

Is LGBT Social Media Activity Breaking ITE Law in Indonesia?

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Abstract: LGBT social media activity is a new anxiety in Indonesia. The law on LGBT and its activity does not yet exist, but LGBT people do live in the community. Most people think LGBT is a sin and others consider it a human right. The dissemination of LGBT activity is done through social media. Two problem statements: Does LGBT social media activity violate the ITE Law and what solution can be used to overcome LGBT social media activity? Legal sociology is used as an approach and qualitative as the method. Sources of research : ITE Law, Fatwa MUI, Social Media relating to LGBT and news media. The results : LGBT social media activity is not breaking the articles of ITE Law but can be overcome by the MUI Fatwa number 57 of 2014 as a solution. The discussion was divided into the application of the Fatwa from rehabilitation to the death penalty. Conclusions, LGBT social media activity in cyber space are things that are similar to the real life, can be punished if the MUI fatwa number 57 of 2014 is implemented. Impact for the government to immediately issue a law on LGBT.

1 INTRODUCTION

LGBT and its social media activities are anxieties in Indonesia. Anxiety is divided into two, first, when a behavior is claimed as a sin or a violation or crime cannot be punished because there is no written regulation from the state, LGBT in Indonesia is one that is claimed to be a violation or a crime. Second, when the written regulations exist, violations or crimes are still violated, such as corruption crimes (Darmoko, 2018) either carried out alone or in congregation (Riana, 2019).

LGBT Indonesia's social media activities are crowded in cyberspace. Social media accounts like Facebook, Twitter and Instagram provide freedom for LGBT Indonesia to communicate and "recruit" LGBT members in their activities. Facebook, Twitter and Instagram are social media that provide access to significant LGBT developments. Through these three social media, LGBT people socialize and communicate between old members and new members. I do a search on Facebook, if the word "LGBT" is written in the choices of people, names appear that exist with LGBT endings or prefixes from various countries. And the words 'LGBT' are written in groups' choices so that dozens of LGBT groups emerge. In Twitter and Instagram, the search term "LGBT" is also contained in dozens of entries (Darmoko, 2018). Like an iceberg, LGBT social media activities continue to

show developments that need attention from all parties involved, especially the government and scholars. This is coupled with the regulations issued by Brunei and Taiwan that are in opposition. Brunei executes LGBT people by stoning (Saputra, 2019a) and Taiwan legalize same- sex marriage (Saputra, 2019b). I am convinced by the facts of the information that I have obtained that social media plays an important role in the formation of a statutory regulation.

In Indonesia, the state has established an ITE Law to regulate cyberspace but has not yet determined the status of LGBT and its social media activities. The two problem statements that I look at need to be studied based on the absence of regulations or the vacuum of legislation: first, does the LGBT social media activity violate the ITE Law and secondly, what solution can be used to overcome LGBT social media activity?

The research approach is carried out with a legal sociology approach with the application of directly related theories. The choice of legal sociology is based on two things, first, how strong the dominance and influence that the law has on society or second, vice versa. Sociology has elements: individuals, groups, society and has three key words: dominance, influence and dependence. The legal sociology approach is used in an effort to find answers to the research problem formulation. The Law has three key words: regulating, binding and sanctioning those who violate

(Darmoko, 2017). The law referred to in this study can be interpreted as a written regulation or as people who make or implement regulations (Darmoko, 2019).

I use the Social Definition Theory in this study. This theory reveals that individual factors are more dominant and compelling in behavior and actions towards Social Institutions, Social Norms, Social Classes. When applied, LGBT dominates Social Institutions, Social Norms and Social Classes as evidenced by the freedom to express their identities on social media and programs they carry out in the community, such as the Transvestite contest (Darmoko, 2017).

2 METHOD AND MATERIALS

I use qualitative methods in this study based on the flexibility of this method: interpretations that can change at any time according to the data obtained. Uncertainty is the advantage of this method, so that every time can change in its conclusions. And of course, the interpretation of the materials that I have obtained today is based on the legal sociology approach as well as the locus and tempos that I limit to research sources, so that it certainly can be different from other researchers whose interpretations differ.

Research locus is LGBT Indonesia with the social media activities they do. Tempus research is since 2014 until this paper was written. The 2014 election was based on the issuance of the MUI Fatwa on LGBT. It should be noted that the fatwa does not bind, regulate and impose sanctions such as the provisions of the Act which were formalized by the state.

I obtained research material or sources from two types of sources, which usually consisted of four sources. I omitted interviews and observations as sources of research on the grounds of limited time and funds that I had. I obtained research material from documents and news media and social media.

The source document consists of two documents: ITE Law and MUI Fatwa Number 57 Year 2014 which are directly related to this research. As for news media and social media sources, I searched through the internet by entering keywords related to LGBT. The document of the ITE Law and the Fatwa of the MUI are the main sources of research because the search for sanctions or violations of LGBT or not is contained in these two documents.

The articles of Law Number 19 Year 2016 concerning ITE which are directly related to criminal sanctions are: (1) Violating morality in article 27 paragraph 1 is punished with article 45 paragraph 1

= maximum imprisonment of six years and a maximum fine of one billion rupiah, (2) Gambling in 27 verses 2 is punished with article 45 paragraph 2 = imprisonment for a maximum of six years and a maximum fine of one billion rupiah, (3) humiliation or defamation in article 27 paragraph 3 punishable by article 45 paragraph 3 = imprisonment of at most four year and a maximum fine of seven hundred fifty million rupiahs, (4) extortion or threats in article 27 paragraph 4 punishable by article 45 paragraph 4 = maximum imprisonment of six years and a maximum fine of one billion rupiah, (5) dissemination of false news and misleading results in consumer loss in article 28 paragraph 1 punished by article 45A paragraph 1 = imprisonment of a maximum of six years and a maximum fine of one billion rupiah, (6) dissemination of information to cause hatred or permu suhan SARA in article 28 paragraph 2 was punished with article 45A paragraph 2 = imprisonment for a maximum of six years and a maximum fine of one billion rupiahs and (7) threats of violence or scare intended personally in article 29 punished with article 45B = the most imprisonment four years and a maximum fine of seven hundred fifty million rupiah (Presiden RI. Undang-Undang Nomor 19 Tahun 2016 tentang ITE, 2016).

MUI Fatwa Number 57 of 2014 concerning Lesbi, Gay, Sodomy and Imbination consists of several parts: First, General Provisions, in this fatwa what is meant by: (1) Homosex is a person's sexual activity carried out against someone who has the same sex, both men and women, (2) Lesbi is the term for sexual activity carried out between women and women, (3) Gay is a term for sexual activity carried out between men and men, (4) Sodomy is a term for sexual activity against syar'i law by intercourse through anus or known as liwath, (5) molestation is a term for sexual activity carried out against someone who does not have a bond between husband and wife such as fingering, squeezing, tinkering, and other activities, both done to other types and same-sex, to adults and children, who are not justified syar'I, (6) Hadd is a type of punishment for criminal acts whose forms and levels have been determined by Nash, (7) Ta'zir is a type of punishment for a crime whose form and level are handed over to Ulil Amri (the party authorized to determine the sentence).

Second, the legal provisions are: (1) Sexual relations are only permitted for someone who has a husband and wife relationship, namely a marriage and male partner who is legally legitimate, (2) Sexual orientation towards same sex is a disorder that must be cured and aberration (3) Homosexuality, both lesbian and gay is illegal, and is a form of crime (jarimah), (4) Homosexuals, both lesbian and gay, including bisex-

ual, are subject to hadd punishment and / or ta'zir by the authorities, (5) Sodomy is haraam and is a cruel act that brings great sins (fahisyah), (6) The sodomy perpetrator is subject to ta'zir punishment which is a maximum sentence of death, (7) Homosexual activities other than by sodomy and the culprit is subject to ta'zir punishment, (8) sexual abuse activities, namely the release of sexual nasfu such as fingering, squeezing, and other activities without a proper marriage bond h, what is done by someone, whether done to another type or same sex, to adults and children is illegitimate, (9) The perpetrators of revocation as referred to in number 8 are subject to ta'zir punishment, (10) In the case of victims of crime (jarimah) homosexuality, sodomy, and molestation are children, the perpetrators are subject to punishment until the death sentence, (11) Legalizing same-sex sexual activity and other deviant sexual orientations is haram.

Third, Recommendations for: (1) DPR-RI and the Government are asked to immediately compile legislation that regulates: (a) not legalizing the existence of homosexual behavior, both gay and other, as well as other communities that have a deviant sexual orientation; (b) severe penalties for sodomy, lesbi, gay, and other deviant sexual activities that can function as *zawajir* and *mawani* (making the perpetrator deterrent and those who have not yet done so are afraid to do so); (c) include deviant sexual activity as a public offense and constitute a crime that defiles human dignity; (d) Preventing the development of deviant sexual activities in the community through socialization and rehabilitation, (2) The government must prevent the widespread deviation of sexual orientation in the community by conducting rehabilitation services for perpetrators and accompanied by strict and strict law enforcement and (3) Government may not acknowledge same-sex marriage and (4) the Government and the community not to allow the existence of homosexual, sodomy, sexual abuse and other deviant sexual orientations to live and grow in the community (Fatwa Majelis Ulama Indonesia. Lesbian, Gay, Sodomi, Dan Pencabulan, 2014).

3 RESULTS

There are two research results. First, legally formal, LGBT People and their social media activities cannot be punished by criminal sanctions through the application of the ITE Law, because not even one article from article 45 to article 45B can be applied to them. The moral article in article 27 has diverse interpretations as well as the community's pro-contra and law on LGBT status. Second, LGBT can be given so-

cial religious sanctions based on the 2014 MUI fatwa number 57. Virtual analogy with real nature with strong evidence can be applied to LGBT cases and social media activities, because it is the same perpetrator.

4 DISCUSSIONS

In this discussion there were two conflicting opinions, one pro and the other contra, especially against the application of penalties for LGBT and its social media activities (Wallace, 2019). Pro LGBT states, during the absence of the Law on LGBT, there is also no criminal sanction for LGBT. They use the principle of legality (no penalty as long as there are no written rules) as a basis for justice and legal transparency in Indonesia. The principle of legality is an initial requirement in determining law and justice in society (Hasyim, 2019). LGBT rights to life are human rights. If you can choose, the views of the pros want that every LGBT has the right to get rehabilitation in overcoming LGBT problems (Fagan, 2019).

For those who are contra, LGBT is a sin and crime that was set in the course of human history and religion which is based on the arguments of God and Prophethood (A.L., 2018). Sin and crime in religious beliefs must be given sanctions, ranging from rehabilitation to the death penalty (Byrnes, 2019), as stated by the MUI Institution. But this fatwa cannot be applied nationally because the definition of fatwa is the answer to the question. This fatwa has no power to regulate, bind and sanction. Fatwa is only a liberator of sins for Indonesian clerics, because the law as a written regulation or law maker / executor (the President and parliament) alone can change the fatwa into Law.

CONCLUSIONS

I conclude two things, first, LGBT people and their social media activities do not violate the ITE Law even though in the pros and cons of LGBT status it becomes a gray matter and this is troubling in terms of humanity, both for LGBT itself and the community. Second, the handling of LGBT and all its activities by the government, as an impact, can be done by making the MUI Fatwa number 57 of 2014 as a Statute or Law by moderating the application of appropriate and gradual penalties.

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