secular and non-Muslim people who continue to voice the “normalization” of LGBT sexual characteristics. This will be very dangerous if allowed to spread, especially in Indonesia, which is one of the countries with the largest Muslim-majority population in the world (Ja’far et al., 2021).

Islam disagrees with the perspective that curbing natural sexual instincts cannot be attributed to one's high degree and value of glory. This view is contrary to all moral and spiritual concepts instilled by Islam. Instinct, even mental prowess or physical failure, is a gift of Allah ﷻ to the view that curbing natural sexual instincts cannot be attributed to one's high degree and value of glory. This view is contrary to all moral and spiritual concepts instilled by Islam. Instinct, even mental prowess or physical failure, is a gift of Allah SWT. (Sulistiani, 2019).

To get a valid answer, the authors review this study from the perspective of a philosophy of transcendental-prophetic based. The meaning of transcendental itself is a paradigm that is derived from religious thought of divine values with interconnection and inter-disciplinary paradigms with other transcendental and cultural values, that aim to analyze the meaning of human creation (Absori et al., 2018).

Based on this background, the author will identify the purpose of the law (*Maqashid Ash-Shari'ah*) that regulates LGBT issues in Indonesia, especially in the study of transcendental-prophetic philosophy.

Method

The study is classified as a normative legal research methodology, with a philosophy of transcendental-prophetic approach and a conceptual approach that explores the meaning of *Maqashid Ash-Shari'ah* to understand the meaning of the prohibition of LGBT in Islamic law. According to Dimiyati, et.al. The transcendental approach leads to ultimate intelligence. It does this by breaking through the boundaries between formalism (inspiring rules) and transcendentalism to achieve a new way of thinking that brings us closer to the ultimate truth (Dimiyati et al., 2021). Meanwhile, prophetic philosophy was proposed by Muslim historian Kuntowidjoyo as a new approach to the correlation and tug-of-war between religion and science. Wardiono then tries to refine the opinion, that prophecy is an individual/group effort to read, understand, and make sense of God's messages, and to prepare and ensure that these divine messages can be applied in daily life, with the expectation that this will have an impact not only on oneself but on society and the universe at large. Objectification begins with internalization, followed by externalization using structural-transcendental and synthetic analytical methods



(Wardiono, 2016). This study explores the juridical legal sources based on Law No. 1 of 1974 on Marriage, Compilation of Islamic Law, and especially the holy Qur'an and Hadith of the Messenger of Allah, Muhammad SAW (Suwardi & Syaifullah, 2022). To analyze the data in this study, a qualitative method was carried out to obtain comprehensive results to establish laws against LGBT.

Results and Discussion

Islam recognizes that humans have a great desire to have sexual intercourse, especially between men and women (with the opposite sex). For this reason, Islam, through laws based on the Qur'an and Hadith, regulates the distribution of biological needs through marriage. It is through this marriage that human nature can be well preserved because marriage regulates sexual relations between a man and a woman with a valid bond in the form of monogamy and polygamy. Marriage is an institution that connects hearts, maintains benefits, and combines love between two parties who are life partners. As Allah SWT. says in the Qur'an Surah Ar-Rūm (30) verse: 21,

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ ٢١

Meaning: *Among His signs is that He created spouses for you out of your own kind so that you may feel at peace with him. He makes among you a sense of love and affection. Indeed, in such things, there are indeed signs (of Allah's greatness) for those who think.*

It can be implied that actually, Allah SWT has offered a solution for preserving offspring through marriage. Allah SWT has created human with the fate of pairing between a man and a woman. Islamic law is essentially Allah's law to organize human life on the right path. Does it mean there is the wrong path? The answers are written in another surah, namely Al-Isra' (17) verse: 32,

وَلَا تَقْرَبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا ٣٢

Meaning: *Do not approach adultery (Zina). Indeed, (adultery) is a heinous act and the worst way.*

Even with the sexual activity between a man and a woman, they need to be married before having sex. If not, it is called *Zina* and it is a heinous act and the worst way. Everyone who commits this sin will be punished in their whole life and the afterlife.

The regulation can be realized in real life if there is an awareness of Muslims to practice it, namely carrying out every command and staying away from all prohibitions outlined by the Qur'an and Hadith. Islamic law is a legal system that is very suitable for humans because its formation always pays attention to the interests of human beings in facing various problems and challenges in their lives (Sulistiani, 2019).

History stated in the holy Qur'an, it has been told that the people of the Prophet Lōt (peace be upon him), were famous for being homosexual. They don't want to marry women unless they



are very fond of having sex with fellow men (Ja'far et al., 2021). It was told in the Surah Al-'Ankabūt (29) verses: 28-30, Allah says:

وَلَوْ طَأَّ إِذْ قَالَ لِقَوْمِهِ إِنَّكُمْ لَأْتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ الْعَالَمِينَ ۚ ۲۸ أَيْنَكُمْ لَأْتَأْتُونَ الرِّجَالَ وَتَقَاطَعُونَ السَّبِيلَ ۚ
وَتَأْتُونَ فِي نَادِيكُمُ الْمُنْكَرَ ۚ مَا كَانَ جَوَابَ قَوْمِهِ إِلَّا أَنْ قَالُوا اتَّبِعْنَا بَعْدَ اللَّهِ أَنْ كُنْتُمْ مِنَ الصَّادِقِينَ ۚ ۲۹ قَالَ رَبِّ انصُرْنِي عَلَى
الْقَوْمِ الْمُفْسِدِينَ ۚ ۳۰

Meaning: *When Lōt said to his people, "Indeed, you have committed a very heinous (homosexual) act that no one has ever done before you in the universe (28). Is it proper for you to go to men (to vent orgasms), rob, and do evil in your meeting places?" So the answer to his people is nothing but saying, "Bring us the punishment ('adhab) of Allah if you are among the righteous!" (29) He (Lōt) prayed, "O my Lord, help me (by inflicting punishment) on those who do the damage." (30)*

It can be concluded that from the words of Allah SWT, His Prophet, namely Lōt (peace be upon him), asked his people (the Sodomites) who have disbelieved and deviated, to repent to Allah. Even these Sodomites have committed the first heinous act (homosexual) which has never been done by any nation in any age before, but the Sodomites challenged Allah to bring His punishment immediately. These disgraceful people, in the end, were punished by Allah, and their land was lifted up to the sky and turned around, and then uncounted large and numerous rocks fell down. It is a true story that should be a lesson for the next human generation.

عَنْ ابْنِ حَدَّثَنَا مُحَمَّدُ بْنُ الصَّبَّاحِ وَأَبُو بَكْرٍ بْنُ خَلَادٍ قَالَا حَدَّثَنَا عَبْدُ الْعَزِيزِ بْنُ مُحَمَّدٍ عَنْ عَمْرِو بْنِ أَبِي عَمْرٍو عَنْ عِكْرَمَةَ
عَبَّاسٍ أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ مَنْ وَجَدْتُمُوهُ يَعْصِلُ عَمَلَ قَوْمِ لُوطٍ فَاقْتُلُوا الْفَاعِلَ وَالْمَفْعُولَ بِهِ

Meaning: *Narrated to us Muhammad bin Shabah and Abu Bakr bin Khalad, both of whom said: narrated to us that Abdul Aziz bin Muhammad from Amru bin Abu Amru from Ikrimah from Ibn Abbas, indeed the Messenger of Allah (peace and blessings of Allah be upon him) said: "Whoever finds a person who does the deeds of the Prophet Lōt, then kill the perpetrator and the object of the perpetrator."*

Even the Prophet Muhammad SAW ordered his people to execute perpetrators who resembled the Prophet Lōt (LGBT). It can be concluded that in Islam, the deeds of LGBT classified as a crime and will be punished whether they are Muslims or not. Homosexuality in Arabic is called *liwāt*, which is attributed to the act of the Prophet Lōt (peace be upon him) who was the first in the history of human beings to commit such a heinous act.

Allah SWT did not send His messengers without any reason. He wants humans to live in harmony, preserve their descendants, and bring benefits to the earth. The *Maqashid Ash-Shari'ah* has the purpose of analyzing the meaning of the Qur'an and Hadith so it can be applied in daily life. In the book of "*Mufrodāt Al-Qur'an*", Ar-Raghib Al-Ashfahani writes that "*ash-shar*" is the clear path. While *maqashid* linguistically is plural of *maqshad*, and *maqshad mashdar*, mim from *fi'il qashada*, it can be said: *qashada-yaqshidu-qashdan-wa maqshadan, al-qashdu* and *al-maqshadu* mean the same, some of the meanings of *al-qashdu* are: *al-i'timad*, means hold fast, *al-amma*, means: lean, go to something and towards.



Ibn Al-Qayyim Al-Jauziyah affirms that, “*sharia* is based on wisdom and benefits for human beings both in this world and in the hereafter. The change in the law that applies based on the change of times and places is to ensure that *sharia* can bring benefits to humans”.

Among the ‘*ulama* who see *Maqashid Ash-Shari'ah* from the perspective of “double vision correlation” is Imam Ibn Taymiyyah. In his view, building *al-wujud* is the basis, while maintaining *al-'adam* is the complementary. The first side is the main goal, while the second side is the complementary goal. The *ghoyah* (purpose) of Islamic law according to Hasbi Ash-Shiddieqy is:

دسفملا ماما قيسطلا ملاعم عيضجو ريخلاو لدعلاو قحلاب ابهدلا تسايسو مهل حلاصملا بلجو سانلا ايهد نم
عنم رسيلا

Meaning: *Prevent the destruction of the human world and bring benefits to them, control the world with truth, justice, and virtue, and explain the path that must be taken before human reason.*

From the perspective of *Maqashid Ash-Shari'ah*, homosexuality, besides being a danger to the survival of the human population, is also an act that goes beyond the limit. *Maqashidu Ash-Shari'ah* regarding the strict prohibition of adultery both between the opposite sex and the same sex (homosexual) so that the integrity and purity of the nasab are maintained (*hifdzu al-nasab*), in addition to that, some previous scholars also included maintaining honor (*hifdzu al-'irdh*) part of the *Maqashid Ash-Shari'ah* as an addition to the three known *maqashid*, because several hadiths mention this. In *maqashid* science, the ‘*ulama* divide this discipline into several parts. This is due to the human need for the benefit of a law in Islamic *sharia*. Among the several types of *maqashid* science are: 1. *Al-Maqashid al-Dharuriyat*; 2. *Al-Maqhasid al-Hajiyat*; and 3. *Al-Maqashid al-Tahsiniyat*. Maintaining the honor of oneself and others is a must in Islam, and staying away from all heinous and transgressive acts such as homosexual acts is strongly emphasized.

In the case of Indonesia, The LGBT phenomenon is classified as two different entities, namely: LGBT the first entity, is LGBT classified as a “disease” of mental disorders, or deviations of sexual orientation, that a person is attached to as an individual. The disease is caused by two factors, namely biological and sociological factors, and can be transmitted to other people. At this first entity level, LGBT people are divided into two identities; first of all, they are those who cover up their identity as LGBT so that no one else (outside of them) knows. The second identity is those who dare to come out to others and hope for the help of others (outside themselves) to help heal them. The second entity is LGBT as a community, group, or it can also be called organization, which has a certain Vision, Mission, and activities or movements. It is this second entity level that is now rampant in the midst of Indonesian society, whether the LGBT group movement can be legalized or not (Harahap, 2016).

In the Law No. 1 of 1974 on Marriage, Article 1 stated that “**Marriage is a bond** between a **man** and a **woman** as husband and wife to form a happy and eternal family (household) based on the God Almighty”. In this article, it is clearly explained that marriage is a bond “between a man and a woman”, not “a man and a man”, nor “a woman and a woman” because same-sex marriage is not valid based on the religion and beliefs of each couple.



Meanwhile in the Compilation of Islamic Law, in Article 1 letter a. "Marriage is an event of efforts towards the occurrence of an arranged relationship between a man and a woman", which means it has the same condition with the Law No. 1 of 1974 on Marriage. There is no room for LGBT to get married in Indonesia because there is no umbrella law for LGBT.

Conclusion

As a result, this study came to the conclusion that homosexual acts according to the perspective of *Maqashid Ash-Shari'ah* are unholy acts and will be punished by Allah SWT if they do not repent immediately. In Indonesia, the LGBT does not have an umbrella law to fulfill their needs. Based on the transcendental-prophetic perspective, LGBT will bring damage to the earth because there will be no sexual activity aimed at preserving human offspring.

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