



## The Legal Politics of Regulation for Lesbian, Lesbian, Gays, Bisexuals and Transgende (LGBT) in Indonesian Law (Discourse Between Punishment and Regulation)

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**ABSTRACT**

*The LGBT phenomenon is a trending topic in the midst of society after the Constitutional Court has issued a Decision Number 46 / PUU-XIV / 2016 on the examination of norms on Article 284, 286 and 292 of the Criminal Code with the Decision rejecting all petition completely. LGBT is actually a classic problem that has existed as human civilization on earth. LGBT is different from other normal human beings because LGBT has a disorder in terms of sexual orientation so that such circumstances require the presence of the State to take action by criminalizing LGBT because it sees widespread impacts or otherwise violates LGBT on the basis of freedom and human rights. Political law is the activity of choosing the law that will be applied in order to achieve the purpose of the law all of which leads to the achievement of the purpose of the State with the law as a tool. This study is a normative juridical research, where the data used in this study is secondary data in the form of books, legislation, documents and other writings relating to the problems under investigation. Based on the result of the research, it is found that LGBT arrangement in law in Indonesia is a must since Indonesia is a Pancasila country with the first principle of Belief in Godhead and Country built on religious values. The constitutional juridical basis of LGBT arrangement can be seen in Pancasila as the source of all sources of law, The Introduction of the 1945 Constitution, the 1945 Constitution of Indonesian republic, Law Number 12 on 2011 concerning the Formulation of Legislation which all affirm that the establishment of law in Indonesia can not be released away from the religious values adopted in Indonesia.*

## INTRODUCTION

The phrase that law is culture is a necessity, because law is the embodiment of the culture of society and then formulated in written form. Law in the written sense is a set of norms that made by the State in this case by the government together with the DPR-RI in formulating the regulation, so that it can be understood that the law is the result of political agreement of the ruler to arrange something to be allowed or to be not allowed.

The law can be regarded as a manifestation of the culture of its society, so law is culture, according to the author is a precise expression because the law wherever and whenever always depart from the culture and then formulated in written law. Law always departs from where and what is its philosophy, for example in the Islamic State then the applicable law is Islamic law, in the communist state the applicable law is communist law, and in the continental European state the prevailing law is the liberal law. It is understandable that the law in harmony with what is the philosophy of a nation and the laws prevailing in a State is to reflect the culture of its people.

Indonesia simultaneously adheres to 3 (three) different legal systems namely customary law, Islamic law and continental European law. Islamic law is applicable in Indonesia because Indonesia is predominantly Muslim, customary law is applicable because the existence of indigenous and tribal peoples is factually still practiced in some areas of Indonesia with arrangements in several areas of life including a different dispute resolution model with a dispute resolution model provided by the State, and constitutionally customary law is recognized in the Constitution.<sup>1</sup>The law with continental European legal system was adopted in Indonesia because based on two reasons, namely the first historical reason because Indonesia was colonized by the Dutch and at that time applied the Dutch law with the principle of concordance and secondly, the constitutional reason that is in Article II of the Transitional Rules at the time of Act The 1945 Constitution of the State of Indonesia Republic, states that all existing bodies and regulations remain in effect before a new regulation, so for these two reasons Dutch law with continental European law system adopted in Indonesia.

The enactment of Dutch law with the Criminal Code as the parent book since it was stipulated by Act. Number 1 Year 1946 on the Implementation of the Criminal Code up to now that is approximately for 73 (seventy three) years since it was put into effect leaving a lot of problems. First, because the law is a manifestation of the culture then it is certainly the Criminal Code made at that time in the Netherlands is a manifestation of Dutch culture with its individual, liberal and hedonic culture, this is different from the communal and religious Indonesian culture that puts Pancasila as the source of all sources of law in Indonesia with one of the sila is Belief in the One Supreme. Secondly, the development of crimes that are not offset by legal developments proved to be particularly problematic in law enforcement, because the articles contained in the Criminal Code can not reach new types of crime that are modified by technological developments and the development of the times, it is because of the law in Indonesia and its enforcement is locked with the legality principle that an act can not be punished if there is no regulating rule.

If the law is a manifestation of the culture, then it can be understood that the Indonesian Criminal Code is also a manifestation of Dutch culture then formulating to the Criminal Code so that we are familiar and applied now, so of course the culture is different from Indonesian culture. Dutch society sees sexual freedom as individual freedom so it must be protected by State law while Indonesians see sexual freedom as freedom Individuals who can not be separated from the regulation of religious norms and Pancasila as the source of all sources of law.

LGBT phenomenon that recently began to surface to become a classic problem in the world of law in Indonesia whether Indonesia is better to make arrangements or even Indonesia legalize LGBT with the law. The Criminal Code literally does not regulate LGBT issues particularly Articles 284, 286, and 292 of the Criminal Code so it can not criminalize LGBT. The widespread impact of LGBT is

undeniable that Indonesia as a religious country with the world's largest Muslim population forbids the abhorrent sexual intercourse, and it does not stop there that all religions recognized and adopted by the Indonesian population see LGBT as a deviant sexual behavior in perceptive teachings of those religions respective, and so also for indigenous peoples.

Based on the reality above there are two sides that become serious problem in law in Indonesia, namely First if the function of law is as a means of control and social engineering then can Indonesian law carry out its legal function to regulate LGBT to be in harmony with the values of living law based on the teachings religions embraced in Indonesia, and secondly if Pancasila with the God Precepts of the Almighty, said to be the source of all legal sources in Indonesia then whether LGBT can be regulated in Indonesia as a deviant sexual behavior that can be punished<sup>2</sup>, or even Indonesia retains the nature of Articles 284, 286, and 292 of the Criminal Code as an act which is not prohibited and regards as individual freedom (legalized).

## METHOD

This study aims to reveal the legal politics of the LGBT arrangements in law in Indonesia and what are the constitutional grounds of LGBT arrangements in law in Indonesia. This research is a normative juridical research because it uses secondary data or often also called library

## RESULTS AND DISCUSSIONS

### 1. Legal Politics of LGBT Arrangement in Indonesia.

LGBT has a long history of human civilization on earth, but in Islam, LGBT can be traced from the history of Lut AS in Al-qur'an. Prophet Luth AS has a wife who has a sexual disorder that likes to have sex with same-sex, so also his people at that time so that same-sex sexual relations has become a habit of the people of Prophet Luth AS. The custom in the present context can be said to be LGBT, then Allah SWT sends a punishment to the prophets of Lut including his wife as described in Sura Asy-Suaraa (26: 160-173) *"Lut denied the apostles when their brother, Lut, to them: "Why do you not fear Allah? verily I am an apostle (sent) to you, fear Allah and obey me. And I ask no more for you for the invitation; My reward is nothing but the Lord of the Worlds. Why do you go to the kind of men among men, and leave the wives that your Lord has made for you, even you are transgressors. "They replied:" O Lut, if you do not stop, you are really among those who are expelled. "Lut said:" I really hate your deeds. "(Lut prayed):" O my Lord save me and my family from the (result) deeds that they do. "Then we save him and his family all, except for an old woman (his wife), who belongs to the group that lives. Then we destroyed the others. And we bombard them with rain (rock) it is very ugly rain that befall those who have been warned it. "*

LGBT itself is an acronym that has at least Lesbian, Gay, Bisexual and Transgender. Lesbian means a woman who loves women, both physically and sexually and spiritually, so this is very distorted. Gay is a man who likes and also loves men, and these gay words are often mentioned to clarify or keep referring to homosexual behavior. Bisexual is slightly different from the two above because bisexual people are people who can have an emotional and sexual relationship of the two sex so this person can have a relationship with men or women. While the transgender is an inequality of gender identity given to that person by gender, and a transgender may be included in homosexual, bisexual or heterosexual people.<sup>3</sup>

Furthermore, LGBT fights for the right to engage in similar marriages as part of human rights in various countries of the world. In Indonesia the LGBT continues to strive for recognition by the State through its laws, although the criminal norms contained in Articles 284, 286 and 292 of the Criminal Code can not criminalize LGBT behavior but explicitly also in Act. No. 1 of 1974 about Marriage, states that LGBT is not allowed because of the legal requirements of marriage in marriage law is that there must be a bridegroom and bride, not bridegroom and bridegroom or bride and bride like LGBT.

The development of LGBT, in fighting for their rights to perform similar marriages in various countries in the world turned out to get a response, some who accept and legalize it by the law, but not least also reject LGBT to be protected by the law. Quoted from [lifestyle.sindonews<sup>4</sup>](#), the following are the countries in the world to legalize same-sex marriages, namely:

- a. Dutch (1966)

The Dutch government legalized a same-sex marriage in 1966, 15 years after gay activists brought the issue to the surface in the early 1980s. At that time the Dutch formed a special commission to look at the legal effects of the legality of same-sex marriages. Four years later the law was passed. As a result since April 1, 2011, same-sex marriage has been officially recognized legally in the Netherlands.
- b. Belgium (2003)

One year after the legality of same-sex marriage was enacted in the Netherlands, similar laws were filed with the Belgium parliament. precisely on June 1, 2003. The first couple to marry then were Alain De Jonge and Olivier Pierret.
- c. Spain (2005)

On June 30, 2005, the Spanish Parliament legalized a similar marriage. This regulation draft, strongly opposed by the Catholic Church, but the poll results show that 62% of the council approved this regulation. The history records, On June 8, 1901, Elisa Sanchez Loriga, dressed like a man and behave like a man. His partner is Marcela Gracia Ibeas. After the lie was uncovered coupled with the news of two newspapers, they lost their jobs, were ostracized, and had to leave Spain. Their marriage became the first such marriage recorded in Spanish history.
- d. Canada (2005)

By the time Parliament approved a gay marriage on July 20, 2005, almost all provinces in Canada were noted to have legalized that regulation. After approved that regulation, Canada publishes more than 15,000 marriage certificates for same-sex couples living in the country or just specifically coming to get married.
- e. South Africa (2006)

In some African countries, a man may be sentenced to death or life imprisonment if caught gay. Like Uganda, they apply the death penalty for the person who has this disorder. Likewise with Nigeria, threatened to throw to jail to execute the citizens who are caught homo. The same is done by the Government of Burundi and Rwanda. But South Africa has a different law, it gives LGBT (lesbian, gay, bisexual, and transgender) LGBT rights to marry officially, the provision is valid since November 30, 2006. Only, there are countries in the same continent that are tolerant with gay. The Kenyan government bans homosexuals, for which the government launches sexual orientation research to improve the health of its citizens.
- f. Norway (1993)

Same-sex marriage became a topic of discussion on the Norwegian government council. In 1993, Norway became the second country, after Denmark, which legalized same-sex marriages, in Denmark when it began in 1989, allowing same-sex lovers to marry outside the church and get the blessing of a priest. 20 years later, the government allowed gay couples to adopt children.
- g. Sweden (2008)

Sweden is one of the most liberal countries in the world and 71% of its population supports same-sex marriages. Same-sex marriage legislation passed in May 2008. Five months later, precisely in November, the Swedish Lutheran Church was the most celebrated church, announcing full support for same-sex marriage. Three quarters of the population of Sweden are members of the Lutheran church, although their presence in the church is very low.
- h. Portugal (2009)

Homosexuality was seen as a crime in Portugal until 1982. Later in 2009, LGBTs received only 40% support from parliament. After Prime Minister Jose Socrates was re-elected in 2009, he drafted a law that legalized same-sex marriages, the regulation passed by Parliament. Friday 8 December became a historic day, a law regulating such marriage approved by parliament by vote. A total of 123 members of parliament voted in support of this rule, while 99 others refused. The law came into force on 5 June 2010.

i. Mexico (2009).

j. Iceland (2010)

Since December 21, 2009, same-sex marriages can be made in the Mexican capital, Mexico City. As reported by the Associated Press on Friday (8/8/2010), eight out of 10 judges in the country's high court said the law is constitutional. Mexico City is one of the first capitals of Latin America to fully recognize similar marriages. At that time, only in the capital of the country, it can be done.

A legalized legal marriage size legitimized the Icelandic legislature in June 2010. Public polls before the ballot show broad support for the size, and no state legislators voted against. Iceland has allowed same-sex couples to register as domestic partners since 1996. A decade later, the parliament passed a measure that allows gay couples to adopt children. After the new law came into force in late June 2010, the country's prime minister, Johanna Sigurdardottir, married her longtime partner, Jonina Leosdottir, to being one of the first to marry under the law.

k. Argentina (2010)

Right on July 22, 2010, the law came into force in Argentina, they became the first country in Latin America to legalize same-sex marriage. Apart from the strong opposition of the Catholic Church and evangelical Protestant church, it was approved by both Argentine legislative assemblies and signed into law. by Cristina Fernandez de Kirchner. The law gives rights and obligations to same-sex married couples, just like other normal couples, all rights and responsibilities enjoyed by heterosexual couples, including the right to adopt children.

l. Uruguay (2010)

Uruguay Became the second Latin American country, after Argentina, which approved the gay marriage, precisely on Thursday (11/4). The new regulation also regulates the minimum age change for marriage legally. Now, the minimum age for women and men to marry is 16 years. Previously, the minimum age for women to marry was 12 years and 14 years for men. as many as 71 of 92 members of parliament finally approved the proposal after 1 week of senators considering the decision carefully. On the other hand, the Catholic church and the Uruguayan Christian organization said they were disappointed at the decision. They considered that this law would endanger the family institution.

m. New Zealand (2013)

Parliament approved the amendment of New Zealand marriage laws made in 1955, despite much opposition from local Christian groups. But now the government has legalized same-sex marriage in a country close to Australia. precisely on April 17, 2013, New Zealand became the first Asia-Pacific country to legalize same-sex marriage, after gay and lesbian groups struggled for 10 years campaigning on the legalization of similar marriages.

n. France (2013)

On May 18, French President Francois Hollande has signed a controversial law, making his country the 9th in Europe, and the 14th in the world to legalize same-sex marriage. Although the bill has been passed by the National Assembly and Senate in April, Hollande's signature must wait until a court challenge brought by the conservative opposition party, UMP, is resolved. On May 17, France's highest court, the Constitutional Court, ruled that the bill was constitutional.

o. Denmark (2013)

The Danish parliament has regulated an Act. that allowing homosexual couples to marry in a state-owned Evangelis-Lutheran church. The new legal rule was originally enforced from June 15, 2013.

In fact, in 1989, the government allowed gay lovers to marry outside the church and received the blessing of the pastor, 20 years later the government allowed gay couples to adopt children.

- p. England and Wales (2013)  
Same sex marriage is now legal in England after Queen Elizabeth II gives royal approval. Head of British parliament John Bercow, said royal approval had been granted on Wednesday, July 17, 2013, after a bill to legalize a gay marriage in the England and Wales region was approved by parliament. The bill allows gay couples to marry in religious and civil ceremonies in England and Wales. The bill also allows couples who have previously lived together to formalize their relationship in marriage.
- q. Scotland (2014)  
Scotland officially approved a same-sex marriage after voting in parliament, with a majority vote approving the passing of a similar marriage law. There are 105 parliamentarians agreeing and agreeing on same marriage as an important step in human rights equality and only 18 people refuse. The latest in vietnam, in contrast to Muslim countries in Southeast Asia such as Indonesia, Malaysia and Brunei prohibiting marriage a kind, Vietnam takes an opposite attitude. Vietnam is the second country in Asia to abolish laws that prohibit the marriage of people of the same sex. Previously Israel had already done the same thing, since January 1, 2015 ago. it automatically makes Vietnam now the second country in Asia (after Israel) that allows same-sex marriage.
- r. Brazil (May 14, 2013)
- s. Luxembourg (June 18, 2014)
- t. Finland (28 November 2014)
- u. Ireland (May 23, 2015)
- v. United States (June 26, 2015)

LGBT ratification into the state law, on the basis of human rights for every nation in the world can not be viewed as equal or same. Freedom on the basis of human rights is not the freedom of freedom by disregarding religious values. For the countries that mentioned above, the legalization of LGBT can be understood that their socio-cultural background differs from Indonesia. Human rights are known to this day is still a debate to apply in Indonesia is whether Indonesia adheres to universal human rights that assume that human rights in every country in the world is the same or even the opposite of human rights that adopted in Indonesia is a human right the particular human being that is bound human rights and can not be separated from the norms of religion and culture of the people of a nation which later in Indonesia is named with constitutional rights.<sup>5</sup>

LGBT issue in Indonesia is in the status quo, that Indonesia sees LGBT as an act prohibited under the law that lives in the community ie religious and customary law but when viewed from the written law side, LGBT in Indonesia is not prohibited. In the perspective of *ius constitutum*, the problem of LGBT can not be convicted, it can be understood that the law as applied in Indonesia now is a law of Dutch heritage, where in the Netherlands itself sexual freedom is part of their lifestyle with their individualistic, liberal and hedonist background, but in the present Draft Penal Code (*ius constituendum*) is prohibited.

Indeed, the acts of adultery and obscenity have been regulated in Indonesian law especially the Criminal Code, but the arrangements as contained in the Criminal Code can not reach LGBT as intended by same-sex relationships conducted by likes. The Criminal Code with its chapters places adultery as a violation of the law so that it can be prosecuted if in it the element is one of the perpetrators or both are married, whereas when it is adult and done likes likes it can not be said as adultery. Articles 284, 286, and 292 of the Criminal Code when translated a *contraria* clearly

understood that the Criminal Code allows for same-sex marriage, adultery committed on the basis of likes and adults.

Article 284 paragraph (1) of the Criminal Code :

- a. a married man who commits adultery (overspel), knowing that Article 27 of the Civil Code applies to him.
- b. a married woman who commits zina (overspel), knowing that Article 27 of the Civil Code applies to her ".
- c. a man who participated in the act, knowing that the guilty had married.
- d. a woman who participated in the act, knowing that the guilty had married.

Article 284 paragraph (2) of the Criminal Code :

"Prosecution is made only for complaints of contaminated spouses and if applicable to Article 27 of the Civil Code, within a period of three months followed by divorce requests for separate tables and beds for that very reason".

Article 284 paragraph (3) of the Criminal Code :

"With respect to this complaint does not apply Articles 72, 73, and 75".

Article 284 paragraph (4) of the Criminal Code :

"The complaint can be withdrawn during the investigation in the court hearing has not started yet".

Article 285 of the Criminal Code :

"Anyone with violence or the threat, forced a woman outside of marriage, threatened for rape with a maximum imprisonment of nine months".

Article 292 of the Criminal Code :

"An adult who commits a lewd act with another person of the same sex with him, knowingly or duly to be presumed to be immature, shall be threatened with a maximum imprisonment of five years".

Legal void or absence of law to punish LGBT, demands the state to provide fair legal certainty to its society. The legal certainty is in order to give a sense of justice, as Umar Sholehudin said "legal justice for society is not just formal-procedural justice; justice based on rigid normative rules far from the morality and values of humanity. The opponent of formal-procedural justice is a substantive justice, a measure of fairness that is not quantitative as it appears in formal justice but qualitative justice based on public morality and humanitarian values and capable of satisfying and happiness for the community.

The unease of the Indonesian people as the world's largest moslem country, due to the LGBT can not be denied anymore. Such anxiety is caused by the rise of sex behavior outside of marriage even done in the education environment by students and students, adultery, prostitution, rape and same-sex obscene, do not stop here the impact continues in the formation of family institutions due to free sex lifestyle that impact on the reluctance of the younger generation to marry in a good and proper way according to religious demands. It not only undermines the growth of Indonesian democracy but also reduces the quality of Indonesian families both biologically, psychologically and socially so that it leads to fragile family institutions and ultimately demands national resilience.

This condition triggers the author to conduct further research on how LGBT ideally be punished / legalized in law in Indonesia. Politik hukum defined as an activity to choose the law that will apply or revoke it in order to achieve the objectives of the law that is justice, berihitian and utilization as contained in in the 1945 Constitution. Further legal politics is defined by the experts as follows: Mahfud, MD said, that legal politics is a legal policy or an official policy line of law that will be enforced either by the creation of a new law or by the replacement of the old law in order to achieve the state's objectives.

Padmo Wajono said that legal politics is the basic policy that determines the direction, form, and content of the law to be formed. In another article Padmo Wahjono clarifies the definition by saying that legal politics is the policy of state organizers about what is used as a criterion for punishing something within which includes the establishment, implementation and enforcement of the law. Teuku Mohammad Radhie defines the politics of the law as a declaration of the will of the state authorities regarding the laws prevailing in its territory and of the direction of development of established law.

When viewed from the definition of legal politics according to experts, it can be concluded that the political law is a policy line to punish something or regulate something or revoke it all done in order to achieve the goal negara. Dalam legal review of law if a law that applies is not in accordance with the purpose of the state as it is in the Preamble to the 1945 Constitution of Indonesian republic, it would be better if the law is revoked and replaced by new law, and vice versa if there is a phenomenon such as LGBT in the middle of society that disturbs society from the impacts as it is now, then it is better to punish the LGBT in legislation as prohibited rather than to indirectly legalize by doing the omissions so that the impact is widespread.

Furthermore, in the study of law politics see the law as a non-purpose tool, law is not a final building so people have to serve the law while the law is no longer providing a sense of justice. The law is a means to achieve the State's goals as contained in 1945 NRI Constitution. in law in Indonesia is one of the ways to achieve the goals of the State. In the 4th edition of the 1945 Constitution of NRI, there are several phrases that can be used as a basis for LGBT arrangement in Indonesia: *"Then to form an Indonesian State Government that protects the entire Indonesian nation and all over Indonesia and to promote the general welfare, the nation, and follow the world order based on freedom, eternal peace and social justice, then the Indonesian National Liberation shall be constituted in a Constitution of Indonesia, formed in a composition of the Republic of Indonesia which is governed by the people by the Almighty God, Fair and civilized humanity, the Indonesian Unity and Citizenship led by the wisdom of wisdom in the Consultation / Representation, and by realizing a social justice for all Indonesians."*

LGBT arrangements in Indonesian law is the implementation of the phrase *"protecting the whole Indonesian nation, and the whole of Indonesia's blood and to promote the general welfare"*, given the impact of health, psychological and the destruction of the grass-roots living order, to the destruction of national resilience is a direct or indirect result of sexual behavior such as LGBT. The phrase *"to carry out the order of the world based on independence, eternal peace and social justice"* is the goal to be achieved from LGBT arrangements in Indonesia, with the regulation of deviant sexual behavior that Indonesia has participated in the implementation of world order based on social justice by criminalizing perpetrators of sex deviant by not neglecting human rights, because in the LGBT arrangement not the human being who is rejected in Indonesian law but whose behavior, borrowing the language of Mahfud, MD "the person is accepted but his sexual behavior is rejected", the LGBT arrangement in law in Indonesia is in accordance with The only God Almightya as contained in the fourth paragraph of the Preamble of the 1945 Constitution of the Republic of Indonesia.

## **2. Constitutional Juridical Ground LGBT Arrangement in Law in Indonesia**

### **a. Pancasila**

Pancasila is not just Indonesia's ideology but Pancasila is the source of all legal sources in Indonesia. Pancasila in particular the Supreme Being is the basis of the LGBT arrangement in Indonesia so LGBT can be regarded as an act not only against material law but against formal law. The existence of the Almighty God puts that religious values as one of the sources of the establishment of legislation in Indonesia. Kaelan, MS in states that in relation to them the Almighty God has the meaning of all aspects of the implementation of the state shall be in accordance with the values that comes from God. When details of the matters concerning the conduct of the state include, among others, the implementation of a materieal state, among others: the form of state, the



purpose of the country, the order of the law, the state system, as well as the spirituality such as state morals, the morals of state regulators and so forth.

b. Constitution of the State of the Republic of Indonesia on 1945

Several Articles in the NRI Constitution of 1945, can be used as the basis for the regulation of LGTB in Indonesian law :

Article 18B paragraph (2)

"The state acknowledges and respects the customary law societies and their traditional rights as long as they are alive and in line with the development of society and the principles of the Unitary State of the Republic of Indonesia, which are governed by law".

Article 28E paragraph (1):

"Everyone has the right to embrace religion and to worship according to his religion, to choose education and teaching, to choose a job, to choose citizenship, to choose the place of residence in the country and to leave it, and to be entitled to return".

Article 28J paragraph (2):

"In exercising his rights and freedoms, each person shall be subject to the restrictions prescribed by law solely for the purpose of securing recognition and respect for the rights and freedoms of others and to meet the demands of justice in accordance with the moral, religious values of the , security, and public order in a democratic society ".

Article 29 paragraph (2):

"The state guarantees the independence of every citizen to form their own religion and to worship according to his religion and belief".

c. Law Number 12 on 2011 concerning Formulation of Legislation, that is :

Article 2 :

"Pancasila is the source of all sources of state law"then in his explanation "The placement of Pancasila as the source of all sources of state law is in accordance with the Preamble of the Constitution of the State of the Republic of Indonesia Year 1945 the fourth paragraph of the Supreme Godhead, Just and Civilized Humanity, Unity Indonesia, Democracy Leded By Wisdom Wisdom in Consultation / Representation, and Social Justice for All Indonesians. Placing Pancasila as the basis and ideology of the state as well as the philosophical basis of the state so that any material content of the Laws Regulation should not be contrary to the values contained in Pancasila.

Article 6 paragraph (1):

The content of legislation should reflect the principle:

- a. aegis;
- b. humanity;
- c. nationality;
- d. kinship;
- e. the nature of archipelago;
- f. Unity in Diversity;
- g. justice;
- h. equality of positions in law and government;
- i. order and legal certainty; and / or
- j. balance, harmony, and harmony.

Then in the explanation of this law is described in more detail about the principles mentioned above namely: *"letter f : the meaning of "single bhinneka ika principle" means that the Content of Legislative Content shall take into account the diversity of the population, religion, ethnic groups and classes, special conditions of the region as well as the life culture of the nation, nation and state."*

## CONCLUSION AND SUGGESTION

Based on the above description it can be concluded that LGTB regulatory legal policy in Indonesia is to make arrangements against LGBT in Indonesia in law as a matter that is prohibited and threatened with criminal. The arrangement is appropriate and in accordance with the state objectives as contained in Alenia IV of the 1945 Constitution of the Republic of Indonesia. Article 284, 286 and 292 of the Criminal Code are irrelevant to the religious and socio-cultural background of the Indonesian people so that the Dutch Criminal Code should be replaced by new and incorporated the LGBT offense as prohibited and threatened with punishment. Basic constitutional jurisdiction that can be used as the basis in LGBT arrangement is Pancasila, NRI 1945 Constitution and Law Number 12 on 2011 concerning Formation of Legislation.

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