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## HOW INDONESIA SHOULD ELIMINATE DISCRIMINATIONS TOWARDS LGBT AS A PART OF CIVIL AND HUMAN RIGHTS

By Fanny S. Alam<sup>1</sup>

### ABSTRACT

Information about two public universities in Indonesia which used to release the announcement of prohibition towards new students in great suspicion to be engaged in LGBT activities or in personal are a part of LGBT encourages some intense protests from society in Indonesia. Not only do activists in concern of LGBT issues voice their objection, but also other people in general. This emerges in two years subsequently, in Andalas University, Padang, 2016 and in University of Indonesia Education, Bandung, 2017. The information of both universities in attempt to decline the registration from LGBT students reflects how higher education institution should realize the following impacts from the prohibition due to specific moral values, in a meantime, it is expected that the institution be open for any student without discriminating them against race, ethnic, beliefs, economy status, and sexual orientations.

Through an intense overview to media and literature study as a part of direct observation, this paper outlines how the state is supposed to act when such a prohibition emerges extended with an elaboration of some protocols or covenants addressing the rights of students or people in LGBT groups as civil rights. It is obvious that the state must be in high capability of protecting them as a part of citizens without discriminating them against their sexual orientations. Therefore, people in LGBT might enjoy their basic rights as humans while at the same time gaining their same rights as other citizens guaranteed by the state.

**Keywords:** LGBT; Discriminations; Civil and Human Rights

### 1. INTRODUCTION

Two public universities in Padang and Bandung, both in Indonesia in 2016 and 2017, used to release a statement letter for newly registered students, underlining that they are not involved as a part of LGBT groups or supporters. Both incidents above-mentioned question the state's commitment for human rights issues in this country. State, through its government actions, is supposed to provide a warranty for the life of its citizens without overlooking the differences towards religions, races, ethnic, incomes, and sexual orientations. However, Indonesia is always in a reluctant position when facing sexual orientations issues by seeing the country's indecisiveness causing numerous ambiguity in the treatment not only from the apparatus but also public, which eventually lead to various discriminating actions towards LGBT in general.

<sup>1</sup> Coordinator of Bhinneka Nusantara Foundation Bandung, contact: fannyplum@gmail.com





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Controversy emerged when American Psychiatric Association (APA) criticized Indonesian Mind Specialist Medical Doctors Association which categorized LGBT as an issue of psychiatrics. They emphasized that the categorization could lead LGBT groups in terms of wrong label and this issue had been argued through some scientific evidence<sup>2</sup>, nevertheless, this fact has not managed to change the country and its public's perspectives towards LGBT. It is proven through profound negative stigma and discriminating actions towards the group up to now, which is unfortunate due to the country's negligent response despite the fact that they are a part of Indonesian citizens.

Any information in purpose to concern and to protect LGBT group in this country still figures out such a long way to accomplish fairness and justice since here admit only two legal existing gender identities, men and women without acknowledgement to other ones. It could be a background why the country stays in hardship facing LGBT issues, therefore, in the end most of discriminating actions up to criminalization offending LGBT group are considered common for them.

LGBT's sexual behavior is not the issue emphasized in this paper. Furthermore, it underlines more how the state through its government, starting from the central up to the bottom level manages their actions more wisely addressing LGBT issues and bring their position equal as Indonesian citizens with their legal rights and duties. The state is obligated to assure fair and reasonable treatments for them as the citizens in terms of eliminating negative stigma as well as discriminating actions.

In contrast to the above-mentioned conditions, Indonesia has precisely signed one international covenant in a regard to civil and political rights which is supposed to refer to the government's assurance towards all Indonesian citizens, covering LGBT group. The covenant is ratified into one of the state's law confirming that it is providing solid protections for all human beings with no distinctions. Notwithstanding, it is considered challenging for the state to conduct the implementation, one of the reasons is due to the consideration of religious values development in this country to be taken predominantly as significant references addressing LGBT issues. Hence, the situation leads to law decisions with the tendency to discredit them without considering their rights and duties as citizens in the state's positive law.

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<sup>2</sup>[http://www.bbc.com/indonesia/berita\\_indonesia/2016/03/160316\\_indonesia\\_lgbt\\_psikiatri\\_indonesia](http://www.bbc.com/indonesia/berita_indonesia/2016/03/160316_indonesia_lgbt_psikiatri_indonesia)



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In the context to ASEAN, all countries in this group are supposed to provide a larger capacity in terms of their citizen protection due to cases involving human right issues. Since long time ago, all ASEAN countries have been suspected to be lacking this capacity<sup>3</sup> although some of them have signed international covenants of human rights. Particularly, Indonesia, which is in attempt to reach the human right standardization in current periods, furthermore having signed International Covenant on Civil and Political Rights, must be capable of performing its capacity to protect its citizens in accordance of human rights standards. It is a serious consideration acknowledging that the state has ratified the Covenant to be a part of State Law of 12/2005 addressing citizens' civil and political rights. One of the civil rights that must be put into serious attention is highlighting LGBT's rights as a part of civil rights in which the group should be treated the same as other parts of citizens in Indonesia without the tendency of criminalization, unfair treatment, and stigma due to their different sexual orientation.

## 2. RESEARCH METHODOLOGY

The paper relies on direct observation which profoundly implies on the observation of data towards literatures and news on specific media. It does not mean to be an attempt as a part of direct participants in the event, furthermore it promotes a more detached perspective from the event context<sup>4</sup>

Since LGBT cases are informed on various types of media massively, they have significant capacity to promote society's attention. Observing Indonesian society addressing LGBT cases is immersing due to various opinions in terms of supporting or opposing. More importantly, it is acknowledged that their opinions concerning LGBT cases might be overviewed from various perspectives for both pro and contra.

The direct observation in this paper leads to exploratory research about LGBT cases, the society's responses as well as observing the state's ideas in a regard to LGBT protection for their civil rights in the country. It is significant to oversee how the state manages their laws and other supporting regulations despite some contra opinions against LGBT existence in the country. It will not promote final and conclusive solutions for existing issues, however it examines how eventually the state attempts to accommodate minority groups, particularly LGBT so as to prevent them from unfair

<sup>3</sup> <https://www.opendemocracy.net/openglobalrights/haris-azhar/making-asean-economic-community-human-rights-friendly>

<sup>4</sup> [www.socialresearchmethods.net/kb/qualmeth.php](http://www.socialresearchmethods.net/kb/qualmeth.php)



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discriminations and to settle their rights as Indonesian civilians as assured in the state's laws and other regulations.<sup>5</sup>

Besides direct observation, literature and media news review supports the content of the paper in a purpose to acknowledge current yet relevant knowledge including substantial findings as well as theoretical and methodological contributions to the issues of the paper. <sup>6</sup> The literature review elaborates principal laws and other supporting regulations regarding the protections of minority groups, for LGBT in particular. Media news review perform some relevant findings, laying its audiences' opinions and news contents about LGBT, particularly both universities' rejection towards LGBT students. All the elaboration eventually covers how the state considers more comprehensive ways in accordance with no discriminating actions to assure LGBT civil rights as a part of Indonesian citizens, while in contrast views the responses of the universities and public, including the students.

### 3. DISCUSSION

#### a. Law and Regulations Background

As a matter of fact, Indonesia has signed an international covenant in addressing people's civil and political rights, that is International Covenant on Civil and Political Rights ratified in the Law no 12 year 2005.<sup>7</sup> It is incontestable that the state's participation in ratifying the covenant is in accordance with The 1945 Constitution of the Republic of Indonesia, Act 26 implying the right of citizenship, Act 27 article 1 about the equality of all Indonesians in law and government, Act 27 article 2 about the right of Indonesians for descent life towards humanity.<sup>8</sup> Eventually, the state is supposed to be aware that any deviation occurring in every stage of actions leading to stigma, discrimination, and human rights violations in general will not provide proper foundation, particularly for the state's development in economy, politic, social, culture in the long term. Therefore, the Law no 12 year 2005 Act 9 implies the right of people in private freedom and security and Act 26 confirms the equality of people in law and protection without any discrimination through race, skin colors, gender identities, languages, religions and

<sup>5</sup> Adams, John, Khan, Hafiz TA; Raeside, Robert (2007). Research Methods for business and social science students, New Delhi: Sage Publication, p. 56

<sup>6</sup> Lamb, David, The Uses of Analysis, Rhetorical Analysis, Article Analysis, and the Literature review. Academic Writing Tutor, 23 May 2014

<sup>7</sup> [www.ohchr.org/documents/ccpr](http://www.ohchr.org/documents/ccpr)

<sup>8</sup> [www.ilo.org/documents/wcms\\_174556](http://www.ilo.org/documents/wcms_174556)



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faiths, politic, other opinions, origins of nation or social, economy status or other conditions.<sup>9</sup> In general, Indonesia emphasizes the assurance for all Indonesian citizens even without observing status of sexual orientations in terms of the rights and obligations.

Human rights are defined as the rights which adhere on any human regardless their nations, residences, gender identities, ethics, colors, languages, and other statuses towards our human rights without discrimination.<sup>10</sup> The definition is considered a basic of international covenant ICCPR signing which in the following time is ratified to be the Law no 12 year 2005. Both are conducted by Indonesia.

Meanwhile, specifically Indonesia underlines its policy about LGBT as viewed in Law of Crime Article 292 to restrict homosexual actions conducted towards underage children and teenagers. It is obvious that the article does not confirm homosexual actions conducted by adult to adult.

The state's ambiguity to act confirming LGBT issues certainly is in contrast noticing that they have approved to sign the international covenant and to ratify it to be a part of the state's laws, while on the other side most of the laws in this country have not managed to accommodate the position of LGBT both fairly and equally, particularly proven when some lawsuits and criminalization due to sexual orientations involve them as well as discriminations in general. To respond those problems, on 6-9 November 2006 an international conference of world law experts in the forum of International Service for Human Rights was conducted in Gadjah Mada University, Yogyakarta, resulting 29 principles in terms of the application towards international human rights legal standard to overcome discriminating actions as well as harassments. All of them are summarized in Yogyakarta Principles. Implying the importance of human rights for LGBT as well as intersex groups, Yogyakarta Principles elaborates specific principles addressing the coverage of LGBT's rights as well as intersex's in a purpose to prevent criminalization and discriminating actions. Some important principles in a regard to their rights are as follows : principle 1 : the universal enjoyment of human rights, principle 2: the right of equality and non-discriminating actions, principles 3: the right towards legal acknowledgement, principle 5: the right of personal security, principle 6: the right of privacy, principle 7: the right of freedom and arbitrary of freedom elimination, principle 8:

<sup>9</sup> [www.peraturan.go.id/uu/no-12-tahun-2005.html](http://www.peraturan.go.id/uu/no-12-tahun-2005.html), from ministry of law and human rights, the Republic of Indonesia

<sup>10</sup> International Convention on the Elimination of All Forms of Racial Discrimination, [www.ohchr.org](http://www.ohchr.org)







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the right of fair and justice trial, and principal 9 : the right to gain human treatment along the period of arrestment.<sup>11</sup>

**b. Cases of LGBT Students Restriction in Andalas University and Indonesia Education University and Responses towards Both**

As Indonesia has ratified ICCPR into the state law no 12/2005, it tends to be controversial when highlighting some of discrimination cases occurred openly. It becomes more unfortunate to see that two public universities, expected to be a part of role models in fair treatment and justice for all students, even initiated to discriminate their new students by restricting them to register as proven LGBT or indicated to be involved in series of LGBT actions or their organization activities. First, it was Andalas University, Padang, West Sumatra, which released a statement for newly registered students in new academic year.<sup>12</sup>

The restriction of LGBT students to register in Andalas University was confirmed by the Rector, implying that LGBT students' existence in the university environment would produce negative impacts. Added by him that besides genetic factors, LGBT could develop gradually through the environment as a whole. Therefore, he had the right to restrict the life of LGBT as well as its development in the university not only based on religion values but also the custom in the Land of Minang (Ranah Minang).<sup>13</sup> The statement letter used to be virally disseminated through social media. In addition, the release encouraged pro and contra from social media users. After its wide dissemination, eventually the Padang Law Aid Institution criticized the university's statement, requesting the university to withdraw it due to its violation to the existing State Constitution 1945. It elaborates that all citizens deserve to gain proper education as regulated in the State Constitution 1945 as well as other laws.

Second, whether it was inspired by Andalas University or not, Indonesian Education University (UPI) Bandung, West Java, Indonesia conducted the same action besides highlighting the restriction for smoking and tattooed students.<sup>14</sup> According to

<sup>11</sup><https://kabarlgbt.org/2016/02/21/apa-itu-ham-dan-prinsip-prinsip-yogyakarta-yang-berkaitan-dengan-orientasi-seksual-dan-identitas-gender/>

<sup>12</sup> [http://repo.unand.ac.id/4657/4/Surat\\_Pernyataan\\_Mahasiswa\\_Baru\\_Unand\\_2017.pdf](http://repo.unand.ac.id/4657/4/Surat_Pernyataan_Mahasiswa_Baru_Unand_2017.pdf)

<sup>13</sup>[https://nasional.tempo.co/read/news/2017/05/02/173871563/rektor-unand-ogah-cabut-syarat-mahasiswa-baru-bebas-lgbt-ada-apa?fb\\_comment\\_id=943076995794807\\_943088012460372](https://nasional.tempo.co/read/news/2017/05/02/173871563/rektor-unand-ogah-cabut-syarat-mahasiswa-baru-bebas-lgbt-ada-apa?fb_comment_id=943076995794807_943088012460372)

<sup>14</sup> <https://www.google.co.id/url?sa=t&source=web&rct=j&url=http://pmb.upi.edu/wp-content/uploads/2017/06/Surat-Pernyataan-Mahasiswa-Baru-2017-SBMPTN-1-1.pdf&ved=0ahUKEwi7vcWz4aPWAhUHK48KHcw9AbYQFggBMAA&usg=AFQjCNFIXE6WJudv7EklbtXdFAN4Ftj7tQ>



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Berita UPI edu, a research had been conducted to figure out the students' responses addressing LGBT existence both in general and in campus. Sample was taken through 100 respondents, consisting of the students of Department of Communication Science and Department of Psychology, performing that their same tendency of rejection towards LGBT was withdrawn from the research. It was conducted based on the demography, such as religion, gender, and majors of study. In details, 40% stated their disapproval and 17% showed their strong disapproval of LGBT existence in Indonesia in accordance with their basis of religion view (Islam). If viewed from the demography of majors of study, Department of Communication performed more dominant disapproval than Department of Psychology.<sup>15</sup>

Both of above conditions certainly generate public's objection in general despite some public's emerging contra to support those restrictions. Along with those cases mentioned above, the state's negligence towards LGBT rights is exposed clearly, mainly about their civil rights as a part of Jogjakarta's Principles, signed by world's law experts in Jogjakarta, Indonesia addressing the protection of LGBT's rights in general. For almost 10 years after the signing of Jogjakarta's Principles, the state has always been in profound ambiguity when facing cases of LGBT or responding their rights in general.<sup>16</sup>

### 4. CONCLUSION

Indonesia is a multi-culture country which adapts State Constitution 1945 principally in correlation with the assurance of all citizens' rights. All state laws in a regard to assuring the citizens' rights are implemented based on the State Constitution as well as the signing of relevant international covenants, one of them is International Covenant on Civil and Political Rights, which is ratified into State Law no 12/2005. With all basic constitution and laws, the state is expected to be able to assure and to protect all citizens' rights, covering minorities groups' ones, particularly LGBT's rights in this paper. In contrast, the implementation of all state laws addressing LGBT's rights is not in line with the factual situation, in which it shows a lot of negativity, stigma, and discriminations towards the group. More visible rejections towards the group are exposed obviously, starting from public and, unfortunately, university. The last mentioned is the last milestone to be exposing fairness and non-discriminating actions for students and public due to its capacity in performing research and scientific backgrounds for any issue in

<sup>15</sup> <http://berita.upi.edu/?p=1712>, Mahasiswa Tidak Akui Keberadaan Kaum LGBT

<sup>16</sup> <https://m.cnnindonesia.com/nasional/20161123161838-12-174787/sepuluh-tahun-prinsip-yogyakarta-negara-abai-pada-lgbt/>



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society and country. It is unfortunate when university performs its actions to be against fairness and non-discriminating actions for minority groups, particularly LGBT when they register as new students. Two universities, Andalas University and Indonesia Education University, showed contradictive ways when attempting to restrict LGBT students to register through their statement letters which must be signed by them. They had their own reasons for not allowing LGBT existence to develop massively due to obeying religion values and other "considered" proper values in their regions.

Pro and contra obviously were generated due to this central issue. In the end, both of the universities decided to withdraw their controversial statement letter for restricting LGBT students to register. However, it becomes a significant note for the state to view how regions in Indonesia should treat minority groups, in this case LGBT. Universities in this country must be advised to call the relevant laws addressing minorities group into serious attention, particularly LGBT. Despite their different sexual orientations, they still have their rights as human and civilians, one of them is to reach higher and more proper studying opportunities. The state is in its full capacity to protect their rights, therefore, they are expected to act in such a legal way to prevent this similar occurrence to emerge in the future. It is conducted as a part of improving an awareness for students, universities, and public as well that human rights are imperative and have been adhered since human beings were born. In other terms, the state's urgency to act without ambiguity when facing minorities group' issues, mainly LGBT's is expected to provide all fair treatments and justifications in accordance with the existing state law and regulation.





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