

LGBT between jihad and sharia (can Islam Nusantara solve this problem?)

By Murry Darmoko Mursidin

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Abstract

LGBT is a problem in the Muslim's countries. Indonesia as a biggest population Muslims has to face LGBT. Today, LGBT is not considered as a crime yet, but in other side, LGBT is being as trash of society. Handling LGBT Indonesia is in Grey Area, lawless. This paper has two research question, first, LGBTers have rights to be equal with other gender, Can Islam Nusantara accepts the sexes other male and female? Second question, what are the solutions in order of law toward LGBT behavior which can breach society system and destroy humanity health? Jihad and Sharia in the moderate style are the answer for both question above. I represent sociology of law as a method to answer, with the two keys : domination and influence. The materials of research are taken from Iran respond on transgender and from Netherland on the legality of married on sesame sex. Results of the research are : Islam Nusantara can accept the other sexual behavior in “*The Principle of al-'Adah Muhakamah*” and the Fatwa MUI number 57 of 2014 can be used as legal tool mixed jihad and sharia on LGBT solution. Discussion divides pro and contra about the result. Pro argue that LGBTer should be treated as a human. Contra say that LGBT is crime on humanity and must be punished. Conclusion, being Islam Nusantara in religious act is one of many moderate ways to solve LGBT problem.

Keywords : LGBT, Islam Nusantara, Sociology of Law

Short Vita :

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Introduction

LGBT in Indonesia is a legal anxiety. I see that there are two anxieties for those who study and work in Indonesian law. First, there are agreed and written regulations but cannot be implemented, such as corruption, regulations and sanctions already exist, but corruptors still commit corruption and are often arrested. Second, there are claims for violations or crimes, such as LGBT, but cannot be punished or sanctioned, because there are no written rules that bind all Indonesian citizens (Darmoko, 2019a). These are the **backgrounds** of this study.

On the one hand, claims for LGBT are violations or crimes originating from textual understanding of religious arguments and often applied by certain groups to bully LGBT, but on the other hand, in the research context, in fact some people need LGBT in jobs and certain fields that help the existence of society in maintaining the balance of social order. LGBT's presence in the field of sexual fantasy tourism and entertainment and beauty salons is something that cannot be denied as an LGBT base in fulfilling their life needs, as demand and supply, especially in Bali and major cities in Indonesia. (Darmoko, 2018).

LGBT identity in the laws and regulations in Indonesia is not clear which legal solutions must be sought. The meaning of the law: (1) the rules that are binding in writing and agreed upon and sanctioned or (2) the law is the law maker itself. LGBT in Indonesia has experienced a long history of existence. If the legal absence of LGBT becomes a reason for their bullying, this research becomes important in protecting human rights (rights that are also owned by LGBT) and justice for LGBT identity clarity. Shouldn't the presumption of innocence or the principle of legality be a guideline in determining someone right or wrong? And isn't it supposed to be the judge's decision in **13** court that is used as the legal basis for determining the sentence to be applied. And as **a country with the largest Muslim population in the world**, Indonesia should be able to provide a good legal example in overcoming the controversial problems of the world. The interaction of the law and the social reality of the Muslim community over LGBT cases is closely related to the way of religion, that is, through the way Islam Nusantara that I choose with the interpretation that I have.

Islam Nusantara was chosen because: (1) in terms of quantity, Islam Nusantara is the Nahdlatul Ulama which amounted to a majority of followers and (2) in quality, contextual jihad methods with **11** the application of two main rules: (a) *al-'Adah Muhakkamah* and (b) *al-Hifdz 'ala al-Qadim al-Salih wa al-Akhdzu bi al-Jadid al-Ashlah*. **Islam Nusantara** is one way of religious ways in Indonesia that applies solutions to any problems that arise. I see that the truly moderate in jihad and ijtihad is Islam Nusantara. And of course, LGBT is a problem that needs jihad and ijtihad so that solutions can be obtained through procedural research that begins with **research questions**, so that it remains focused and gives limitations in this research in the angle of jihad and sharia in the moderate style.

Research objective diwujudkan dalam Research Questions terdiri dari dua pertanyaan sebagai berikut : first, LGBTers have rights to be equal with other gender, Can Islam Nusantara accepts the sexes other male and female? Second question, what are the solutions in order of law toward LGBT behavior which can breach society system and destroy humanity health? these two questions will be answered by the legal sociology approach. I chose **approach** Sociology of Law for two reasons: first, the relation between sociology and law with 3 key words in each sentence. Sociology has three key words: dominance, influence and dependence, Law also **has three key words: regulating, binding and sanctioning** (Darmoko, 2017b).

In the case of LGBT, there will be six variations in the relationship between sociology (read: society) and law (read: law makers). First, does the public dominate lawmakers in LGBT cases so that regulations are not issued? Permissive society and lawmakers are ignorant. Second, is the community dominated by law makers in LGBT cases so that regulations are not issued? Society ignores and permissive lawmakers. Third, does the public influence lawmakers in LGBT cases so that regulations are not issued? Permissive society and lawmakers are ignorant. Fourth, is the community influenced by law makers in LGBT cases so that regulations are not issued? Society ignores and permissive lawmakers. Fifth, does the community depend on law makers in LGBT cases so that the regulations are not issued? Permissive society and lawmakers are ignorant. Sixth, do lawmakers depend on the community in LGBT cases so that regulations are not issued? Society ignores and permissive lawmakers.

Second, the anxiety that occurs in the community can only be resolved properly through a law that is fair and provides certainty with agreed rules and binds together and provides sanctions for those who violate. LGBT cases in Indonesia will continue to provide anxiety, both for the community and LGBT, as long as the law on LGBT status and identity has not been established in official legislation.

Methods

I use Qualitative Method in this study. I understand that the qualitative method is a method that uses procedural interpretations limited to locus (location of LGBT research in this study carried out in Indonesia) and tempos (span of legal absence of LGBT in Indonesia since 2001, since the Dutch legalized same-sex marriage, up to the time this research was written in 2019). The application of this qualitative method to research on LGBT is appropriate. Especially for LGBT cases viewed from a legal perspective in Indonesia through the Islam Nusantara style solution that is experienced in the issue of jihad and sharia. This method provides answers to the two previous problem formulations. Qualitative provides researchers after me for other open doors in finding diverse answers to LGBT cases in Indonesia.

Literary Reviews

Research on LGBT in Indonesia is small in academic literature. This is due to three things. First, LGBT is a taboo problem to be discussed and considered a problem that has existed since a long time ago. Second, the debate about LGBT produces more conflict than solutions. Third, LGBT actors in Indonesia in their daily lives hide their LGBT identities, for fear of being bullied, and if they have been bullied, it is better to be quiet and resigned rather than take legal action.

Data Sources (Materials)

Materials in this study used two sources: Documents and News Media. I did not do the research sources from interviews and observations because there was a research ethic that I guarded against LGBT people, in order to maintain courtesy and ethics in research. These materials are collected by collecting data documents that are directly related to: (1) LGBT in the Netherlands, in Iran and in Indonesia (2) Moderation of jihad and sharia in Indonesia carried out by Nahdlatul Ulama as locomotives of Islam Nusantara and (3) fatwas MUI Number 57 in 2014.

Findings

LGBT in the Netherlands get all that LGBT people want in the world, at the peak, the legality of same-sex marriage. LGBT Netherlands has a long history in this phenomenal ⁴ achievement. LGBT was born, big and mature in Amsterdam, Netherlands, *'Amsterdam could be considered the birthplace of LGBT rights. Homosexuality was decriminalised here in 1811, and the first gay bar followed in 1927. One of the world's first gay rights organisations, the COC, was founded in Amsterdam in 1946. As a tribute to the many gays and lesbians who lost their lives in World War II, the city unveiled the first-ever Homomonument in 1987. Amsterdam then became the first city outside North America to host the Gay Games in 1998. And as the Netherlands was the first country in the world to legalise same-sex marriage in 2001, the Mayor of Amsterdam officiated the first legal gay and lesbian nuptials here in the capital city'* (Canaday, 2014).

LGBT in the Netherlands, before 1950 was considered a sin, a disease and disorder. In 1950-1960, LGBT was recognized as one of the various forms of love. In 1960-2001, the years of emancipation of LGBT and Bisexuals, especially in 1994, the issuance of regulations concerning the prohibition of discrimination based on sexual orientation. In 2001, same-sex marriage was legalized for the first time in the world in Amsterdam. LGBT has the same rights as the other two genders with the exception ⁶ of blood donors (Holland Alumni Network, n.d.). Even the Dutch government issued *The Policy Plan* describes the focus on 3 domains to reach gender equality and LGBTI equality: (1) the labour market, (2) safety, security and acceptance, and (3) gender diversity and equal treatment : *Gender & LGBTI Equality Policy Plan 2018-2021: Putting principles into practice* (Netherlands, 2018).

For the Islamic Republic of Iran, Lesbian Gay Bisexual is an act that is prohibited and punished by a sentence written on the Koran and Hadith with the application of the Ja'fari school (12 *Imam*), but not for Transgenders who have their own privileges. The Iranian government makes it easy for those who want to change sex, this is based on the understanding of the scholars for the absence of prohibitions from religious arguments about transgender. In 1982, the ease of medical and judicial transgender was applied in Iran based on Imam Khomeini's fatwa (Saeidzadeh, 2016). Transgender in Iran is categorized as Gender Identity Disorder (GID) not categorized as violation or crime. The response taken by the Iranian government in over ¹⁴ coming Transgender is to provide limited subsidies on sex operations and health care *Gender Confirmation Surgery* (CGS), *Hormone Replacement Therapy* (HRT) and *Psychosocial Counseling* (OutRight Action International, 2016)

In Indonesia, the Transgender case has a different side to Iranian Transgender. Transgender does not get help from the government. Sex change operations are carried out at will and at their own expense and changes in identity are submitted to the district court by themselves as in the case of Dorce Gamalama, an Indonesian artist, in 1988 at the Dr. Hospital. Soetomo Surabaya (Damarjati, 2019). Transgender is recognized in the realm of human rights in the view of judges in the district court, not through ratification based on religious arguments which are then concluded by judges in religious courts. In other words, sex change operations occur and then are followed by identity changes that can only be legalized through a district court.

LGBT in Indonesia has cultural roots. There are at least four roots of LGBT culture: (1) The five sexes recognized by the Bugis of South Sulawesi: men, women, *Calalai* or graceful women such as women, *Calabai* or women tomboys like men and *Bissu*, a non-male and not female (2) *Lengger Lanang Banyuwangi* dan *Ludruk* (traditional drama)

dance which often features a cross-gender culture (3) *Warok - Gemblakan* in Reog Ponorogo art. Warok is a strong man who has sexual abuses against women, but is allowed to have sex with handsome boys aged 12-15 (4) *Insemination ritual Kimam South Papua*, boys are separated from mothers and women around it with the excuse not to be contaminated with the female element. They are gathered in the Bachelor House, a man's house in order to absorb the male element through their senior cement fluid through oral sex or anal sex. After growing a mustache and feathers (sign of the ability of anti-contamination element of women) the children were returned to the mother and the women, "*They regularly practiced homosexual and intercourse*" (Darmoko, 2017a).

These four cultural roots (directly or indirectly or known or not by LGBT) make LGBT exist in Indonesia, but have not yet obtained binding legal certainty and sanctions. This is certainly related to the pattern of acceptance in the community and lawmakers in Indonesia in terms of assumptions and claims, is LGBT a human sin or is LGBT one of the human rights? Until now, for Indonesia, gray. And moderate solutions to legal sociology are needed, one of which is from the aspect of jihad and sharia through religious law and the way of religion itself in solving this case.

And that has been illustrated in fiqh warits, which recognizes the existence of a third type of gender, 'khuntsa', a person who has two sexes when inheritance distribution is needed in determining tendencies in men or women. There are also other problems, socially similar to khuntsa, namely sissy. Pansy or bencong or transvestites are often associated with prostitution in sexual fantasy tours. Sissy is a complement to the problems that also occur in Indonesia. Khuntsa and effeminate, are socially recognized and there are even boarding schools for effeminate santri in Yogyakarta Indonesia (Yuwono, 2016) even though it was closed for reasons of not having permission and avoiding conflict (BBC News Indonesia, 2016).

The moderation of Jihad and sharia is the way of religious nahdliyyin, another name for NU kyai and santri and their followers. The moderation of jihad and sharia carried out by Nusantara Islam or NU has indeed formally refused to understand the LGBT movement and understanding, but not LGBT people, as stated by KH Miftahul Akhyar, Deputy of Rais Aam, the NU Executive Board. The LGBT understanding and movement for NU is a deviant behavior and not in accordance with human nature because it tarnishes the honor of humanity (Fathoni, 2016). For NU, LGBT people must be embraced and protected by the government and society by providing rehabilitation and assistance in recovery by strengthening family institutions as prevention and recovery (Shahal/Fathoni, 2017).

The Indonesian Ulema Council (consisting of elements of religious organizations in Indonesia, NU, one of the majority elements that fills its structure) issued *Fatwa MUI nomor 57 tahun 2014 tentang Lesbi, Gay, Sodomi dan Pencabulan*. Fatwa, by definition is the answer to one or more questions of the people who want to know the law of something based on religious propositions. The fatwa in Indonesia is issued by a religious scholars and only regulates but is not binding on those who disagree and do not give sanctions until the fatwa is made into a law by the government.

In each international conference presentation I attended with a presentation on LGBT, I conveyed this fatwa as a solution and guideline for regulations on legal vacancies in Indonesia over LGBT cases. The fatwa of MUI number 57 in 2014 is a moderate fatwa, combining jihad and sharia. The combination between the two can be seen in the application of the principles of *usul fiqh*, such as : *Idza Dhaq Ittasa'* (if it's narrow, it's stretched to fit), *Idza Ittasa' Dhaq* (if the width is narrowed to fit), its application is when rehabilitation takes precedence over the death penalty, or the death penalty if it really needs to be carried out under certain conditions so there is no doubt that it can be

implemented. MUI's suggestion to the parliament and the government to make regulations regarding LGBT is a moderate attitude in awaiting a court ruling 'incrach', non-vigilante and street court in punishing LGBT.

In health matters, this fatwa also covers it, when LGBT is considered a disease that can be cured through proper handling and rehabilitation for the perpetrators, this is seen in the results of the recapitulation of data on the spread of HIV-AIDS through the Man Sex Man (MSM). Human health and medical records on the high risk of HIV - AIDS transmission through sexual contact between LGBT and the threat of physical and mental health (Syndemic). I have obtained data on Gay, Bisexual Men and HIV - AIDS released in February 2017 from the U.S Center for Decision Control and Prevention (CDC) U.S Department of Health and Human Services. Every year, 26,000 gays and 5 sexuals are infected with HIV. The interesting data I need to tell you is as follows: (a) from 2008 to 2014, HIV infections stabilized among Men Sex Men (MSM) overall, (b) HIV infections among gay and bisexual men decreased among these age 13-24 years by 18 percent (from 9,400 to 7,700 infections), (c) HIV infections among gay and bisexual men decreased among these aged 35-44 years by 18 percent (from 5,800 to 4,300 infections), (d) HIV infections among gay and bisexual men increased by 35 percent among those aged 25-34 years (from 7,200 to 9,700). Complex factors increase Risk : High prevalence of HIV, Lack of knowledge of HIV Status, Social Discrimination and cultural issues and Substance abuse (alcohol, illegal drugs by sharing needles or injection equipment (Prevention, 2019).

FATWA MUI NOMOR 57 TAHUN 2014

MEMUTUSKAN
MENETAPKAN:

FATWA TENTANG LESBI, GAY, SODOMI, DAN PENCABULAN

Pertama : Ketentuan Umum

Di dalam fatwa ini yang dimaksud dengan :

- Homoseks** adalah aktifitas seksual seseorang yang dilakukan terhadap seseorang yang memiliki jenis kelamin yang sama, baik laki-laki maupun perempuan.
- Lesbi** adalah istilah untuk aktifitas seksual yang dilakukan antara perempuan dengan perempuan.
- Gay** adalah istilah untuk aktifitas seksual yang dilakukan antara laki-laki dengan laki-laki
- Sodomi** adalah istilah untuk aktifitas seksual secara melawan hukum syar'i dengan cara senggama melalui dubur/anus atau dikenal dengan liwath.
- Pencabulan** adalah istilah untuk aktifitas seksual yang dilakukan terhadap seseorang yang tidak memiliki ikatan suami istri seperti meraba, meremas, mencumbu, dan aktifitas lainnya, baik dilakukan kepada lain jenis maupun sesama jenis, kepada dewasa maupun anak, yang tidak dibenarkan secara syar'i.
- Hadd** adalah jenis hukuman atas tindak pidana yang bentuk dan kadarnya telah ditetapkan oleh nash.
- Ta'zir** adalah jenis hukuman atas tindak pidana yang bentuk dan kadarnya diserahkan kepada ulil amri (pihak yang berwenang menetapkan hukuman).

Kedua : Ketentuan Hukum

1. Hubungan seksual hanya dibolehkan bagi seseorang yang memiliki hubungan suami isteri, yaitu pasangan lelaki dan wanita berdasarkan nikah yang sah secara syar'i.
2. Orientasi seksual terhadap sesama jenis adalah kelainan yang harus disembuhkan serta penyimpangan yang harus diluruskan.
3. Homoseksual, baik lesbian maupun gay hukumnya haram, dan merupakan bentuk kejahatan (jarimah).
4. Pelaku homoseksual, baik lesbian maupun gay, termasuk biseksual dikenakan hukuman hadd dan/atau ta'zir oleh pihak yang berwenang.
5. Sodomi hukumnya haram dan merupakan perbuatan keji yang mendatangkan dosa besar (fahisyah).
6. Pelaku sodomi dikenakan hukuman ta'zir yang tingkat hukumannya **maksimal** **hukuman mati**.
7. Aktifitas homoseksual selain dengan cara sodomi (liwath) hukumnya haram dan pelakunya dikenakan hukuman ta'zir.
8. Aktifitas pencabulan, yakni pelampiasan nafsu seksual seperti meraba, meremas, dan aktifitas lainnya tanpa ikatan pernikahan yang sah, yang dilakukan oleh seseorang, baik dilakukan kepada lain jenis maupun sesama jenis, kepada dewasa maupun anak hukumnya haram.
9. Pelaku pencabulan sebagaimana dimaksud pada angka 8 dikenakan hukuman ta'zir.
10. Dalam hal korban dari kejahatan (jarimah) homoseksual, sodomi, dan pencabulan adalah anak-anak, pelakunya dikenakan pemberatan hukuman hingga hukuman mati.
11. Melegalkan aktifitas seksual sesama jenis dan orientasi seksual menyimpang lainnya adalah haram.

Ketiga : Rekomendasi

1. DPR-RI dan Pemerintah diminta untuk segera menyusun peraturan perundang-undangan yang mengatur:
 - a. tidak melegalkan keberadaan komunitas homoseksual, baik lebi maupun gay, serta komunitas lain yang memiliki orientasi seksual menyimpang;
 - b. hukuman berat terhadap pelaku sodomi, lesbi, gay, serta aktifitas seks menyimpang lainnya yang dapat berfungsi sebagai **zawajir dan mawani'** (membuat pelaku menjadi jera dan orang yang belum melakukan menjadi takut untuk melakukannya);
 - c. memasukkan aktifitas seksual menyimpang sebagai delik umum dan merupakan kejahatan yang menodai martabat luhur manusia.
 - d. Melakukan pencegahan terhadap berkembangnya aktifitas seksual menyimpang di tengah masyarakat dengan sosialisasi dan rehabilitasi.
2. Pemerintah wajib mencegah meluasnya kemenyimpangan orientasi seksual di masyarakat dengan melakukan **layanan rehabilitasi** bagi pelaku dan disertai dengan **penegakan hukum** yang keras dan tegas.
3. Pemerintah tidak boleh mengakui pernikahan sesama jenis.
4. Pemerintah dan masyarakat agar tidak membiarkan keberadaan aktifitas homoseksual, sodomi, pencabulan dan orientasi seksual menyimpang lainnya hidup dan tumbuh di tengah masyarakat.

FATWA MUI NUMBER 57 YEAR 2014

**HAS DECIDED
SET:
FATWA ABOUT LESBIAN, GAY, SODOM, AND FORNICATION**

2
First: General Provisions

In this fatwa what is meant by:

1. Homo-sex are sexual activities of a person committed against a person who has the same sex, both male and female.
2. Lesbian is a term for sexual activity conducted between women and women.
3. Gay is a term for sexual activity conducted between men and men
4. Sodomy is a term for sexual activity unlawfully *syar'i* by way of intercourse through rectum / anus or known with *liwath*.
5. Abuse is a term for sexual activity committed against a person who does not have a husband and wife bond such as touching, kneading, fondling, and other activities, whether done to other types or same sex, to adults and children, which is not justified by *syar'i*.
6. *Hadd* is a type of punishment for a criminal offense whose form and level has been set by the texts.
7. *Ta'zir* is a type of punishment for a crime whose form and measure is submitted to *ulil amri* (the party authorized to impose a penalty).

3
Second: Legal Provisions

1. Sexual intercourse is only permitted for a person who has a husband and wife relationship, male and female partners based on legitimate marriage in *syar'i*.
2. Orient sexual orientation is a disorder that must be cured and irregularities that must be straightened out.
3. Homosexual, both lesbian and gay law is *haram*, and is a form of crime (*jarimah*).
4. Homosexual perpetrators, both lesbian and gay, including bisexual are subject to *hadd* and / or *ta'zir* penalties by the authorities.
5. Sodomy of the law is *haram* and is a cruel act that brings great sin (*fahisyah*).
6. Sodomy applicants are subject to a *ta'zir* punishment whose maximum sentence is death penalty.
7. The homosexual activity other than by sodomy (*liwath*) the law is *haram* and the perpetrator is subjected to *ta'zir* punishment.
8. The activities of sexual abuse such as palpation, squeezing, and other activities without legitimate marriage bonds, performed by a person, whether committed to other types or same-sex, to adults and children are *haram*.
9. The perpetrators of obscenity as referred to in number 8 shall be subjected to *ta'zir* punishment.
10. In the case of the victim of a homosexual crime (finger), sodomy, and immorality are children, the perpetrator is subjected to a penalty of punishment to the death penalty.
11. Legalizing same-sex sexual activity and other deviant sexual orientations is *haram*.

Third: Recommendations

1. DPR-RI and the Government are required to immediately establish legislation regulating:
 - a. Does not legalize the existence of homosexual, gay or other gay, and other communities with aberrant sexual orientation;
 - b. Severe penalties for sodomy, lesbians, gays, and other deviant sexual activities that can serve as *zawajir* and *mawani*' (making the offender a deterrent and the unbeliever becoming afraid to do so);
 - c. Incorporating sexual activity deviates as a general offense and is a crime that tarnished the dignity of the human person.
 - d. Carry out prevention of the development of deviant sexual activity in the community with socialization and rehabilitation.
2. The government shall prevent the widespread deviation of sexual orientation in the community by conducting rehabilitation services for the perpetrators and accompanied by harsh and firm law enforcement.
3. The government shall not recognize same sex marriage.
4. The government and society to not allow the existence of homosexual activity, sodomy, obscenity and other deviant sexual orientation live and grow in society.

Discussions

The pro and contra discussion of the findings of the research above is based on the sociological perspective and legal perspective. Pros and cons occur in the perspective of applying three theories of sociology (Facts, Definitions, Behavior). In the legal perspective, the pros and cons occur because of the factor of centrism, is it Teocentric or Anthropocentric? Sociology places three major opinions on how individuals, groups or communities react to external elements that surround them, such as other individuals, other groups, other societies, environments, structures and systems of life.

Social fact theorists support the statement that either individuals or groups or communities are influenced by external elements, in this study what is meant by outside elements is LGBT. In LGBT cases, supporters of this theory see and emphasize that Indonesian society is currently influenced and dominated and has dependence on LGBT, so that people allow LGBT to move freely in expressing their identity such as prostitution, transvestite contests and LGBT groups on social media, especially in areas that have traditionally had LGBT cultural roots. LGBT is the right of choice given by 'customs'. LGBT actors are similar to other human gender.

Social definition theory is the antithesis of social fact theory. In essence, people dominate LGBT and influence them, and make LGBT dependent on society. LGBT in Indonesia, especially in Aceh and other locations that apply sharia regional regulations. LGBT activities and expressions are impossible to do, even to work in a salon as in the case of Aceh, a trauma for transvestites *gawaria banci* (groups included in LGBT people) because they get less humane treatment, *'by shaving their hair and replacing their clothes in collared shirt men and make them run screaming until their male voice out'* (Molana, 2018).

Theory of social behavior is a synthesis of the two theories above. Adherents of this theory unite the two theories that contradict one bond, namely: either society or LGBT, both seek mutual benefits. People will be angry at LGBT if it really disrupts social and

economic stability. But people will be happy if LGBT provides economic benefits, such as sexual tourism and unique entertainment (Darmoko, 2018).

The pros and cons of making LGBT laws are related to a mindset that focuses on God or on humans. Is that law made by God for humans, or is that law made by humans for humans themselves? The debate was born from these two central sources. Supporters that the law must be centered on God will use religious arguments from the holy books and religious and prophetic history, the result of which LGBT is a sin and must be punished. LGBT is bullied by organizations that understand textually religion and believe that the law only comes from God and only the law of God that deserves to be applied on earth (School of Natural Law pioneered by Thomas Aquinas). The anthropocentric supporters assume that law should be made by humans and for humans, then LGBT has the same rights as other humans (Positivism Law School pioneered by John Austin) (Darmoko, 2019b). With different points of view, the pros and cons will continue until LGBT is enacted in Indonesia.

Conclusions

There are two Summary in this conclusion. First, Islam Nusantara, since it was in Indonesia, has received other sex besides male and female. Five schools of fiqh in Islam mention the other sex as Khuntsa. Khuntsa is included in the inheritance chapter as a solution for someone who has two genitals or does not have both at all. Determining the portion of inheritance based on trends and track records, what is the portion of women or men? Especially in Sulawesi, Nusantara Islam allows three sexes besides male and female as local wisdom, namely: Calalai, Calabai and Bissu.

Second, the fatwa of MUI number 57 of 2014 is a temporary solution because the MUI Fatwa only regulates but is not binding and cannot sanction violators legally nationally from Islam Nusantara through jihad and sharia moderate way. The impact of this research is that the Indonesian government must immediately issue a law on LGBT..

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