

Coercive Coercion Rhetoric as a Reason for Criminal Abolition (Analysis of LGBT Group Sexual Activity Deviations)

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Abstract

Sexual behavior is a deviant behavior, basically an abnormal sexual orientation in general. Sexual orientation itself is a tendency that leads to a sense of attraction, romance, emotional and sexual to men, women, or a combination of both. This deviant sexual behavior is carried out by people who have a deviant sexual orientation, which is then known as the LGBT group (Lesbian, Gay, Bisexual, and Transgender/ Transsexual). This research is Normative Law research; the data in this research is secondary data obtained from library materials using library research as a theoretical basis related to the problem researched by the author. The research results show that, First, there is a correlation between physical or biological disabilities and deviant sexual activity in LGBT people. Second, deviations from the sexual activities of LGBT people due to physical or biological defects must be seen as a reason for the abolition of punishment due to coercive force, as stipulated in Article 48 of the Criminal Code, must be seen as coercive forces because deviations from the sexual activities of LGBT people are carried out by encouragement. from within LGBT people which they cannot avoid, just as an act cannot be avoided due to factors within the perpetrator of the criminal act, the meaning of coercive force which has so far been interpreted as coming from within the perpetrator must be reorganized so that it also includes power. Force that comes from within the maker.

Keywords: *Sexual behavior, Physical defects, LGBT, Criminal Abolition.*

Abstrak

Perilaku seksual merupakan perilaku yang menyimpang, pada dasarnya orientasi seksual yang tidak normal seperti pada umumnya. Orientasi seksual sendiri merupakan kecenderungan yang mengarahkan pada rasa ketertarikan, romantisme, emosional dan seksual kepada pria, wanita atau kombinasi keduanya. Perilaku seksual menyimpang ini dilakukan oleh orang-orang yang memiliki orientasi seksual menyimpang yang kemudian dikenal dengan kelompok LGBT (*Lesbian, Gay, Bisexual dan Transgender/Transexual*). Penelitian ini merupakan penelitian Hukum Normatif, data dalam penelitian ini merupakan data sekunder yang didapatkan dari bahan-bahan Kepustakaan dengan menggunakan Studi Kepustakaan, sebagai landasan teoritis yang berkaitan dengan masalah yang diteliti penulis. Hasil penelitian menunjukkan bahwa, *pertama*, ada korelasi antara cacat fisik atau biologis dengan aktivitas seksual yang menyimpang pada kaum LGBT. *Kedua*, Penyimpangan aktivitas seksual kaum LGBT yang dikarenakan oleh cacat fisik atau biologis harus dapat dipandang sebagai alasan penghapusan hukuman karena Daya Paksa, sebagaimana yang ditentukan dalam Pasal 48 KUHP. Harus dapat dipandang sebagai Daya Paksa oleh karena pada dasarnya penyimpangan aktivitas seksual kaum LGBT dilakukan oleh karena dorongan dari dalam diri kaum LGBT yang tidak dapat mereka hindarkan sebagaimana tidak dapat dihindarkannya suatu perbuatan dikarenakan faktor-faktor dari luar diri si pembuat tindak pidana. Arti Daya Paksa yang selama ini diartikan Daya Paksa yang datangnya dari luar diri si pembuat harus direoreantasikan sehingga meliputi pula Daya Paksa yang berasal dari dalam diri si pembuat.

Kata Kunci : *Cacat Fisik, Perilaku Seks, LGBT, Penghapusan Pidana*

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INTRODUCTION

In the Indonesian Criminal Law System, the grounds for abolishing the crime consist of justifying reasons and excuses regulated in Articles 44 to 51 of the Criminal Code.¹ Excuse means a reason that eliminates the guilt of the perpetrator of a criminal act, while a justification reason means a reason that eliminates the unlawful nature of a criminal act. The reason for forgiveness is subjective and inherent in the person, especially regarding the mental attitude before or when to act. While the justification reason is objective and attached to his actions or other things outside the perpetrator's mind.² The reasons for the abolition of the crime are as specified in the Criminal Code, namely, *first*, Acts that cannot be accounted for because of a lack of perfect intellect/soul or disturbed due to illness (Article 44 of the Criminal Code); *second*, coercion or Overmacht (Article 48 of the Criminal Code); *third*: Emergency defense or Noodweer; *fourth*; Carrying out the rules of law (Article 50 of the Criminal Code); *fifth*; Carrying out office orders (Article 51).³

Thus, it is determined in the Criminal Code that the perpetrator of an act that is abolished from the crime for his act is related to the reason for the abolition of the crime, which is currently an issue concerning the deviation of sexual activity by LGBT people. In this journal study, many experts provide views on LGBT sexual activities that they consider physically or biologically disabled, including experts in the fields of psychology, criminal law, and Islamic criminal law. The opinion of psychologists explains the deviation of sexual activity of the LGBT group by those who have physical or biological disabilities. Namely, Sigmund Freud and Psychoanalysts in their work explain that LGBT sexual

¹ Andi Hamzah, *Asas-asas Hukum Pidana*. (Jakarta: Rineka Cipta, 1994), h. 28.

² Kitab Undang-Undang Hukum Pidana (Staatsblad 1915 No. 732).

³ Teguh Prasetyo, *Hukum Pidana*, (Jakarta: Rajawali Pers, 2011), h. 132

deviations can be caused by psychological factors such as childhood experiences, social environment, and genetic factors, and the main factors that cause these deviations are psychological and psychiatry.⁴ Dr. Ati Kusmawati, in her work, explained that LGBT sexual activity deviations in LGBT behavior can be contagious and grow in anyone, especially if they lack attention from their families. Ati emphasized the importance of education to prevent deviant behavior from an early age with the right parenting style.⁵

In the context of criminal law in Indonesia, views on LGBT sexual activity deviations, especially for individuals with physical or biological disabilities, are very diverse. Some legal experts consider this behavior a deviation that must be handled with a strict legal approach. In contrast, others argue that a rehabilitative approach is more appropriate, so the view of the legal expert, Nila Djuwita F Moeloek, the Minister of Health of the Republic of Indonesia, who, during a visit to Padang City, West Sumatra, in February 2016, she argued that LGBT is classified as a psychiatric problem. "In terms of health, LGBT is a psychiatric problem. It is different from psychiatric disorders if the disorders of those who are members of it cannot interact".⁶ Dr. Munadi, MA. In his work, he highlights that the LGBT phenomenon is often considered a sexual deviation that is harmful to society. He noted that same-sex sexual interactions, especially for those with physical or biological disabilities, are often viewed negatively by society and considered abnormal. Munadi said that further discussion on individual rights and legal protection for those involved in these activities is needed. Prof. DR. Barda Nawawi Arief, In

⁴ Ainurrofiq Dawam, "*SIGMUND FREUD DAN HOMOSEKSUAL (Sebuah Tinjauan Wacana Keislaman)*", *Jurnal Musiwa*, Vol. 2, No.1, Maret 2003

⁵ Ati Kusmawati, *Psikolog Ungkap Perilaku LGBT Akibat Kurang Perhatian* (Jakarta: Universitas Muhammadiyah Jakarta, 2021), hlm. 15

⁶ PKRS RSUD Kota Padang Panjang, "Penyuluhan Tentang Dampak dan Bahaya LGBT dari Perspektif Psikologis," disampaikan pada kegiatan penyuluhan, Jumat, 21 Mei 2021.

his view, sexual deviations, including homosexuality, should not always be criminalized but can be dealt with through rehabilitation.⁷ He emphasized that criminal punishment should be a last resort and that it is better to carry out prevention and medical and psychological treatment to overcome sexual orientation that is considered deviant.⁸

Experts in Islamic criminal law have a firm view of sexual activity deviations, including those committed by individuals with physical or biological disabilities. One of them is Dr. Phil. Qorrotul'uyun S. Psi, M. Psi., In a study conducted by the Islamic University of Indonesia, Dr. Phil. Qorrotul'uyun discussed that LGBT behavior can be categorized as a psychological disorder. He noted that although since 1970, LGBT has been abolished from the category of mental disorders in some contexts, from an Islamic perspective, this behavior violates Allah's rules and can cause mental instability for the individuals involved.⁹

In addition, several journal articles related to this issue, with topics to be researched on several previous studies, are expected not to be repeated. For this reason, the author referenced several previous studies in this study: Muhammad Furqan Sultan Deyis Journal entitled "Responding to LGBTQ based on Islamic criminal law." The journal discusses LGBTQ Views in Community Relations and reviews the basis of Islamic law for LGBTQ actors and the response of Islamic criminal law to LGBTQ behavior.

Melani Budiarti Santoso's journal in this journal discusses: "LGBT in the Perspective of Human Rights," which discusses in this journal explains

⁷ Tetty Herlina, *Lesbian Sebagai Kejahatan Ditinjau dari Segi Kriminologi dan Qanun Jinayah* (Skripsi, UIN Ar-Raniry Darussalam, Banda Aceh, 2021), hlm. 10.

⁸ Welly Kendra, "Kriminalisasi Terhadap Perilaku Penyimpangan Seksual," *Journal Unes* 4, no. 1 (April 2020): 23–35.

⁹ Ikatan Mahasiswa Muslim Psikologi (IMAMUPSI), "Psikologi Islam Menjawab Perilaku LGBT," Universitas Islam Indonesia (UII), disampaikan pada acara seminar, 23 Maret 2018.

that LGBT is a mental illness, but its basic rights must be protected. The journal of Mahkrus Munajat discusses the "LGBT perspective of Islamic Criminal Law." This journal discusses the application of punishment for LGBT perpetrators as an alternative punishment, which can be the death penalty stoning, punished like adulterers, namely stoning for adulterers and whipping for adulterers, and can be subject to ta'zir law.

Based on the Phenomena and Problems above, there are many debates among experts regarding the deviation of sexual activity of the LGBT group due to their physical or biological defects, so it is very interesting to study what is stated in the form of a journal which (*LGBT is due to Physical or Biological Defects because there is a strong shock from their soul so that their Sexual Instinct Desire leads them to commit unlawful acts can be seen as Erasure Criminal from the point of view of Criminal Law and Islamic Criminal Law*). Therefore, based on the above problems, the author aims to examine whether there is a correlation between physical or biological defects and deviant sexual activities in LGBT people, as well as how to eliminate criminality in criminal law and Islamic criminal law (analysis of deviations in sexual activities of LGBT groups).

METHOD

The library research method is used in this study. *Library research* aims to obtain secondary data that will be used as a theoretical basis related to the problem that the author is doing and relevant to the problem being researched to support the data obtained during the research by studying books, literature, and other sources. In this study, the author uses a normative juridical research method (*legal research*) because it is commensurate with the title of the research raised by the author, namely the Abolition of Criminal Punishment in Criminal Law and Islamic Criminal Law (Analysis of Deviations in Sexual Activities by LGBT

Groups), the normative juridical law methodology is a method that focuses on the study of the application of teachings in positive law. The scope of normative juridical research includes the study of documents because it follows the normative definition of law, namely the study of documents, legal sources, legislation, court rulings or decisions, agreements, legal rules, and doctrines or opinions of legal experts.¹⁰ In terms of conducting research and summarizing material from literature or secondary sources, normative juridical research can also be considered legal research on literature, theoretically or dogmatically.

RESULTS AND DISCUSSION

LGBT Sexual Activity Deviation.

Sexual behavior is deviant behavior, basically abnormal sexual orientation in general. Sexual orientation itself is a tendency that leads to a sense of attraction, romanticism, emotional, and sexual attraction to men, women, or a combination of both. This deviant sexual behavior is carried out by people who have a deviant sexual orientation, which is later known as the LGBT (*Lesbian, Gay, Bisexual, and Transgender/Transsexual*) group. Lesbi is a term for women physically, emotionally, and spiritually attracted to fellow women, likewise with Gay, a term that applies to men who are interested in both physical, emotional, and spiritual with other men. Bisexuality itself is used for people who have physical, emotional, and spiritual attraction to both types of women and men. Meanwhile, transgender people are people who feel that their gender identity is different from their sexual anatomy, so they make efforts to change their gender according to what is believed to be sex surgery.¹¹

¹⁰ Muhaimin, "*Metode Penelitian Hukum*," (Mataram: Mataram Press, 2020), hlm.24

¹¹ Roby Yansyah, "Globalisasi Lesbian, Gay, Biseksual, dan Transgender (LGBT): Perspektif HAM dan Agama dalam Lingkup Hukum di Indonesia," *Jurnal Law Reform* 14, no. 1 (Januari 2018): hlm. 133.

Deviations in LGBT sexual activity can be caused by several factors that involve various complex aspects, including psychological and biological factors. Here are some of the key factors that researchers have identified: *first*, Psychological Factors. From the dominant psychological factors being Stigma and Social Pressure from a society that stigmatizes LGBT, individuals may feel pressured to hide their sexual orientation, which can lead to deviant behavior as a form of escape or self-adjustment. *Second*, Biological Factors. Some studies suggest that biological factors, such as genetic predisposition or hormonal imbalances, can play a role in a person's sexual orientation. For example, chromosomal variations and the influence of the hormone testosterone can affect sexual behavior.¹² Medical Conditions: Some studies also link homosexual behavior to certain medical conditions that can affect an individual's sexual development.

In Arabic, we know the terms *al-sihaq* (lesbian), *al-liwath* (homo), *ityân albahaim* (intercourse with animals), *jima al-amwat* (intercourse with the dead), only now there is the term *al-mitsliyyah al-jinsiyyah* (same-sex sex), an emotional attraction that a person has to the same sex that presents a desire to make physical contact which in intercourse with each other masturbate, oral, Etc.¹³ There is evidence of the prohibition of homosexuality in the Qur'an, which tells the problem of homosexuality in the story of the Prophet Luth. Allah Subhanahu wa Ta'ala said:

It means: "*And (we have also sent) Luth, when he said to his people, "Why do you do such a heinous deed that no one has ever done before you. Indeed, you have vented your orgasm to your fellow man and not to the woman. You are*

¹² Zulfa Ardhini, "Memahami Arti LGBT, Faktor Penyebab, dan Berbagai Istilah LGBT," diakses melalui <https://www.detik.com/edu/detikpedia/d-6669493/memahami-arti-lgbt-faktor-penyebab-dan-berbagai-istilah-lgbt> pada 3 Desember 2024.

¹³ Muhammad Tahta, *An Analysis of Imam Nawawi Al-Batani's Opinion on Punishment for Liwath Perpetrators with Its Relevance to the LGBT Phenomenon in Indonesia* (Thesis, UIN Walisongo Semarang, 2022), p. 204

truly a person who goes beyond boundaries. "And the answer of the people is nothing but saying. Expel them (Luth and her followers) from your land, and they are the ones who consider themselves holy." Then We saved him and his followers, except his wife. He (his wife) was among the people left behind. Moreover, We rained on them with rain. So pay attention to how the person who sins ends. (Q.S.Al-A'raf (7): 80-84).

Thus, in Islamic criminal law, it is very clear that LGBT perpetrators who commit sexual acts are deviant acts. However, the verse does not explain LGBT perpetrators who have physical or biological disabilities where there is a great shock from their soul so that their sexual instincts lead them to commit unlawful acts for this reason, which is a reason that should not always be criminalized against the perpetrator LGBT.

Reasons for the Abolition of Criminal Punishment in Criminal Law and Islamic Criminal Law.

In Criminal Law, several conditions can cause a person to be categorized into the grounds for Criminal Abolition; the conditions are as follows: Justifying Reasons consist of Coercion (If a person commits an act because an emergency forces him, then the act is not against the law), Forced Defense (If a person performs an act of defense for himself or others from physical threats, then the act is not against the law), Because of the Execution of the Order of the Law (If a person performs an act because he carries out a valid order of law, then the act is not against the law), Because of the Execution of a Lawful Order of Office (If a person commits an act because he or she carries out a lawful order of office, then the act is not against the law).¹⁴ Excuse: The inability to Assume Responsibility is a reason for forgiveness that can abolish punishment. If a person cannot be responsible for his actions for reasons such as insanity,

¹⁴ Fitria Lubis, "Analisis Penghapusan Pidana Terhadap Perbuatan Menghilangkan Nyawa Orang Lain Karena Alasan Adanya Daya Paksa (Overmacht)," *Jurnal Retenrum* 1, no. 2 (Februari 2020): 9–17.

then the act is not against the law.¹⁵ In Islamic Criminal Law, the conditions for not being convicted or forgiven can be divided into several aspects: a) the condition of the subject of the law, b) knowing the consequences of the deed¹⁶, c) perfect forgiveness, and d) repentance.

Regarding the elimination of criminal penalties for physical or biological defects, one of the problems of LGBT deviation is that there is a strong impulse from within the soul that cannot be avoided; in other words, because they are forced to be born so that they commit LGBT sexual deviance. In article 48 of the Criminal Code of the Dutch Heritage, namely Coercion or Overmatch, an act that is contrary to the law committed by a person due to an element of coercion or in the content of the article, namely an emergency or coercion that can be the reason for the abolition of the crime, the author provides a view as well known among legal experts, activists, academics, Practitioners, students, and the community, that coercion is a criminal act, which is due to an emergency to the perpetrator which can be categorized as a forced act, and the element is a situation that arises from outside the perpetrator so that because of this coercion he commits an unlawful act which then becomes a reason for the criminal expungement for the perpetrator. So the research reorientation of physical or biological defects to LGBT sexual deviation is that there is a strong impulse from within the soul that cannot be avoided from birth so that with the forced state from within him that makes him commit LGBT sexual deviation, this kind of coercion can be said to be a reason for the abolition of the crime.

¹⁵ Joshua S. V. Tampi, "Implementing the Provisions of the Law as a Reason for Abolishing Criminal Offenses Based on Article 50 of the Criminal Code," *Lex Privatum* VIII Journal, no. 4 (October-December 2020).

¹⁶ Mukhsin Nyak Umar and Zara Zias, "A Study of Islamic Criminal Law and Positive Criminal Law on Criminal Sanctions for Perpetrators of Assisting Murder," *Journal of Legitimacy* VI, no. 1 (January-June 2017).

Can LGBT sexual activity deviations encouraged by physical or biological disabilities be used as a reason for criminal abolition?

Deviations in LGBT sexual activity caused by physical or biological disabilities can be used as a basis for the abolition of criminal acts in the legal context in Indonesia. In this study, the author reiterates Article 48 of the Criminal Code (Coercion or Overmatch), which is a reason for the criminal abolition of sexual deviation of LGBT people by their physical or biological disabilities. The researcher provides a reference to the opinions of experts as reinforcements in this study, namely Meyer-Bahlburg, a sexologist who emphasizes that sexual orientation is not only influenced by hormonal factors but also by brain structure. He points out that differences in brain structure can contribute to the inevitable appearance of sexual urges.¹⁷Tika Bisono, In her view, argues that the psychology of life experiences can influence the development of sexual orientation so that individuals feel compelled to follow the inevitable sexual urges that may have been present from birth.

Nila Djuwita F Moeloek is the Minister of Health of the Republic of Indonesia; during a visit to Padang City, West Sumatra, in February 2016, she argued that LGBT is classified as a psychiatric problem. "In terms of health, LGBT is a psychiatric problem. It is different from psychiatric disorders if the disorders of those who are members of it do not interact".¹⁸ The dominant cause of LGBT psychiatric problems, according to the experts, is genetic factors; based on the results of research, it is said that LGBT has traits that can be inherited from previous family members. In the world of health, a normal man generally has an XY chromosome, while a normal woman has a XX chromosome. However, in various cases,

¹⁷ Kompasiana, "LGBT in Psychological Perspectives," published on January 5, 2023, accessed via <https://www.kompasiana.com> on December 3, 2024.

¹⁸ PKRS RSUD Kota Padang Panjang, "Penyuluhan Tentang Dampak dan Bahaya LGBT dari Perspektif Psikologis," disampaikan pada acara penyuluhan, Jumat, 21 Mei 2021.

it has been found that a man can have XXY chromosomes, which means an excess of one chromosome. As a result, the man has a behavior similar to that of a woman. This case is often believed by the LGBT person that there is something wrong with him, namely that he has been trapped and trapped in the wrong body. Not infrequently, this makes the LGBT person will have genital surgery and completely change his life. Further research for this genetic factor only applies to transgender people because for Gays and Lesbians, their health and physical health is normal, but the problem is in their psyche.

Prof. Dr. Barda Nawawi Arief, an Indonesian legal expert, argues that sexual deviance, including homosexuality, should not always be criminalized. In his view, a more humane and rehabilitative approach should be preferred. He emphasized that the act of criminalizing individuals who experience sexual deviation is not only ineffective but can also cause further stigma and trauma. Barda Nawawi Arief advocates for policy changes that are more inclusive and rehabilitative rather than punishing individuals based on their sexual orientation. He called for a deeper understanding of sexual deviance in Indonesia's social and cultural context, as well as the importance of support for individuals facing stigma and difficulties due to their sexual orientation.¹⁹

M.V.T. mentioned two reasons for the abolition of the penalty, namely: a. The reason cannot be accounted for by someone who lies in that person (intended). The reason for the inability to account for a person who commits a criminal act lies with the person; this matter is regulated in Article 44 of the Criminal Code, and according to this article, a person cannot be punished because his soul is infested by disease or his soul does not grow perfectly. b. The reason for the inability to account for a person

¹⁹ Welly Kendra, "Kriminalisasi Terhadap Perilaku Penyimpangan Seksual," *Journal Unes* 4, no. 1 (April 2020).

who is located outside that person (uitwendig), Articles 48, 49, 50, 51 of the Criminal Code²⁰

A reaction to article 48 of the Criminal Code, namely R. Sugandhi, in his book entitled *Criminal Code*, said that the sentence "due to the influence of coercion" must be interpreted, both the influence of mental coercion and birth, spiritual and physical. The force that cannot be resisted is a greater force, a power that is generally impossible to resist. In an emergency, the person forced to do so chooses which criminal event he or she will commit. For example, there is a ship accident, namely, the ship explodes, so each passenger has to help himself. One lucky passenger was able to float on a wooden board that could only accommodate one person, and another passenger came who also wanted to save him. With no tools to save himself, he grabbed the wooden plank his predecessor had used to float. The previous person then pushed the person to drown and die. Because in an emergency, the person cannot be punished.²¹

The Reconciliation of this study is that LGBT sexual deviation is due to physical or biological defects that cannot be avoided in his soul and are innate from birth, so the forced situation from within his soul makes him commit LGBT sexual deviance, which can be a reason for criminal abolition. The author said that a normal person is disgusted and will not want to commit the act of LGBT deviation. However, unlike LGBT perpetrators, because of physical or biological defects where there is a strong urge or pressure in their soul that cannot be avoided, and they do not want to do the deviant act, but because the forced situation in their soul leads them to commit deviant LGBT acts, the author states that it can be a reason for the abolition of the crime.

²⁰ Teguh Prasetyo, *Hukum Pidana* (Jakarta: Rajawali Pers, 2016), hlm. 127

²¹ Dian Dwi Jayanti, SH, "Daya Paksa dan Pembelaan Terpaksa Sebagai Alasan Penghapusan Pidana," *Hukum Online*, diakses pada www.hukumonline.com.

In Islamic law, several Islamic jurists and psychologists have expressed the opinion that LGBT (Lesbian, Gay, Bisexual, and Transgender) behavior is a form of deviation that can be categorized as a mental illness. The following are some of the opinions of these figures, namely Dr. Phil. Qorrotul'uyun S. Psi, M. Psi., In a study conducted by the Islamic University of Indonesia, Dr. Phil. Qorrotul'uyun discussed that LGBT behavior can be categorized as a psychological disorder. He noted that although, since 1970, LGBT has been removed from the category of mental disorders in some contexts, from an Islamic perspective, this behavior violates Allah's rules and can cause mental instability for the individuals involved.²² Quraish Shihab, a prominent Muslim scholar, stated that individuals with LGBT behavior are "sick" and need to be "treated". He emphasized the importance of stemming the spread of this behavior so that it is not transmitted to others. According to him, LGBT actions are a violation of human nature and must be faced with a loving approach, not hatred.²³

These Islamic law experts point to a consensus that LGBT behavior is not only considered a violation of religious law but can also be seen as a mental health problem that requires attention and treatment. Suggested approaches include religious understanding and psychological support to help individuals return to accepted social and religious norms. In Islamic criminal law, criminal liability can be erased due to causes related to the actions of the perpetrator of the crime and causes related to the perpetrator's circumstances.

As for the abolition of punishment caused by a special condition related to the perpetrator of the *jarimah*, the conditions are as follows: 1.

²² Ikatan Mahasiswa Muslim Psikologi (IMAMUPSI), "Psikologi Islam Menjawab Perilaku LGBT," Universitas Islam Indonesia (UII), disampaikan pada acara seminar, 23 Maret 2018.

²³ Quraish Shihab, "LGBT Harus Dibendung," *Kompas* (Jakarta, 4 Maret 2016), 02:30 WIB.

Because of coercion, 2. Because of madness, 3. Because of drunkenness, 4. Because he is immature, 5. Special defense (self-defense), 6. Treatment, 7. Executor (performing tasks).²⁴

In Islamic law, several conditions can abolish punishment for perpetrators of criminal acts, especially those related to physical or biological disabilities. Here is an explanation of this: 1) Mental Illness: If a person has a mental illness that interferes with his ability to think or act rationally, then he cannot be punished either.²⁵ 2) Maqasid al-Shariah: This concept emphasizes the higher purpose of sharia, including protecting the soul, intellect, and humanity. Islamic criminal law seeks to protect individuals who cannot understand the consequences of their actions. Therefore, punishment for those with mental disabilities is usually directed towards rehabilitation rather than punitive.²⁶

Islamic law pays special attention to the physical and mental condition of the perpetrators of criminal acts. Mental and physical or psychiatric disabilities can be a valid reason to abolish punishment, reflecting the principles of justice and humanity in the Islamic legal system. This suggests that criminal liability is only imposed on those who consciously understand and choose their actions.²⁷

CONCLUSION

There is a correlation between physical or biological disabilities and deviant sexual activity in LGBT people. Then, deviations in the sexual

²⁴ Abel Salam Arief, *Diktat Kuliah Fiqh Jinayah* (Yogyakarta: Ideal, 1987), hlm. 49-51

²⁵ Elfa Murdiana, "Pertanggungjawaban Pidana dalam Perspektif Hukum Islam dan Relevansinya terhadap Pembaharuan Hukum Pidana Indonesia," *Jurnal Al-Mawārid* (STAIN Jurai Siwo Metro, Lampung), vol. XII, no. 1 (Feb-August 2012).

²⁶ Mita Anggraini, "Pertanggungjawaban Pidana Penyandang Disabilitas Mental dalam Tindak Pidana Pembunuhan: Perspektif Hukum Pidana Islam," *Skripsi* (Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2024 M/1445 H).

²⁷ Elfa Murdiana, "PeRtanggungjawaban Pidana Dalam Prespektif Hukum Islam Dan Relevansinya Terhadap Pembaharuan Hukum Pidana Indonesia" *Jurnal (STAIN Jurai Siwo Metro, Lampung) AL-MAWARID, VOL. XII, NO 1, FEB-AGUST 2012.*

activities of LGBT people due to physical or biological disabilities must be seen as a reason for the abolition of punishment due to coercion, as specified in Article 48 of the Criminal Code. It must be seen as coercion because the deviation of LGBT sexual activities is carried out by impulses from within LGBT people that they cannot avoid, as well as the unavailability of an act due to factors from outside the perpetrator of the crime. The meaning of coercion interpreted as coming from outside the creator must be reprioritized so that it also includes coercion from within the creator.

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