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## Urgency of Regulating Same-Sex Lewd Acts by Adults in Indonesian Criminal Law

Article	Abstract
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## INTRODUCTION

Crimes against decency are illegal in Indonesia. The offense of decency is regulated in CHAPTER XIV of Book II of the Criminal Code (KUHP)<sup>1</sup>. This provision was made to protect the public from various forms of immoral acts, such as rape, adultery, obscene acts, and sexual harassment. One phenomenon that has emerged in recent years is the increasingly widespread practice of obscene acts committed by same-sex couples (homosexuals). It is not uncommon for same-sex couples to live together openly as husband and wife, even demanding equal rights like heterosexual couples in marriage<sup>2</sup>. In Indonesia itself, sexual behavior is only regulated in marriage, which is a physical and mental bond that aims to form a family based on the Almighty God<sup>3</sup>. This conception is expressly regulated in Article 1 of Law No. 1/1974 on Marriage, which states “The inward and outward bond between a man and a woman with the aim of forming a happy and lasting household based on God Almighty”. Therefore, sexual behavior should not be done outside of this concession, because indirectly same-sex marriage is against Indonesian law.

On the other hand, Indonesia is a country that upholds divine values, as explicitly reflected in the first principle of Pancasila, namely the One True God. This value reflects the strong religious element in the life of the nation<sup>4</sup>. Therefore, behaviors such as homosexuality and transgenderism are often seen as contrary to the teachings of the religions practiced in Indonesia. Since religion is an important part of the social norms that live in society, it is not surprising that there is a push from the community for the state to impose criminal sanctions on actions that are considered inconsistent with these religious values.

Regarding this issue, Indonesian national law regulates it in Article 292 of the Criminal Code which stipulates that “An adult who commits obscene acts with another person of the same sex whom he knows or reasonably should presume to be a minor shall be punished by a maximum imprisonment of five years”. The article reflects the limitations of the law in reaching same-sex obscene practices committed by two adults voluntarily. The concept of

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<sup>1</sup> Asma U L Husna et al., “Tinjauan Yuridis Terhadap Tindak Pidana Perbuatan Cabul Terhadap Anak Oleh Sesama Jenis Kelamin,” 2023.

<sup>2</sup> Ceceng Kholilulloh, “Studi Kritik Sanad Hadis Fatwa MUI Tentang Lesbian, Gay, Sodomi, Dan Pencabulan,” *Angewandte Chemie International Edition*, 6(11), 951–952., 2018, 10–27.

<sup>3</sup> Mira Fajri, “LGBT Dalam Perspektif Hukum Di Indonesia,” *Republika*, 2016, <https://analisis.republika.co.id/berita/o3a5s0388/lgbt-dalam-perspektif-hukum-di-indonesia>.

<sup>4</sup> Sigit Eko Prabowo, “Urgensi Kebijakan Kriminalisasi Terhadap Perbuatan Homoseks Dan Transgender Sebagai Upaya Pembaharuan Hukum Pidana Indonesia,” 2023.

Article 292 of the Criminal Code can be understood that criminal law does not regulate criminal sanctions for obscene acts committed by adults of the same sex<sup>5</sup>.

From the perspective of criminal law theory, indecent acts fall under the category of crimes against morality (*crimen contra mores*). According to the theory of legal protection (*rechtsbescherming*), criminal law must protect the most vulnerable legal interests, in this case the sexual integrity of individuals (Muladi & Arief, 1992). Referring to Article 292 of the Criminal Code, this shows that there is a legal vacuum related to the regulation of obscene acts that occur against adults, especially in the context of same-sex relationships<sup>6</sup>. This theory can support the reconstruction of rules against adult obscene acts, which is very important to control and take action against behavior that is detrimental to society and moral norms<sup>7</sup>. However, Article 292 of the Criminal Code only regulates indecent acts between persons of the same sex involving minors, leaving a legal vacuum regarding the regulation of indecent acts between adults, particularly in the context of same-sex relationships. This gap is particularly important to address because sexual violence and abuse do not only occur in heterosexual relationships but also in same-sex relationships involving adults.

Research by I Made Suryantara Widi (2022) highlights the urgency of legal protection against sexual violence experienced by men, which has long been overlooked and inadequately protected by the law<sup>8</sup>. Riska Erdani (2018) asserts that criminal law regulations in Indonesia are still inadequate in accommodating same-sex relationships between adults, especially men<sup>9</sup>. Meanwhile, Dendy Valerian Wibowo (2023) emphasizes the importance of criminalizing perpetrators of same-sex rape between adults, which has not been explicitly regulated in the Criminal Code<sup>10</sup>. This legal vacuum not only creates legal uncertainty but also opens opportunities for perpetrators of violence to evade legal consequences. Therefore,

<sup>5</sup> Wahyu Utami and Afriyadi Wijaya, "Perbuatan Cabul Sesama Pria Dewasa (Homoseksual) Dalam Perspektif Kebijakan Hukum Pidana Nasional," *Sutan Adam: Jurnal Hukum Dan Sosial* 1, no. 2 (2023): 270–79, <http://id.m.wikipedia>.

<sup>6</sup> Kartika Fithri Suryani, Beby. Arie, "Urgensi Pengaturan Hukum Perbuatan Homoseksual Didalam Peraturan Perundang-Undangan Pidana Di Indonesia," 2018, 1–10.

<sup>7</sup> Riswan Erfa, "Kriminalisasi Perbuatan Cabul Yang Dilakukan Oleh Pasangan Sesama Jenis Kelamin (Homoseksual)," *Arena Hukum* 8, no. 2 (2015): 236–57, <https://doi.org/10.21776/ub.arenahukum.2015.00802.6>.

<sup>8</sup> I Made Suryantara Widi, "Urgensi Perlindungan Hukum Kekekrasan Seksual Terhadap Laki-Laki" 11, no. 06 (2022).

<sup>9</sup> Riska Erdani, "PERSPEKTIF HUKUM PIDANA TERHADAP TINDAK PIDANA PERBUATAN CABUL SESAMA JENIS YANG DILAKUKAN OLEH ORANG DEWASA" 3, no. 2 (2018): 91–102.

<sup>10</sup> D V Wibowo and F Simangunsong, "Urgensi Pengaturan Kriminalisasi Bagi Pelaku Pemerkosaan Sesama Jenis Terhadap Orang Dewasa," *Innovative: Journal Of Social ...* 3 (2023): 2430–38, <http://j-innovative.org/index.php/Innovative/article/view/5923%0Ahttp://j-innovative.org/index.php/Innovative/article/download/5923/4577>.

reconstructing criminal law regulations to be more inclusive and comprehensive is crucial to controlling and addressing harmful behaviors toward society and upholding moral values<sup>11</sup>.

Changes in social dynamics and values in Indonesian society have also influenced the emergence of various new phenomena in the legal field, especially those related to criminal acts of indecency. Globalization, technological developments, and access to information have accelerated the transformation in behavioral patterns, including in sexual orientation and behavior. The phenomenon of same-sex couples living together openly and demanding recognition of equal rights like heterosexual couples is one of the issues that is increasingly emerging in the public<sup>12</sup>. New challenges have emerged for the Indonesian criminal law system, which has so far been rooted in strong religious, social, and cultural values. Therefore, it is important to assess and change existing legal arrangements in order to create a more inclusive and just legal framework.

In this case, the Indonesian criminal law system needs to be updated in a responsive manner to rapid social changes, including in terms of interpreting legal norms related to issues of morality and individual freedom. Criminal law updates do not only include regulatory changes, but also a more progressive and inclusive approach so that the law remains relevant and effective in responding to new phenomena such as the existence of same-sex couples. This is important so that the legal system is able to maintain a balance between protecting individual rights and social order, as well as meeting the demands of society for more open and fair justice. Thus, criminal law reform must be directed towards creating a more inclusive and just legal framework, which is able to answer the challenges of social dynamics and values that continue to develop in Indonesia.<sup>13</sup>

The main issues that can be formulated are, first, whether same-sex sexual acts committed by adults need to be regulated in Indonesian criminal law as a form of legal protection and enforcement of moral values in society. Second, how to reconstruct or reform the ideal and relevant criminal law provisions regarding same-sex sexual acts among adults,

<sup>11</sup> Itaborahy and Bruce-Jones, "State-Sponsored Homophobia- A World Survey of Laws Criminalising Consenting Adults," no. May (2011): 1–4, [https://www.ecoi.net/file\\_upload/90\\_1340784424\\_2011-05-ilga-state-sponsored-homophobia-2011-0.pdf](https://www.ecoi.net/file_upload/90_1340784424_2011-05-ilga-state-sponsored-homophobia-2011-0.pdf).

<sup>12</sup> Merin Y, *Equality for Same-Sex Couples: The Legal Recognition of Gay Partnerships in Europe and the United States*, 2002, [https://books.google.co.id/books?id=10rBoQPazt0C&lpg=PR9&ots=07Nu69RTEH&dq=The phenomenon of same-sex couples living together openly and demanding recognition of equal rights like heterosexual couples is one of the issues that is increasingly emerging in the public.&lr&hl=id&pg=PR9#v=onepage&q&f=false](https://books.google.co.id/books?id=10rBoQPazt0C&lpg=PR9&ots=07Nu69RTEH&dq=The+phenomenon+of+same-sex+couples+living+together+openly+and+demanding+recognition+of+equal+rights+like+heterosexual+couples+is+one+of+the+issues+that+is+increasingly+emerging+in+the+public.&lr&hl=id&pg=PR9#v=onepage&q&f=false).

<sup>13</sup> Anthony Amatrudo and Leslie William Blake, *Human Rights and the Criminal Justice System, Human Rights and the Criminal Justice System*, 2014, <https://doi.org/10.4324/9780203797228>.

taking into account aspects of legal certainty, protection of rights, and the social and cultural values prevailing in Indonesia. The legal approach taken must be able to balance protection for victims of violence and sexual abuse with respect for human rights and individual privacy, particularly in the context of diverse sexual orientations. Comparative studies show that some countries have adopted an inclusive, human rights-based approach to regulating same-sex relationships, while others maintain strict regulations based on traditional moral norms<sup>14</sup>. In the Indonesian context, legal reform must take into account the prevailing social and cultural sensitivities and religious norms so that the resulting regulations are widely accepted and effective in upholding justice<sup>15</sup>.

The proposed reform of Indonesian criminal law goes beyond simply removing the age limit in Article 292 of the Criminal Code, but also adopts legal norms that are more inclusive, sensitive, and relevant to the development of modern society. This is important so that criminal law can protect individuals who are vulnerable to violence and sexual abuse without neglecting human rights and the ever-evolving socio-cultural dynamics. This reform must also anticipate the potential for abuse of the law that could target the LGBT community, as criticized in the new Criminal Code Bill, which criminalizes sexual relations outside of marriage and is feared to be used to suppress individual privacy and freedom. Therefore, new regulations must integrate the principles of legal certainty, protection of human rights, and respect for sexual orientation diversity, so that criminal law can function fairly, responsively, and inclusively toward the needs of Indonesia's pluralistic society<sup>16</sup>.

## RESEARCH METHODS

The research method used in this research is the normative legal research method (normative juridical) which focuses on the study of legislation, legal doctrine, and legal literature relevant to the regulation of same-sex obscene acts by adults in Indonesian criminal law. The approaches used include a statutory approach to examine and analyze applicable legal provisions such as the Criminal Code (KUHP) and other relevant regulations, as well as a conceptual approach to examine the theories and principles of criminal law underlying the regulation of indecent acts. The legal materials used in this research include primary legal

<sup>14</sup> Nevenka Đurić, Sunčana Roksandić Vidlička, and Gleb Bogush, "State-Sponsored Homophobia 2019," *Russian Law Journal* 6, no. 1 (2019): 28–57, [https://www.academia.edu/40452231/State\\_Sponsored\\_Homophobia\\_2019](https://www.academia.edu/40452231/State_Sponsored_Homophobia_2019).

<sup>15</sup> Nursyahbani Katjasungkana and Saskia E Wieringa, "Mapping of Indonesia's National Laws and Regional Regulations That Violate Human Rights of Women and LGBTIQ People CREEPING CRIMINALISATION," 2016, [www.facebook.com/outrightintl](http://www.facebook.com/outrightintl).

<sup>16</sup> Aengus Carroll and Lucas Ramón Mendos, "State-Sponsorder Homophobia: A World Survey of Sexual Orientation Laws," no. May (2017): 196.

materials such as the old Criminal Code, the new Criminal Code (Law No. 1 of 2023), the 1945 Constitution of the Republic of Indonesia, as well as several relevant court decisions; secondary legal materials in the form of legal literature, scientific journal articles, textbooks, and previous research results that discuss the concept of indecency offenses, legal protection of victims, and criminal policy; while tertiary legal materials are used as support to clarify the meanings of terms or concepts used in the analysis. This research aims to deeply understand the existing legal rules and identify lacunae or ambiguities in these arrangements.

## ANALYSIS AND DISCUSSION

The urgency of regulating same-sex indecent acts by adults in Indonesian criminal law is very important to fill the legal vacuum that has existed for some time. Currently, the Indonesian Criminal Code (KUHP) only regulates indecent acts involving victims under the age of consent, while same-sex indecent acts involving adults are not clearly regulated<sup>17</sup>. This creates legal uncertainty and reduces protection for adult victims who experience same-sex indecent acts. In addition, strict regulation is needed because the act is religiously prohibited, considered detrimental to society, contrary to the values that live in society, and contrary to the precepts of Pancasila<sup>18</sup>. This legal vacuum creates legal uncertainty and has the potential to disrupt social order and norms.

The urgency of implementing a criminalization policy against acts of same-sex sexual relations cannot be separated from various considerations or reasons contained therein, both philosophically and legally. In the philosophical consideration of Pancasila as the philosophical basis of the nation and state in Indonesia, philosophically if associated with acts of same-sex sexual relations, it will conflict with the values of Pancasila from the first principle "Belief in the One Almighty God" and the second value of Pancasila "Just and Civilized Humanity". While sociologically when viewed in Indonesian society, acts of same-sex relations are acts that are contrary to the cultural values and culture of Indonesian society which has high moral standards of morality, these moral standards of morality are different from those used by western countries, especially countries that adhere to liberalism which consider same-sex sexual relations to be common or taboo to do.

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<sup>17</sup> Ni Luh Rai Puspawati and I Ketut Rai Setiabudhi, "Criminalization of Obtained Actions Performed By Same-General Couples (Homosexual) in the Perspective of Criminal Law Reform," *SIBATIK JOURNAL: Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 2, no. 3 (2023): 819–28, <https://doi.org/10.54443/sibatik.v2i3.666>.

<sup>18</sup> M D Pane, "Legal Regulations for Lesbian, Gay, Bisexual and Transgender (LGBT) in the Perspective of Positive Law Reform in Indonesia," ... *on Business, Economics, Social Sciences, and ...*, no. 112 (2020), <https://proceedings.unikom.ac.id/index.php/icobest/article/view/252>.

The phenomenon of same-sex sexual relations among adults is increasingly widespread in Indonesia, but the law has not yet regulated it clearly. Some people consider that same-sex sexual acts and same-sex behavior deviate from religious, moral, and natural values, so that there is a push to criminalize same-sex sexual relations, including those involving adults. The formation of laws and regulations basically has the function of maintaining and protecting the human rights of its citizens, resolving problems or disputes fairly, and regulating the running of the country's government. Therefore, the inadequate reach of Article 292 of the Criminal Code in the context of same-sex molestation by adults is contrary to the nature and function of the law itself.

This regulation is very important to ensure legal certainty and equal protection for adult victims, both male and female, who currently do not have adequate protection. Clear legal rules are needed so that Law enforcement can be effective and prevent people from taking the law into their own hands. In addition, this regulation is also important to preserve the social, cultural, and religious values that apply in Indonesia so that the regulations made can be accepted by the wider community and are in accordance with local wisdom.<sup>19</sup>

Indonesian society generally also rejects obscene acts committed by the same sex. These regulations are also important so that law enforcement can be effective and does not lead to multiple interpretations in judicial practice. In an international context, several countries have explicitly regulated criminal acts of same-sex indecency between adults, so Indonesia can use this as a reference in formulating more comprehensive regulations.

Learning from the experiences of other countries that have comprehensively regulated same-sex indecency can be a crucial guide in designing criminal law policies in Indonesia. Countries such as Brunei Darussalam, Russia, and Nigeria have strict laws, although with varying approaches according to their respective social and cultural contexts<sup>20</sup>. Strong legal regulations regarding same-sex indecency can help reduce stigma and discrimination against people involved in relationships. With clear regulations, it is hoped that society will begin to realize that indecency not only harms the individuals involved, but can also have a negative impact on the existing social structure. Fair and transparent law enforcement will create a safer atmosphere for every individual, regardless of their sexual orientation. This is in line with the principles of human rights which emphasize the protection of all individuals without exception.

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<sup>19</sup> Diding Rahmat, "“ LEGAL PROTECTION AGAINST VICTIMS OF SEXUAL HARASSMENT UNDER LAW NO . 12 OF 2022 CONCERNING CRIMINAL ACTIONS OF SEXUAL VIOLENCE ” 2, no. 1 (2024): 41–53.

<sup>20</sup> N Suryani, "Cultural and Religious Perspectives on Same-Sex Relations in Indonesia," *Journal of Southeast Asian Studies* 51, no. 3 (2020): 456–72.

According to Herek (2009) in his research showed that stigma against individuals with minority sexual orientations can be reduced through education and better understanding of these issues<sup>21</sup>. This regulation can also open up a more effective dialogue space between the government, society, and non-governmental organizations in addressing issues related to sexual orientation and individual rights. Often, doubts in the law can cause fear for victims to report, so that they lose the protection they should receive. Thus, clear and comprehensive regulations in Indonesian criminal law are essential to protect the rights of these individuals and ensure that they can live without fear of stigma or violence. By adopting a more inclusive approach, the law can serve as a tool to promote equality and justice for all individuals, regardless of their sexual orientation.

There is a clear absence in Indonesian national criminal law regarding consensual same-sex indecent acts between adults, creating a normative gap because Article 292 of the KUHP solely addresses indecent acts involving minors, and the new morality provisions under Articles 418/421 only criminalize “cabul” in public, with force, or when published—a framework that fails to cover private, consensual same-sex behavior between adults argue for the introduction of a new criminal provision—by expanding Articles 292 and 420—specifically to criminalize “obscene same-sex intimate relationships” among consenting adults, recommending penalties of up to seven years’ imprisonment or a Category V fine<sup>22</sup>. Advocates see this as necessary to fill the legal void and align statutory law with prevailing cultural and religious norms, whereas critics warn it risks institutionalizing discrimination and infringing on adult privacy rights.

### **1. Same-sex indecent acts committed by adults need to be regulated in Indonesian criminal law**

Indonesia is a Muslim-majority country with a democratic system of government, but it has never enacted a specific criminal code prohibiting homosexuality nationwide. After independence from Dutch colonization in 1945, the criminal law system used was a colonial legacy, the *Wetboek van Strafrecht voor Nederlandsch-Indië*, which was adopted with only minor adjustments from the original version<sup>23</sup>. However, Same-sex obscene acts committed by adults are currently not explicitly regulated in the Indonesian Criminal Code (KUHP). The

<sup>21</sup> Gregory M Herek, *Sexual Stigma and Sexual Prejudice in the United States: A Conceptual Framework*, *Nebraska Symposium on Motivation*, vol. 54, 2009, <https://doi.org/10.1007/978-0-387-09556-1>.

<sup>22</sup> Hendri Yulius Wijaya, “Privacy, Porn, and Gay Sex Parties: The Carceral Governance of Homosexuality in Indonesia,” *Laws* 10, no. 4 (2021), <https://doi.org/10.3390/laws10040087>.

<sup>23</sup> Wijaya.



closest provision is Article 292 of the Criminal Code which states: “An adult who commits obscene acts with another person of the same sex, whom he knows or reasonably suspects to be underage, shall be punished with a maximum imprisonment of five years.”

Normatively, the substance of Article 292 of the Criminal Code only regulates same-sex obscene acts if the victim is a minor, so that if the act is committed voluntarily by two adults, both men and women, no criminal sanctions can be imposed<sup>24</sup>. Even in the new National Criminal Code (Law No. 1 of 2023), the provisions regarding criminal acts of decency do not explicitly regulate same-sex obscene acts committed by adults, so that the reconstruction of legal norms becomes an urgent legislative need. This creates a legal vacuum that results in the absence of legal protection for adult victims in cases of same-sex obscene acts<sup>25</sup>.

Acts of same-sex indecency committed by adults need to be regulated in Indonesian criminal law because such actions go against the social, moral, and cultural values of Indonesia, which are grounded in religion and Pancasila. Currently, the Indonesian criminal code, especially Articles 284, 286, and 292 of the Criminal Code, does not explicitly address punishment for consensual same-sex acts between adults, resulting in a legal gap that needs to be filled to align with societal values and ensure justice. Regulating these acts is important to provide legal certainty, protect public morals, and respect cultural and religious norms, while also considering human rights within the framework of national law<sup>26</sup>.

Based on the analysis from the document, acts of same-sex indecency committed by adults need to be regulated in Indonesian criminal law because such actions go against the social, moral, and cultural values of Indonesia, which are grounded in religion and Pancasila. Currently, the Indonesian criminal code, especially Articles 284, 286, and 292 of the Criminal Code, does not explicitly address punishment for consensual same-sex acts between adults, resulting in a legal gap that needs to be filled to align with societal values and ensure justice. Regulating these acts is important to provide legal certainty, protect public morals, and respect cultural and religious norms, while also considering human rights within the framework of national law

<sup>24</sup> Kuku Prima, Usman Usman, and Herry Liyus, “Pengaturan Homoseksual Dalam Hukum Pidana Indonesia,” *PAMPAS: Journal of Criminal Law* 1, no. 3 (2021): 92–105, <https://doi.org/10.22437/pampas.v1i3.11099>.

<sup>25</sup> Elvira Agustina and Taun, “Batas Tindakan Homoseksual Terhadap Hukum Pidana Dan Hak Asasi Manusia Di Indonesia,” *Jurnal Ilmiah Wahana Pendidikan* 9, no. 21 (2023): 256–69, <https://doi.org/10.5281/zenodo.10076548>.

<sup>26</sup> Anita Yuliastini, Budimansyah Budimansyah, and Hj. Syarifah Arabiyah, “The Legal Politics of Regulation for Lesbian, Lesbian, Gays, Bisexuals and Transgende (LGBT) in Indonesian Law (Discourse Between Punishment and Regulation),” *International Journal of Multi Discipline Science (IJ-MDS)* 1, no. 2 (2018): 137, <https://doi.org/10.26737/ij-mds.v1i1.433>.

Although Article 418 of the New Criminal Code has removed the distinction between sexual orientation in the context of obscene acts by extending the legal object to victims of ‘different or the same sex’, this provision only regulates if the act is committed by force, in public, or publicized<sup>27</sup>. Thus, the practice of same-sex obscene acts committed voluntarily and privately by adults is still not explicitly covered by the provision. This shows that the norm vacuum that previously existed in Article 292 of the old Criminal Code continues in the new National Criminal Code, so the urgency of legal reconstruction remains relevant.

This legal vacuum creates legal uncertainty and has the potential to disrupt social order and prevailing norms in society. The phenomenon of same-sex sexual relations among adults is increasingly widespread in Indonesia, but the law has not yet regulated it clearly. Some people consider that the behavior of same-sex sexual abuse deviates from religious, moral, and natural values, so that there is a demand to criminalize same-sex sexual relations. including that involving adults. The formation of legislation basically has a function to safeguard and protect the rights of its citizens, resolve problems or disputes fairly and regulate the course of state government<sup>28</sup>. Therefore, the inadequate reach of Article 292 of the Criminal Code in the context of same-sex obscenity by adults is contrary to the nature and function of the law itself.

Unlike Islamic law, the prohibition of homosexuality has been strictly regulated since the time of Prophet Lot, when this deviant behavior first appeared among his people<sup>29</sup>. In Islamic law, homosexuality is seen as an act that goes against human nature and is included in the category of major sins. In Indonesia, the application of Islamic law against homosexual offenders is officially only applied in Aceh Province which is regulated by the Aceh Special Region Government. Some of the laws and regulations that serve as the legal basis include: Law No. 44/1999 on the Implementation of the Specialty of the Special Province of Aceh, Law No. 18/2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam, and Law No. 11/2006 on the Government of Aceh.

This regulation is super important to make sure there's legal certainty and equal protection for adult victims, both men and women, who don't have enough protection right

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<sup>27</sup> President of The Republic of Indonesia, “Law of the Republic of Indonesia,” *The President of The Republic of Indonesia*, no. 15 (2014): 1–24, <https://faolex.fao.org/docs/pdf/ins139269.pdf>.

<sup>28</sup> Esty Alfanada, Syamsul Hidayat, and Lalu Saipudin, “Urgensi Undang-Undang Tindak Pidana Kekerasan Seksual (Tpks) Dalam Penanganan Kekerasan Seksual,” *Jurnal Penelitian Hukum* 1, no. 62 (2023): 31–2023, <https://jurnal.bisakonsul.com/index.php/juridische>.

<sup>29</sup> Anis Widyawati et al., “Islamic Law’s Role in Developing Policies Prohibiting Homosexuality as a Crime Against Morality in Indonesia,” *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (2024): 71–89, <https://doi.org/10.22219/ljih.v32i1.30576>.

now. Clear legal rules are needed so that law enforcement can work effectively and stop people from taking the law into their own hands<sup>30</sup>. In addition, this regulation is also important to preserve the social, cultural, and religious values that apply in Indonesia so that the regulations made are acceptable to the wider community and in accordance with local wisdom. The regulation needs to be designed comprehensively by involving various parties, including community figures, academics, and communities that are directly affected. This method will ensure that the law is not only suppressive, but also preventive and educational, so that it can direct social behavior in accordance with the norms and values held by Indonesian society.

Regulations designed with an inclusive and participatory approach will strengthen the legitimacy of the law in the eyes of the public. By involving community leaders, academics, as well as victims and affected communities, the regulations not only reflect legal needs, but also the aspirations and values that live in society. This is very important so that the implementation of the law can run smoothly and be widely accepted, thus encouraging the creation of a sense of justice and public trust in the legal system. In addition, this approach also opens up space for constructive dialogue between various elements of society, which ultimately strengthens social cohesion and reduces the potential for conflict. Furthermore, regulations that are comprehensive and oriented towards prevention and education will help build collective awareness of the importance of protecting adult victims without gender discrimination. Thus, the public will not only understand the legal consequences of violating actions, but will also be motivated to change behavior and social norms that may not support such protection. This preventive approach is crucial to creating a safe and inclusive environment, where every individual feels protected and their rights are respected. Ultimately, these regulations will be a strong foundation for the enforcement of sustainable and harmonious justice in Indonesia<sup>31</sup>.

The regulation of same-sex lewd acts among adults in Indonesian criminal law reflects a deliberate effort to delineate moral boundaries aligned with conservative social and religious values. The proposed legal revisions aim to explicitly criminalize acts of indecency between same-sex adults, establishing clear punitive measures that reinforce traditional notions of morality and social order. This legal approach seeks to prevent the normalization of such acts within society, emphasizing the importance of upholding heterosexual marriage and family

<sup>30</sup> Rizky Ananda Putri, "KRIMINALISASI PERBUATAN CABUL PASANGAN DEWASA SESAMA KELAMIN" 11, no. 1 (2018): 1–207, [http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484\\_SISTEM\\_PEMBETUNGAN\\_TERPUSAT\\_STRATEGI\\_MELESTARI](http://scioteca.caf.com/bitstream/handle/123456789/1091/RED2017-Eng-8ene.pdf?sequence=12&isAllowed=y%0Ahttp://dx.doi.org/10.1016/j.regsciurbeco.2008.06.005%0Ahttps://www.researchgate.net/publication/305320484_SISTEM_PEMBETUNGAN_TERPUSAT_STRATEGI_MELESTARI).

<sup>31</sup> Gillian Macnaughton, "Promotion and Protection of the Right to Health by the Office of the UN High Commissioner for Human Rights," 2018.

structures as central moral pillars. However, it also raises concerns about the potential for subjective enforcement and the infringement on individual rights to privacy and sexual freedom. Overall, these regulations seek to project moral authority and social cohesion, but they must be balanced with considerations of human rights and the risk of marginalizing vulnerable groups<sup>32</sup>.

Regulation of same-sex sexual harassment in Indonesia remains limited and faces significant challenges due to cultural, religious, and legal factors. While the Indonesian Criminal Code (KUHP) and Law No. 12 of 2022 on Sexual Violence provide frameworks for addressing sexual violence, these laws primarily focus on opposite-sex cases or sexual violence involving minors, leaving a legal gap in explicitly protecting victims of same-sex sexual harassment. This gap is compounded by strong social stigma against same-sex relationships, which often leads to underreporting and inadequate legal protection for victims within the LGBT community. Research indicates that sexual violence in higher education, including same-sex harassment, is a growing concern but is insufficiently addressed by current regulations and social attitudes, which hinder effective enforcement and victim support<sup>33</sup>.

## **2. Recontrustion of the Arrangement of Obscene Act Done by Adult in the Futurearisti**

Social changes that continue to occur in society, including in terms of sexual behavior, require criminal law to be able to adapt and respond to existing realities. Law in society has a function as a means of social control as well as a means of protecting legal interests that are considered essential in society, such as decency, public order, and human dignity. In terms of same-sex obscene acts committed by both male and female adults, Indonesian criminal law still shows weaknesses in reaching the growing social reality, especially when the act is committed voluntarily. Article 292 of the Criminal Code states: “An adult who commits obscene acts with a person of the same sex who is known or reasonably suspected to be a minor, shall be punished by a maximum imprisonment of five years”. This article only prohibits homosexual acts between adults and minors, but does not prohibit homosexual acts between adults<sup>34</sup>. When there is no clear regulation, while the phenomenon is increasingly common, the law loses its function as a tool of social control. Furthermore, the regulatory

<sup>32</sup> Evelyn Blackwood, “Regulation of Sexuality in Indonesian Discourse: Normative Gender, Criminal Law and Shifting Strategies of Control,” *Culture, Health and Sexuality* 9, no. 3 (2007): 293–307, <https://doi.org/10.1080/13691050601120589>.

<sup>33</sup> Sascha Kezia Cenniago et al., “Moral and Legal Problems Reviewed from : " Law No . 12 of 2022 Concerning Sexual Violence " Regarding Sexual Violence Cases in Indonesian Higher Education” 5, no. 4 (2025): 2855–62.

<sup>34</sup> Imam As Syafei, “The 5 Th PROCEEDING “ Legal Reconstruction in Indonesia,” *Unissula Press*, 2019, 92, <http://lppm-unissula.com/jurnal.unissula.ac.id/index.php/apic/article/view/10988/4229>.

vacuum against these acts also shows that the law has not fully carried out its role in providing legal certainty (*rechtszekerheid*) and legal protection (*rechtsbescherming*) to the community.

The development of social dynamics and changes in sexual behavior patterns in society require the renewal of criminal law regulations that are more responsive and inclusive. The current regulations, especially in Article 292 of the Criminal Code, seem unable to accommodate the diversity of sexual orientations and relationships between adults in a fair and proportional manner. The ambiguity of the law not only poses a legal threat to the perpetrators, but also has the potential to cause discrimination and negative feelings of shame that are detrimental to certain groups in society. Therefore, indecent acts between adults of the same sex have not been clearly regulated in the Criminal Code, so there are no criminal provisions that specifically regulate this matter. This condition creates a vacuum in legal norms, because indecent behavior between adults of the same sex does not receive clear legal protection. Therefore, it is very important for the state to formulate more comprehensive laws and regulations to fill this vacuum. This is also related to the principle of legality in criminal law, which emphasizes that an act can only be punished if it is clearly regulated in the law<sup>35</sup>. Reconciliation of the regulation of legal acts committed by adults of the same sex is important to ensure that criminal law can function effectively as a tool of social control while providing protection and respect for human rights.

In this context, legal reform must consider the principles of justice, non-discrimination, and respect for individual privacy, especially in relationships that are based on mutual consent and desire between adults. Clearer and more comprehensive regulations will help eliminate legal ambiguity and increase legal certainty for the wider community. In addition, harmonization of these regulations can also strengthen Indonesia's legal position in meeting international human rights standards, while maintaining the values of morality and general peace that apply in society. Thus, reconciliation of regulations on same-sex good deeds carried out by adults is not only a legal necessity, but also strategic steps in building an inclusive and civilized society.

In this case, the harmonization of these regulations also opens up opportunities for Indonesia to strengthen its diplomatic position and international cooperation in the field of human rights, especially in the context of protecting minority groups that have so far received

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<sup>35</sup> Kadek Pageh Arimbawa, I Nyoman Gede Sugiarta, and I Made Minggu Widyantara, "Sanksi Pidana Penyimpangan Seksual Sesama Jenis Terhadap Anak Sebagai Korban," *Jurnal Preferensi Hukum* 5, no. 2 (2024): 203–9, <https://doi.org/10.22225/jph.5.2.8083.203-209>.

inadequate attention. By adopting more inclusive regulations and respecting individual rights without discrimination, Indonesia is not only fulfilling its international obligations, but also creating a more harmonious and tolerant social climate. By implementing more inclusive regulations and respecting individual rights without discrimination, Indonesia is not only fulfilling its international obligations but also creating a more harmonious and tolerant social atmosphere. This approach is very much in line with the values of Pancasila, which emphasizes the importance of social justice for all Indonesian people. Thus, this regulatory harmonization can be a strong foundation in building a society that respects the diversity and dignity of every human being<sup>36</sup>.

In addition, regulatory harmonization also provides space for scientists to play an active role in developing policies based on research and scientific evidence. With the involvement of educators, the regulatory making process becomes more transparent and accountable, so that the resulting policies not only meet international standards but are also relevant to the socio-cultural context of Indonesia. International cooperation established through this harmonization also opens up opportunities for the exchange of knowledge and experience in protecting human rights, which ultimately strengthens national capacity in addressing human rights issues more effectively and sustainably.

A clear reconstruction of the regulation of obscene acts committed by adults is needed by expanding the scope of the New Criminal Code, especially Articles 414-418, to not only highlight the public aspect of pornography but also include acts in the private sphere with elements of non-consent, medical/social supervision, and protection arrangements for adult victims. This is in line with the urgency of laws that do not yet include protection for male victims or same-sex adult couples; this encouragement should be followed up through the establishment of new articles covering the private sphere, the imposition of rehabilitation, and strict sanctions for perpetrators who take advantage of power imbalances or the vulnerable conditions of victims<sup>37</sup>.

Such a situation requires steps to reorganize the rules or commonly referred to as legal reconstruction, namely the process of rearranging irrelevant laws and regulations to make them more in line with the social conditions of society. Legal reconstruction or criminal law reform

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<sup>36</sup> Said Sampara Achmad Zulfikar, Satria Sukananda, Hamza Baharuddin, "Harmonization of International Law in Indonesian Legal System: The Study of Indonesian Migrant Workers Protection Overseas," *Jurnal Hubungan Luar Negeri* 5, no. 2 (2020): 1–17.

<sup>37</sup> Rachel Killeen, Anne Marie McAlinden, and Eithne Dowds, "Sexual Violence in the Digital Age: Replicating and Augmenting Harm, Victimhood and Blame," *Social and Legal Studies* 31, no. 6 (2022): 871–92, <https://doi.org/10.1177/09646639221086592>.

essentially implies an attempt to review and reassess the existing legal system. This includes changing the mindset towards sociopolitical, sociophilosophical, and sociocultural values that underlie and give content to the normative and substantive content of a legal provision<sup>38</sup>. The reconstruction of norms that specifically regulate same-sex obscene acts committed by adults voluntarily, needs to be formulated firmly without causing discrimination or violation of human rights. This regulation is expected to provide a clear legal basis in upholding justice and preventing the potential for vigilante justice due to the vagueness of legal norms. The reconstruction of criminal law regulation related to same-sex obscene acts by adults needs to be done by considering several important aspects

- a) Reconstruction of criminal law regulation related to same-sex obscene acts by adults needs to be done by paying attention to several important aspects<sup>39</sup>.
- b) Legal reform must fill the current legal vacuum so as to provide legal certainty and adequate protection for adult victims. This can be realized by formulating clear offense qualifications and punishments for perpetrators of same-sex obscene acts committed voluntarily by adults.
- c) Regulatory reconstruction must consider the social, cultural and religious values that live in Indonesian society so that the resulting regulations are not only normative but also socially acceptable. This is important so that criminal law does not conflict with prevailing norms and customs so as to maintain public order and morality.
- d) The approach used in criminal law reform can refer to the practices and regulations in other countries that have regulated same-sex obscene acts more comprehensively, such as Brunei Darussalam, Russia and Nigeria, as a comparison material to formulate criminal law policies that are appropriate to the Indonesian context<sup>40</sup>.
- e) Law reform should also take into account the principles of human rights and not cause discrimination against certain groups. Therefore, regulatory reconstruction must be done

<sup>38</sup> A Priagung, "Telaah Rekonstruksi Hukum Dalam Konsepsi Keadilan Restoratif Berdasarkan Peraturan Kejaksaan Nomor 15 Tahun 2020 Tentang Penghentian Penuntutan (Studi Kasus Tindak Pidana Penganiayaan Oleh Tersangka WAH Di Kejaksaan Negeri Purworejo).," 2023, 1–29.

<sup>39</sup> R.E. Safitri, "BENTUK KEBIJAKAN PIDANA TERHADAP PERBUATAN LGBT," *Doctoral Dissertation, UNIVERSITAS BHAYANGKARA SURABAYA* 75, no. 17 (2021): 399–405.

<sup>40</sup> A Hidayat, "Rekonstruksi Regulasi Perlindungan Hak Korban Tindak Pidana Kekerasan Seksual Berbasis Nilai Keadilan," 2023, [http://repository.unissula.ac.id/id/eprint/31234%0Ahttp://repository.unissula.ac.id/31234/1/Program Doktor Ilmu Hukum\\_10302100025\\_fulldoc.pdf](http://repository.unissula.ac.id/id/eprint/31234%0Ahttp://repository.unissula.ac.id/31234/1/Program%20Doktor%20Ilmu%20Hukum_10302100025_fulldoc.pdf).

carefully and involve various stakeholders in order to create fair, effective, and civilized regulations<sup>41</sup>.

In formulating the new norms, it is important to ensure that the criminal law is not only repressive, but also preventive and educative. This means that the law does not solely aim to provide punishment, but also to provide limits and directions for social behavior in accordance with the values adopted by Indonesian society. The reconstruction of norms in the future must also be carefully structured so as not to cause multiple interpretations and must not ignore the three main pillars of state formation, namely the Proclamation of Independence, Pancasila, and the 1945 Constitution of the Republic of Indonesia<sup>42</sup>. Thus, the reconstruction of norms based on the basic values of the state can provide legal certainty and legal protection for the community.

## CONCLUSION

In this article, the author draws two conclusions. First, same-sex indecent acts committed by adults need to be explicitly regulated in Indonesian criminal law because currently the Criminal Code only regulates same-sex indecent acts involving underage victims, as stated in Article 292 of the Criminal Code. This creates a legal vacuum that weakens protection for adult victims, both male and female, and creates legal uncertainty in the enforcement of criminal acts of indecency involving same-sex individuals.

The second conclusion is that the reconstruction of the regulation of indecent acts by adults needs to be carried out with consideration of the social, cultural, and religious values that exist in Indonesia, as well as referring to human rights principles so as not to cause discrimination. This legal reform must be carefully designed, clarifying the elements of the offense, adapting to societal developments, and considering provisions in the new Criminal Code (KUHP) such as Article 419, which has not explicitly addressed the criminalization of same-sex indecent acts by adults.

The government and related parties must immediately revise, compile or create legal regulations that regulate obscene acts between adults specifically and clearly. This regulation must be made with due regard to human rights, individual privacy, and not cause discrimination. With the right rules, it is hoped that society can be more just, maintain peace, and respect the rights of everyone in living their lives.

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<sup>41</sup> RINI PRATIWI, "KEBIJAKAN HUKUM PIDANA TERHADAP PELAKU TINDAK PIDANA PERBUATAN CABUL SESAMA JENIS (HOMOSEKSUAL) DALAM PEMBAHARUAN HUKUM PIDANA" 635292, no. 0281 (2021): 1–38.

<sup>42</sup> Agus Sugiarto, "Criminal Law Politics Renewal of The National KUHP Against the Criminal Actions of Lesbian, Gay, Bisexual, Transgender (LGBT)," *Journal of World Science* 1, no. 12 (2022): 1203–14, <https://doi.org/10.58344/jws.v1i12.169>.



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