

MARRIAGE BETWEEN INDIVIDUALS OF THE SAME SEX, ACCORDING TO ISLAMIC LAW, POSITIVE LAW, AND HUMAN RIGHTS

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Abstract

This study examines the issue of same-sex marriage within the realms of Islamic law, positive law, and human rights. Existing literature reveals that both Islamic and positive laws tend to prohibit same-sex marriage or any form of LGBT relationships. However, human rights perspectives present a contrasting viewpoint. While Indonesia explicitly rejects same-sex marriage based on human rights, approximately 30 countries worldwide have legalized it, recognizing individual rights irrespective of sexual orientation. This research highlights the tensions between religious norms, positive law, and human rights principles regarding same-sex marriage, providing a foundation for further discussion on reconciling legal frameworks in an increasingly inclusive society that embraces sexual diversity.

Keywords : Human rights; Islamic law; Positive law; Same-sex marriage.

Abstrak

Penelitian ini mengkaji isu pernikahan sesama jenis dalam ranah hukum Islam, hukum positif, dan hak asasi manusia. Studi pustaka menunjukkan bahwa baik hukum Islam maupun hukum positif melarang pernikahan sesama jenis atau hubungan LGBT. Namun, perspektif hak asasi manusia memberikan pandangan yang berbeda. Meskipun Indonesia dengan tegas menolak pernikahan sesama jenis berdasarkan hak asasi manusia, sekitar 30 negara di seluruh dunia telah melegalkannya, mengakui hak-hak individu tanpa memandang orientasi seksual. Penelitian ini mengungkapkan ketegangan antara norma agama, hukum positif, dan prinsip hak asasi manusia terkait pernikahan sesama jenis, memberikan dasar untuk diskusi lebih lanjut tentang rekonsiliasi kerangka hukum dalam masyarakat yang semakin inklusif dan menerima keberagaman seksual.

Kata Kunci : HAM; Hukum Islam; Hukum positif; Pernikahan Sejenis.

A. Introduction

Law is a complex system that governs human actions in society. The concept of "order" in law refers to a structured and interconnected system of rules.¹ The legal system consists of a set of rules that form a cohesive unit that can be understood through the relationships established among them. It is important for us to have a comprehensive understanding of the law, not only focusing on individual rules but also understanding the legal relationships that shape the system.

In the context of same-sex marriage, there is a complex debate regarding the perspectives of Islamic law, positive law, and human rights concerning this issue. This reflects the challenges faced in integrating religious values, social norms, and human rights principles within the legal framework. Research on same-sex marriage becomes relevant in the effort to gain a deeper understanding of the legal implications, including religious and human rights aspects, in the context of same-sex marriage.

In the context of Islam, the law of marriage holds a specific perspective. In Islamic law, marriage is seen as a spiritual and physical union between a man and a woman with the intention of forming a happy and eternal family, based on belief in the One Almighty God. Islamic law regulates marriage as a valid bond and is considered an act of worship.² Therefore, it is important to deeply examine the views and arguments from various religious perspectives in this matter.

In Indonesia, the law governing marriage is regulated by the legislation.³ This legislation clearly states that marriage occurs between a man and a woman. However, the debate regarding the need to recognize same-sex marriage in positive law is also important in the pursuit of justice and equality within the legal system. In this context, the study of positive law becomes relevant to understand

¹ Timbo Mangaranap Sirait, "Menilik Akseptabilitas Perkawinan Sesama Jenis Di Dalam Konstitusi Indonesia Divine the Acceptability of Same Sex Marriage in the Constitution," *Jurnal Konstitusi* 14, no. 3 (2017): 621–43, <https://doi.org/https://doi.org/10.31078/jk1438>.

² Setyoko, "Perkawinan Sesama Jenis Dalam Perspektif Hukum Islam," *Al-Ahwal: Jurnal Hukum Keluarga Islam* 6, no. 2 (2013): 169–78, <https://ejournal.uin-suka.ac.id/syariah/Ahwal/article/view/1068/974>.

³ UUD, *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*, 1945.

the legal foundations and considerations in deciding the existence of same-sex marriage.⁴

In the context of human rights, the issues surrounding LGBT rights are complex. There are efforts to protect the rights of the LGBT community and advocate for "Equal treatment and the prohibition of discrimination based on sexual orientation and gender identity of individuals".⁵ However, there are also views that consider same-sex relationships as violating social norms and traditional values, potentially undermining the institution of family, which is deemed important in society.⁶ Therefore, a comprehensive analysis is needed regarding the tensions and harmonization between human rights principles and religious and cultural values in the context of same-sex marriage.

In seeking a deeper understanding of the legal issues surrounding same-sex marriage, there is a need for research that delves into the perspectives of Islamic law, positive law, and human rights regarding this issue. This research aims to explore existing arguments, examine differences and commonalities of views, and seek solutions that accommodate the interests and rights of all parties involved in the situation.

In the context of contemporary discourse, researchers have expressed a profound interest in undertaking an exhaustive and meticulous investigation concerning the intricate topic of same-sex marriage, encompassing its various dimensions within the paradigms of Islamic law, positive law, and human rights. Through the conduct of this comprehensive research, the primary objective is to not only augment our comprehension of same-sex marriage within the legal landscape but also to extend the horizons of knowledge, offering valuable insights to effectively grapple with the multifaceted challenges and complexities that inherently accompany this pertinent subject matter.

⁴ Nyoman Trisna Aryanata, "Melegalkan Perkawinan Sesama Jenis Di Indonesia?," *Intuisi: Jurnal Psikologi Ilmiah* 8, no. 1 (2016): 20–24, <https://doi.org/10.15294/intuisi.v8i1.9455>.

⁵ 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 (2020): 177–200, <https://doi.org/10.33369/ubelaj.5.2.177-200>.

⁶ Fanny Priscyllia, "Perkawinan Sejenis Dalam Hukum Kodrat Di Indonesia," *Jatismara* 37, no. 2 (2022): 152–62, <https://doi.org/10.29303/jtsw.v37i2.400>.

B. Research Method

This research is a library-based study that utilizes "Tafsir Al-Qur'an Al-'Azim" by Imam Ibn Kathir as the primary source of data, along with the Republic of Indonesia's legislation. Additionally, books, journals, theses, articles, news, and relevant information will be used as secondary sources of data.⁷ Data collection will be conducted through library research using a thematic analysis method. This research has a descriptive nature aimed at depicting the current state of affairs, and it employs data analysis techniques based on themes that emerge from the literature reviewed. With this approach, the objective of this research is to gain a comprehensive understanding of same-sex marriage within the contexts of Islamic law, positive law, and human rights.

C. Discussion

1. Same-Sex Marriage According to Islam

Same-sex marriage within the context of Islamic law is considered one of the issues that provoke debate and differences of opinion among scholars. In this regard, two aspects need to be considered, namely the marriage between two men (liwath) and the marriage between two women (sihaq).⁸

In Islam, liwath refers to marriage or sexual behavior between men that is considered a deviation. The term originates from the word "Luth," which is associated with the actions of the people of Prophet Lut (Lot).⁹ Although not an original Arabic word, the term that closely approximates the meaning of "liwath" in English is "homosexuality" or "sodomy." In Indonesian, "liwath" can be translated as "homoseksual" or "hubungan sesama jenis."

Islamic law always considers the well-being of humanity when addressing life's issues, including matters of sexual desires that conflict with the principles of Islamic law, such as the act of liwath. In Islamic law, liwath is explicitly

⁷ Jack R Fraenkel, Norman E Wallen, and Helen H Hyun, *How to Design and Evaluate Research in Education*, Eighth (United State: McGraw-Hill, 2012); Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif, Dan R&D*, 22nd Ed. (Bandung: Alfabeta, 2015).

⁸ Rohmawati, Abdulloh Chakim, and Lilik Rofiqoh, "Perkawinan Lgbt Perspektif Hukum Islam Dan Hukum Positif," *Jurnal of Islamic Law* 17, no. 1 (2018): 1–264, <https://doi.org/https://doi.org/10.20414/ijhi.v17i1.34>.

⁹ Abdullah and Abdurahman, "Tafsir Ibnu Katsir Jilid 3," in *Lubabut Tafsir Min Ibni Katsiir*, ed. M Yusuf Harun MA et al., Cetakan Ke (Pustaka Imam Asy-Syafi'i, 2003), 1–516.

prohibited, considered as haram (forbidden), and such inappropriate actions are condemned. In fact, those who engage in such acts may face severe punishments.¹⁰

The evidence that shows the prohibition and prohibition of same-sex relationships (homosexuality) can be found in verses of the Qur'an such as Al-Nur: 30-31, Al-Mukminun: 5-6, Al-Ma'arij: 29-30, and also in Surah Al-A'raf: 80-81.

﴿ وَلَوْ ظَا إِنْ قَالِ لِقَوْمِي أَتَأْتُونَ الْفَاحِشَةَ مَا سَبَقَكُمْ بِهَا مِنْ أَحَدٍ مِنَ الْعَالَمِينَ ﴿٨٠﴾ إِنَّكُمْ لَتَأْتُونَ
الرِّجَالَ شَهْوَةً مِّنْ دُونِ النِّسَاءِ ﴿٨١﴾ بَلْ أَنْتُمْ قَوْمٌ مُّسْرِفُونَ ﴿٨٢﴾ ﴾ (الاعراف/7:80-81)

Translation:

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." (Al-A'raf/7:80-81)

These verses refer to the people of Prophet Lut (Lot) who committed a wicked and exceeding-the-limits act. The act of homosexuality practiced by the people of Prophet Lut is considered a truly excessive, foolish, and abominable act.¹¹

Additionally, there is further evidence that reinforces the prohibition of homosexuality, which is the curse of the Prophet upon its perpetrators. In a narration by Ahmad, it is mentioned that Allah cursed those who committed the acts of the people of Prophet Lut, and the curse was repeated three times. The curse imposed upon those who engage in similar acts to the people of Prophet Lut is a clear proof of the prohibition of such behavior.¹²

Based on the mentioned evidence, a Muslim should not hesitate to acknowledge that the act of homosexuality is indeed forbidden (haram). It is important to have firm conviction in stating what is permitted and prohibited by Allah. Furthermore, another evidence demonstrating the severity of the act of

¹⁰ Andi Achmad Zulkifli, "Analisis Hukum Pidana Islam Tentang Pernikahan" (UIN Alauddin Makassar, 2019).

¹¹ Ibnu Katsir, "تفسير القرآن العظيم," in 3, 1st ed. (Beirut-Lebanon: DAR al-KOTOB al-ILMIYAH, 1998), 1-305.

¹² Zulkifli, "Analisis Hukum Pidana Islam Tentang Pernikahan."

homosexuality is through the type of punishment inflicted upon the people of Prophet Lut. The punishment they experienced was exceedingly severe and surpassed the punishment endured by other groups. Allah made this event part of the narrative in the Qur'an that will be recited throughout time until the Day of Judgment, serving as a lesson to prevent similar occurrences in the future.

Indeed, in Islam, marriage between women, known as "sihaq," is also prohibited. Sihaq is an Arabic term that refers to the concept of lesbianism or female homosexuality. The word "lesbian" itself originates from the Greek language, specifically "Lebos," which refers to the birthplace of a Greek woman named Sappho. Sappho was known as a Greek woman who had a sexual orientation towards other women in the 6th century BCE, and the term "lesbianism" is associated with the word "Lebos."¹³

In Islamic teachings, there is no tolerance for sexual behavior that is considered deviant. Same-sex marriage is not recognized in Islam. Similarly to liwath, sihaq (lesbianism) is also prohibited in Islamic law, and Islam strongly condemns homosexual acts (lesbianism/sihaq) and threatens punishment for those who engage in them. The Qur'an restricts sexual relationships only to those between men and women and prohibits all other forms of sexual relationships.

While many individuals involved in lesbianism claim to have had a homosexual inclination since birth and feel they have no choice, this assumption remains a subject of debate within the medical community. However, even if this assumption were true, the Qur'an unequivocally rejects it as a justification for lesbian behavior (sihaq). The Prophet Muhammad (peace be upon him) also expressed his concern that among all the crimes that could be committed by his people, the one he feared most was the act of sodomy/homosexuality.¹⁴

Indeed, sihaq (lesbianism) is considered a sinful and abominable act that is prohibited. Allah SWT states in the Qur'an, Surah Al-A'raf, verse 33, that Allah

¹³ Sanawiah, "PERKAWINAN SEJENIS MENURUT HAK ASASI MANUSIA DALAM PERSPEKTIF HUKUM ISLAM," *Anterior Jurnal* 16, no. 1 (2015): 1–27.

¹⁴ Fuji Eka Permana, "Nabi Muhammad Khawatir Umatnya Terpapar Homo Dan Lesbi" (Jakarta, 2023), <https://islamdigest.republika.co.id/berita/rozfq9451/nabi-muhammad-khawatir-umatnya-terpapar-homo-dan-lesbi>.

forbids all forms of indecent and evil deeds, whether they are manifest or hidden, sinful acts, and transgressions of limits without valid justification.

﴿ قُلْ إِنَّمَا حَرَّمَ رَبِّيَ الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَالْأِثْمَ وَالْبَغْيَ بِغَيْرِ الْحَقِّ وَأَنْ تُشْرِكُوا بِاللَّهِ مَا لَمْ يُنَزِّلْ بِهِ سُلْطَانًا وَأَنْ تَقُولُوا عَلَى اللَّهِ مَا لَا تَعْلَمُونَ ﴾ (الاعراف/7: 33)

Translation:

33. Say, "My Lord has only forbidden immoralities - what is apparent of them and what is concealed - and sin, and oppression without right, and that you associate with Allah that for which He has not sent down authority, and that you say about Allah that which you do not know." (Al-A'raf/7:33)

These verses teach the importance of maintaining purity and controlling one's desires in accordance with religious teachings. There is a difference of opinion among scholars regarding the punishment for the act of liwath or homosexuality. There are several different views in determining the punishment for this act. The first opinion comes from a group of scholars who follow Imam Shafi'i, who believe that the perpetrator of liwath should be punished with stoning, whether the perpetrator is married or not. The second opinion comes from a group of scholars who follow Imam Malik and Imam Ahmad bin Hanbal, who believe that the perpetrator of liwath should also be punished with stoning, even if the perpetrator has never been married. This punishment applies to all those involved in the act. The third opinion comes from Abu Hanifah, who believes that the perpetrator of liwath should be punished with ta'zir, which is a discretionary punishment determined by the court.¹⁵

Fatwa MUI Number 57 of 2014, which prohibits LGBT activities, can be considered an official statement from the Indonesian Ulema Council (MUI) stating that Lesbian, Gay, Sodomy, and Pedophilia (LGBT) activities are prohibited. In this fatwa, MUI considers LGBT activities as criminal acts that have the potential to cause dangerous diseases, including HIV/AIDS, which can be transmitted. The fatwa also reminds that LGBT activities are part of the devil's deception, aimed at altering human nature, with the ultimate goal of bringing

¹⁵ Rohmawati, Chakim, and Rofiqoh, "Perkawinan Lgbt Perspektif Hukum Islam Dan Hukum Positif."

Allah's curse upon all descendants of Adam, just as the devil himself has been cursed by Allah.¹⁶

In this fatwa, MUI expresses the view that liwath or homosexual behavior is considered a deviation from the natural disposition (*fitrah*) of human beings. The fatwa asserts that the spread of liwath is part of the devil's ambitious efforts to mislead people and lead them into hellfire. Fatwa MUI Number 57 of 2014 on LGBT, issued as guidance and a reference for Muslims in Indonesia, emphasizes the prohibition and negative consequences of LGBT activities, while also highlighting religious perspectives on human nature and the role of the devil in misleading humanity.

When facing same-sex marriages, Muslim individuals need to understand that in Islam, marriage is considered a union between a man and a woman. This perspective is based on the interpretation of religious texts and the opinions of scholars. However, it is important to note that there are differences in interpretation and approaches when it comes to understanding and interpreting religious teachings. Therefore, it is crucial to engage in meaningful dialogue and discussion to deepen understanding and appreciate different perspectives.

¹⁶ Ardiansyah Megah Putra and Siti Karlinah, "Wacana Pernikahan Sesama Jenis Di Tv One," *Jurnal Kajian Jurnalisme* 1, no. 2 (2019): 214–34, <https://doi.org/10.24198/jkj.v1i2.21340>.

2. Same-Sex Marriage According to Positive Law

Indonesia's positive law has comprehensively regulated all aspects related to marriage through the Marriage Law (Undang-Undang tentang Perkawinan). This law covers various fundamental principles stated in Article 1, as well as the marriage requirements outlined in Articles 6 to 12. Additionally, the law also regulates the rights and obligations between husbands and wives, addresses marriages conducted outside of Indonesia, and includes various other provisions.¹⁷

The 1974 Marriage Law serves as the main foundation for regulating marriages in Indonesia. Article 1 explains that marriage refers to the physical and spiritual bond between a man and a woman as husband and wife. The purpose of marriage is to form a happy and eternal family or household, with the principle of the Almighty God as a strong foundation.

Furthermore, this law establishes the requirements that must be fulfilled by prospective husbands and wives in entering into marriage. These requirements include aspects such as age limits, parental or guardian consent, as well as the absence of marriage prohibitions based on blood relations or previous marriages.

Indonesian positive law also provides legal protection for husbands and wives by regulating their rights and obligations. This includes rights and responsibilities in managing their household, responsibilities in fulfilling the family's needs, as well as rights and responsibilities related to child upbringing.¹⁸

However, in the context of same-sex marriage, the 1974 Marriage Law does not directly recognize same-sex marriages. In the legal framework of Indonesia, marriage is considered a valid union between a man and a woman with the purpose of forming a family based on the principle of the Almighty God. As a consequence, officially, marriages between individuals of the same sex are not recognized within the prevailing legal context.

From a normative perspective, the 1974 Marriage Law asserts that fundamentally marriage is entered into between a man and a woman, with the aim of procreation and building the desired family. Article 2 of this regulation also

¹⁷ Undang-Undang No. 1 Tahun 1974 Tentang Perkawinan

¹⁸ Nur Chasanah, "Studi Komparatif Hukum Positif Dan Hukum Islam Di Indonesia Mengenai Perkawinan Sejenis," *Jurnal Cendikia* 12, no. 3 (2014): 67–72.

states that a marriage is considered valid when it is conducted in accordance with the religious teachings and beliefs held by the prospective husband and wife.

The normative viewpoint is based on legal and customary understandings that form the basis of family life in Indonesia. There is a belief that same-sex marriage violates the nature that has been determined by the prevailing laws and customs.¹⁹

Indeed, it is important to note that views and understandings regarding same-sex marriage can vary within society, and there are efforts and debates to recognize and provide legal recognition for same-sex marriage in Indonesia. This reflects the dynamics and changes in societal understanding of issues related to diversity and human rights.

In the face of social change and demands for equality, the issue of same-sex marriage becomes a complex and sensitive debate. Meaningful discussions and dialogues need to be continued to achieve a broader understanding and consider the perspectives and rights of every individual in a diverse society.

3. Same-Sex Marriage According to Human Rights

a. Same-Sex Marriage According to Human Rights in Indonesia

There hasn't been any individual from Indonesia internationally recognized as a pioneer of Human Rights. However, it does not mean that there are no efforts in Indonesia to respect Human Rights. The struggle for Human Rights in Indonesia began during the colonial era. This struggle not only meant fighting against the colonizers but also represented a fundamental effort to uphold Human Rights. Human Rights are inherent, universal, and inviolable rights that belong to every human being. Therefore, these rights must be protected, respected, and upheld, and should not be disregarded, diminished, or taken away by anyone.²⁰

In Indonesian law, it is stated that regardless of circumstances, human rights, which include the right to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from slavery, the right to be

¹⁹ Vivi Hayati, "LGBT Dalam Perspektif Hukum Positif Dan Hukum Islam (Suatu Kajian Kritis Perkembangan LGBT Di Aceh)," *Jurnal Hukum* 14 (2019): 290–301.

²⁰ Otong Syuhada, "Perkawinan Sejenis Dalam Perspektif Aliran Eksistensialisme Dikaitkan Dengan Hak Asasi Manusia," *DE LEGA LATA: Jurnal Ilmu Hukum* 4, no. 1 (2019): 87–102, <https://doi.org/10.30596/dll.v4i1.3168>.

recognized as an individual under the law, and the right to protection against retroactive prosecution, cannot be diminished.²¹ This statement is in line with the provisions of the Universal Declaration of Human Rights (UN General Assembly, 1948), specifically Article 2 and Article 22. Article 2 states that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status. Article 22 declares that everyone, as a member of society, is entitled to social security and is entitled to the realization of economic, social, and cultural rights indispensable for their dignity and the free development of their personality. This can be achieved through national effort and international cooperation, taking into account the resources and limitations of each country.²²

The mandatory and deserving protection to be provided to LGBT individuals from a human rights perspective is the protection of their rights through the provision of healthcare services that support their recovery process. This is in line with the provisions of Article 25 of the Universal Declaration of Human Rights, which states: "Everyone has the right to a standard of living adequate for the health and well-being of oneself and one's family, including food, clothing, housing, medical care, and necessary social services. Additionally, they have the right to security in the event of unemployment, sickness, disability, widowhood, old age, or other lack of livelihood in circumstances beyond their control."

Referring to the Indonesian Constitution (1945) Article 28B which states: (1) Every person has the right to form a family and continue their lineage through a legally recognized marriage in accordance with the law. (2) Every child has the right to survival, growth, and development, as well as the right to be protected from violence and discrimination. Based on the 1945 Constitution, it is clear that the purpose of marriage is to form a family and continue the lineage. However,

²¹ Undang-Undang No. 39 Tahun 1999 Tentang Hak Asasi Manusia

²² Kalangit and 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."

marriages between individuals of the same sex, whether between two men or two women, can only form a family but do not have the ability to continue the lineage biologically. Thus, individuals involved in LGBT relationships indirectly oppose the 1945 Constitution, as it is not possible to have biological offspring from same-sex marriages.

Therefore, it is evident that LGBT individuals should obtain their fundamental rights, such as protection and treatment for illnesses. However, the recognition or legalization of LGBT sexual orientations, which are considered non-normative, is not part of human rights.

b. Same-Sex Marriage According to Human Rights Worldwide

In considering the issue and phenomenon of same-sex marriage, there are two commonly conflicting perspectives. Firstly, there are arguments based on human rights principles, while the second focuses on religious values. LGBT supporters often use human rights arguments, claiming that the individual's right to form relationships and marry is included in human rights. In their view, prohibiting same-sex marriage is seen as a violation of human rights. On the other hand, opponents of LGBT tend to use arguments based on religious values, stating that religion prohibits same-sex marriage, and therefore, such actions should be prohibited or even punished.

To facilitate the legalization of same-sex marriage, countries often take steps to separate marriage from religious institutions and consider it as a civil union independent of religious perspectives. As a result, marriage becomes entirely regulated by the state and is no longer tied to religious teachings. This process is often referred to as "separation of marriage from religion." This action serves as an initial step in the effort to legalize same-sex marriage in various countries, including the United States.²³

Evidence of such a shift can be found in the *Obergefell v. Hodges* decision, where the majority of the justices removed marriage from the realm of

²³ Hamid Chalid and Arief Ainul Yaqin, *Perdebatan Dan Fenomena Global Legalisasi Pernikahan Sesama Jenis: Studi Kasus Amerika Serikat, Singapura, Dan Indonesia*, Fakultas Hukum Universitas Indonesia, vol. 18, 2021, <https://doi.org/10.31078/jk1817>.

religion.²⁴ This allows the definition and substance of marriage to be freed from the constraints imposed by religious doctrines. In this way, the majority of justices are able to freely redefine and alter the substance of marriage, which previously only encompassed opposite-sex couples according to traditional and religious definitions, to also include same-sex couples, as long as it is a desired and chosen option based on personal will. Subsequently, human rights theory is used to strengthen the argument that marriage is closely related to human rights because it involves one's personal life and choices.

Efforts to "secularize marriage" are supported by the inherently secular nature of the American state, which separates state affairs from religion. Therefore, the "secularization of marriage" as previously described can be more easily accomplished. From the outset, religious values are not directly involved in or determinative of political and legal policies in countries with such characteristics.

When the United States legalized same-sex marriage through the Supreme Court's ruling in *Obergefell v. Hodges* on June 26, 2015, it became the 22nd country to do so. Several countries around the world have legalized same-sex marriage. Some early adopters of this movement include the Netherlands, Belgium, Spain, and Canada, which passed laws in the early 2000s. Since then, many other countries have joined, such as Sweden, Portugal, Argentina, and Norway. In recent years, several countries including Australia, Taiwan, Germany, and the United States have also legalized same-sex marriage. In total, there are over 30 countries currently recognizing same-sex marriage, reflecting significant social changes in the recognition of LGBT rights at a global level.

Although the number of countries allowing same-sex marriage is still fewer than those that prohibit it, the trend is actually the opposite. This means that more countries are changing their legal policies from prohibiting same-sex marriage to legalizing it. This development reflects a significant social shift in the recognition of LGBT rights and changing societal attitudes towards same-sex

²⁴ Kalangit and 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."

marriage. While the struggle continues, there has been progress in acknowledging the individual's fundamental rights to love and marry the person of their choice, regardless of their gender.

Dalam considering same-sex marriage, there are two main conflicting perspectives: human rights versus religious values. LGBT supporters use human rights arguments, stating that prohibiting same-sex marriage is a violation of human rights. On the other hand, opponents of LGBT use religious values arguments, stating that religious teachings prohibit same-sex marriage. To facilitate the legalization of same-sex marriage, countries often separate marriage from religious institutions and consider it as a civil union independent of religious teachings. This is referred to as "secularization of marriage." The United States became the 22nd country to legalize same-sex marriage through the Supreme Court's ruling in the *Obergefell v. Hodges* case in 2015. Currently, over 30 countries worldwide recognize same-sex marriage, reflecting significant social changes in the recognition of LGBT rights on a global scale.²⁵

D. Closing

Same-sex marriage within the context of Islamic law sparks debates and differences of opinion among scholars. Islam explicitly prohibits *liwath* (homosexual relations between men) and *sihaq* (homosexual relations between women), as stated in the Qur'an and hadith. The Fatwa of the Indonesian Ulema Council (MUI) Number 57 of 2014 also prohibits LGBT activities and highlights religious views on human nature and the devil's efforts in leading astray. In Islam, marriage is recognized only between men and women, and Muslims need to understand the differences in interpretation and approaches to understanding religious teachings, while engaging in meaningful dialogue to deepen understanding and respect different perspectives.

The positive law of Indonesia, through Law No. 1 of 1974 on Marriage, comprehensively regulates various aspects related to marriage. This law covers fundamental principles, marriage requirements, rights and obligations between

²⁵ Chalid and Yaqin, *Perdebatan Dan Fenomena Global Legalisasi Pernikahan Sesama Jenis: Studi Kasus Amerika Serikat, Singapura, Dan Indonesia*.

husband and wife, and various other provisions. However, the law does not directly recognize same-sex marriage, as within the existing legal framework, marriage is considered a union between a man and a woman. This perspective is based on normative understanding that views same-sex marriage as contradicting the inherent nature determined by prevailing laws and customs. Nevertheless, in the face of social changes and demands for equality, it is important to continue meaningful discussions and dialogues to deepen understanding, consider diverse perspectives, and respect the rights of every individual within a diverse society.

Same-sex marriage is an issue that sparks debates and differences of opinion among scholars and societies, including within the contexts of Islamic law and Human Rights. In Islam, same-sex marriage is considered a violation of religious teachings and is explicitly prohibited. The argument used is that religious teachings define marriage as a union between a man and a woman with the purpose of forming a family and continuing the lineage. On the other hand, from a Human Rights perspective, there is support for the recognition and protection of individual rights, including the right to form a family and sexual orientation. Same-sex marriage is not recognized in Indonesia, but in some countries around the world, the argument of Human Rights is used as a basis for legalizing it. This development reflects social changes and shifting societal views regarding LGBT rights. However, the debate continues, and it is important to engage in meaningful dialogue and discussions to achieve broader understanding and respect for the rights of every individual within a diverse society.

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