

LGBT Marriage from the Perspective of Jasser Auda's Systems Theory

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Abstract:

LGBT (Lesbian, Gay, Bisexual, Transgender) marriage is one of the highly controversial topics worldwide. This issue has led to three different stances among countries, namely those that support, oppose, and remain neutral (without specific governing laws). This research aims to discuss the analysis of LGBT marriage from the perspective of Jasser Auda's System Theory. The goal is to understand the legality of LGBT marriage in Indonesia and how LGBT marriage is viewed from the standpoint of Jasser Auda's system theory. This study falls under the category of normative juridical research, considering law as what is written in legislation. The approach used is a descriptive-analytical approach, where the researcher attempts to analyze legal issues using Jasser Auda's system theory. The research findings indicate that LGBT marriage cannot be legalized in Indonesia based on the system theory. Through the analysis of six system features: first, Cognitive Nature, it is found that LGBT marriage is considered forbidden as it goes against the natural order, human instincts, and is deemed an act of Satan. In terms of Wholeness, it is also forbidden due to its immorality, exceeding boundaries, and bringing punishment. Concerning Openness, LGBT marriage is considered harmful to religion, society, health, and various other fields. Furthermore, in terms of Interrelated Hierarchy, LGBT marriage is deemed inconsistent with *maqashid al-ammah*, *khassah*, and *juz'iyah*, as well as the social nature of humans, conflicting with established norms.

Keywords: Marriage; LGBT; System Theory; Jasser Auda.

Introduction

The phenomenal issue of LGBT is increasingly showing its existence in the international arena. Various international events are used as a stage to voice the existence of LGBT under the pretext of human rights equality and as an open-minded attitude. This has an impact on the view of LGBT marriage which is no longer considered abnormal, but has become a proud thing to be like marriage in general. In addition, social media is also used as a stage for activists to voice LGBT with the One Love symbol.¹The conditions that occur in various countries regarding the LGBT phenomenon are certainly the LGBT phenomenon at the International

¹ Asnida Riani, "Apa Itu Ban Lengan One Love Yang Tuai Kontraversi Di Piala Dunia Qatar 2022," *liputan6.com*, 2022.

Level. In 2011, the UN Human Rights Council first recognized LGBT rights. The UN Human Rights Commission then issued a report documenting violations of LGBT rights, such as discrimination, criminalization of homosexuality, and hate crimes. The UN Human Rights Commission then called on all countries to implement laws that protect LGBT rights. Based on the Universal Declaration of Human Rights, the UN Human Rights Council passed the equal rights resolution, which states that every human being is born free and equal, and that everyone is entitled to his or her rights and freedoms without discrimination. With the recognition of LGBT rights, LGBT people can use human rights to fight for their right.²

The issue of LGBT marriage continues to lead the international community from various cultural, religious, moral and national backgrounds into a debate that divides their thoughts and attitudes. At least the issue of marriage gave birth to three thoughts and attitudes in response to the case.³ First, countries that support and legalize LGBT marriage. Second, countries that reject and discriminate. Third, countries that have not formed a firm law in their criminal law on the issue. Generally, countries that support LGBT come from western countries, while those that refuse to recognize LGBT are mostly from Islamic countries. Meanwhile, some countries including Indonesia fall into the third group.

The debate on LGBT marriage in Indonesia raises the pros and cons of various parties, even though in the study Indonesia is a country that has not formed specific legal rules related to LGBT marriage.⁴ Various actions smelting of LGBT will be discriminated against in the midst of the public. The majority of the public usually rejects using religious arguments by referring to scriptural texts.⁵ LGBT actions are considered dangerous both in terms of religion and health.

Meanwhile, people who support LGBT marriage are mostly feminist activists and academics who move from theology to politics. In the theological field, this campaign undermines the religious structure that previously established heterosexuality as the only choice of human sexuality. LGBT activists try to conduct LGBT campaigns either inserted in related events, or directly, one of which is the discourse of the ASEAN LGBT meeting in Jakarta which was eventually canceled because of the many rejections.⁶ In the political sphere, this was done by attempting to propose the Gender Justice and Equality Bill (RUU KKG), which would have legalized same-sex marriage, although this ultimately failed.

The existence of these problematic issues has made some academics explore topics related to LGBT in their research, which later also became supporting

² Meilanny Budiarti santoso, "Lgbt Dalam Perspektif Hak Asasi Manusia," *Social Work Jurnal* 2 (n.d.): 154–272.

³ Hamid Chalid and Arief Ainul Yaqin, "Perdebatan Dan Fenomena Global Legalisasi Pernikahan Sesama Jenis: Studi Kasus Amerika Serikat, Singapura, Dan Indonesia," *Jurnal Konstitusi* 18, no. 1 (2021): 138–67, <https://doi.org/10.31078/jk1817>.

⁴ Chalid and Yaqin.

⁵ Mulyono Mulyono, "Perkawinan Lesbian, Gay, Biseksual, Dan Transgender Dalam Perspektif Hukum Islam Dan Hukum Positif," *Al-Istinbath: Jurnal Hukum Islam* 4, no. 1 (2019): 101, <https://doi.org/10.29240/jhi.v4i1.789>.

⁶ CNN Indonesia, "Pertemuan LGBT Se-ASEAN Batal Digelar Di Jakarta," cnnindonesia.com, 2023.

literature that intersects directly with this study. Among them is Nur Triyono who studied the legality of same-sex marriage (Study of Irshad Manji's genealogy and epistemology). The purpose of the study was to find out the legality of same-sex marriage perspectives in the study of Irshad Manji's genealogy and epistemology.⁷ Mafaza and Izza Royyani examined LGBT from the perspective of Prophetic Hadith, which in the study examined the Prophetic traditions in depth to address the increasingly widespread LGBT. Mulyono analyzed lesbian, gay, bisexual, and transgender marriage in the perspective of Islamic Law and Positive Law. As the title suggests, the purpose of this study is to conduct a comparison of LGBT marriage in the perspective of Islamic law and positive law in Indonesia.⁸ The above studies, although different in the use of analytical knives, seem to have similarities with the object of study studied. In addition, these studies are normative studies.

The urgency of this research will provide clarity on the position of LGBT marriage in Indonesian law, as well as to explore whether there is a point of benefit to choose to support LGBT marriage or reject it. In systems theory, which will be used as a knife to analyze LGBT marriage, there are six features of the approach that are interrelated with each other like a system for. These features are cognition, wholeness, openness, interrelated hierarchy, multidimensionality, and purposefulness.

This research is a type of normative judicial research, namely the law is conceptualized as what is written in the law.⁹ The approach used is an analytical descriptive approach, namely researchers trying to analyze legal issues with Jasser Auda's system theory, and a *conceptual* approach. The data used are primary data, namely Grounding Islamic Law Through Maqashid Sharia, Maqasid Al-Shari'ah As Philosophy Of Islamic Law A System Approach, Law No. 16 of 2019, Civil Code, Criminal Code, secondary materials, namely articles in journals related to the object of research, and tertiary, namely from books, theses, scientific articles and websites.

Result and Discussion

The Status of LGBT Marriages in Indonesia from the Perspective of the Marriage Law, Civil Code, and Criminal Code

Looking at LGBT marriage according to the Marriage Law in Indonesia. This can be seen in Law No. 16/2019 on the Amendment to Law No. 1/1974 on Marriage, known as the 2019 Marriage Law. Although there are some significant changes in the 2019 Marriage Law, one of which is increasing the minimum age of marriage, the Law does not change the provision that marriage in Indonesia is still only recognized between a man and a woman.¹⁰ As stated in Article 1 paragraph (1) of the 2019

⁷ M A Mafaza and I Royyani, "LGBT Perspektif Hadis Nabi SAW," *Al Iman: Jurnal Keislaman Dan ...* 4, no. 1 (2020): 131–53.

⁸ Mulyono, "Perkawinan Lesbian, Gay, Biseksual, Dan Transgender Dalam Perspektif Hukum Islam Dan Hukum Positif."

⁹ Amiruddin and Zainal Asikin, *Pengantar Metode Penelitian Hukum* (Jakarta: Raja Grafindo Persada, 2018).

¹⁰ Kesra, "Undang-Undang Republik Indonesia Nomor 16 Tahun 2019 Tentang Perubahan Atas Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," *Journal Presumption of Law* 3, no. 2 (2021): 160–80.

Marriage Law which reads: "*Marriage is the inward and outward bond between a man and a woman as husband and wife with the aim of forming a happy family based on the Supreme Godhead.*" This statement maintains the definition of marriage in accordance with the definition of marriage that has existed since the original Marriage Law, namely Law No. 1 of 1974. In addition, Article 1 of the Marriage Law does not only discuss the definition of marriage, but also includes the purpose of marriage itself, namely to build a happy and eternal family or household based on God Almighty, in this case based on the religion that each adheres to. J. Satrio argues in the book *Principles of Civil Law* that what is meant by family is husband, wife, and children.¹¹

Based on Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage, same-sex marriage (LGBT), which means being of the same sex, is still not legally recognized in Indonesia. The law explicitly states that a valid marriage is a heterosexual marriage or a marriage of different sexes.¹² Therefore, same-sex couples, be it two men or two women, cannot legally marry in Indonesia under the applicable law. As for marriage in the Civil Code Chapter IV concerning marriage, article 26, marriage is only seen from a civil perspective, which means that it is only valid if it fulfills the conditions stipulated in the Civil Code as follows: "*The law views the question of marriage only in civil relations.*" Meanwhile, the conditions in other articles only regulate age, parental consent, the period of second marriage for women, parental consent for minors, and other conditions that are not related to the mention of certain genders such as divorce and marriage agreements.¹³

Meanwhile, there is nothing in the KUHP that regulates LGBT marriage. The only article that comes close is Article 292 which states that: "*An adult who commits obscene acts with another person of the same sex, whom he knows or reasonably should presume is not yet an adult, shall be punished by a maximum imprisonment of 3 years.*"¹⁴ Basically, the article is against acts of sexual abuse that are specific to same-sex sexual abuse of minors or in the sense of immaturity. Meanwhile, same-sex marriage has not yet received legal certainty in the Criminal Code. In 2016 one of the groups against LGBT filed a *judicial review* at the Constitutional Court of the Republic of Indonesia (MK RI) in 2016 against an article in the Criminal Code. The petitioners requested that same-sex sexual offenses be expanded to include not only underage same-sex abuse, but also adult same-sex offenders. The purpose of this request is basically to criminalize LGBT offenders, because same-sex marriage is considered incompatible with the values and identity as a nation that believes in God Almighty.¹⁵ In the end, the application for *judicial review* was rejected by MK RI on the grounds that it was not its authority. MK RI only has the authority to negate an article in the law, while

¹¹ Fanny Priscyllia, "Perkawinan Sejenis Dalam Hukum Kodrat Di Indonesia," *Jatiswara* 37, no. 2 (2022): 152–62, <https://doi.org/10.29303/jtsw.v37i2.400>.

¹² Priscyllia.

¹³ "Kitab Undang-Undang Hukum Perdata Burgerlijk Wetboek," 2014, 1–549.

¹⁴ SH Solahuddin, "Kitab Undang-Undang Hukum Pidana, Acara Pidana & Perdata: KUHP, KUHAP & KUHPdt," 2008, 589.

¹⁵ Chalid and Yaqin, "Perdebatan Dan Fenomena Global Legalisasi Pernikahan Sesama Jenis: Studi Kasus Amerika Serikat, Singapura, Dan Indonesia."

the petition submitted intends to change or add to the sound of an article.¹⁶

LGBT Marriage from the Perspective of Jasser Auda's Systems Theory

Systems is an independent discipline made up of many subdisciplines. This theory is another branch of philosophy known as "anti-modernity". This approach criticizes modernity in a more contemporary way, in contrast to the way postmodernity theory does. In the epistemology of contemporary Islamic law, which uses Jasser Auda's systems philosophy, there are six features that will be used to measure and answer questions about the role of Maqashid al-Syariah in contemporary law-making practices. Systems theory is commonly used in juridical theory and practice for the sake of legal reform and existence. In this case, it will be represented in the legality of LGBT marriage in Indonesia in the perspective of Jasser Auda's system theory, which consists of six features, namely the *cognitive nature of the system (cognitive nature)*, *wholeness*, *openness*, *interrelated hierarchy*, *multidimensionality* and *purposefulness*,¹⁷ The following is the explanation:

1. Cognitive Disposition Features

Fiqh or any science requires human intervention. Islamic law (Fikih) is the result of human Ijtihad on the text, in an effort to uncover its hidden meaning and practical implications. Therefore, fiqh is called human cognition that is separate from divine revelation. The concept will be applied in making the law of LGBT marriage. In order to systematically separate the fiqh or cognition and the divine, it is necessary to describe the sources and relationships of the arguments relating to LGBT, namely with three classifications, namely the Koranic arguments, hadith and *urf*. There are several verses of the Qur'an that discuss LGBT. One of them is Surah Ash-Syu'ara: 165-166 which means:

"Why do you go to the male among men (to commit homosexual acts) and leave those (women) whom God has created to be your wives? You are (indeed) the transgressors."
(QS. Ash-Shu'ara' 26: Verses 165-166)

This verse describes the great evil of the luths, namely momosexual. They prefer to have sex with men rather than women. This is a despicable and ugly deviation, because Allah swt has created men and women and made it the nature of each of them to be attracted to each other and realize by breeding life with offspring as His wisdom and will. The inclination towards the opposite sex is one part of the general system of the universe. Homosexuality, on the other hand, does not realize any target and does not produce any goal as a fitrah. Such behavior is also not in line with the laws of the universe. It is something strange if one enjoys such a relationship. Therefore, there is no other way for them but to return to their normal and healthy nature and inclinations. Or else they will be destroyed.¹⁸

¹⁶ Chalid and Yaqin.

¹⁷ Jasser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*, pertama (Bandung: PT.Mizam Pustaka, 2015).

¹⁸ Syyid Quthb, *Terjemahan Tafsir Fi Zhilalil-Qur'an: Dibawah Naungan Al-Qur'an Jili 4*, ed. Abdul Aziz Salim Basyarahil and Hidayat Nur Wahid, 1st ed. (Jakarta: Gema Insani Press, 2002).

In addition, in Q.S Al-A'raf verses 84-80 which reads;

"And (We also sent) Lūth (to his people) (Remember) when he said to them: "Why do you do that faahisyah, which no one (in this world) has done before you?". Indeed, you go to men to release your lust (for them), not to women; rather, you are a transgressing people. His people said nothing but: "Expel them (Lūth and his followers) from your city; indeed they are those who pretend to purify themselves". Then We saved him and his followers except his wife; she was among those who were left behind. And We sent down upon them a rain (of stones); so see the end of those who sinned."

From the verse, it is clear that the deviation of fitrah in the story of the prophet Luth. So it is called the first human being to deviate very badly again dirty. In verses 80-81, it explains about the transgression by the people of the prophet Luth which greatly hurt Luth's heart, namely the act of transgressing Allah's *Manhaj*. Deviating from fitrah, and exceeding the limits in actualizing the gifts of Allah SWT to carry out the role of preserving life. But they vented it on not the place of reproduction, they vented lust with deviation. Furthermore, in verse 82 the people of the Prophet Luth showed another deviation in which they expelled Luth and his followers because they did not want to sink together in the limpur where the ignorant society flourished. Then in verses 83-84 explain the safety of the threat addressed to the people of sinners, by distinguishing between *manhaj* and creed. Then the wife of Prophet Luth was more inclined to the people who were destroyed so that they perished. They were destroyed with heavy rain accompanied by a whirlwind to purify the earth from the people they did.¹⁹

While in Q.S An-nisa verse 119 which reads:

"And I will surely mislead them, and I will awaken in them idle imaginations, and I will send them to cut off the ears of cattle, (and they will actually cut them off), and I will send them to change the creation of Allah, (and they will actually change it). Whoever takes the devil as a protector besides Allah, then indeed, he has suffered a real loss".

Shaitan openly declares that his intention is to destabilize the children of Adam. He gives empty dreams on a misguided path, with false pleasures and salvation from deliverance at the end of the journey. Among these misguided actions is to change Allah's creation and nature by cutting, changing and certain body parts. It is clearly described that Satan's actions towards his lovers are mere seduction.²⁰ The second classification is the Hadith of the Prophet. Besides being explained in the Quran, LGBT issues are also explained in the Hadith or sunnah. However, first it is necessary to know that the Hadith is distinguished based on the different types of actions of the Prophet according to its purpose, which is divided into three namely; *first*, the direct delivery of the message (treatise) by the Prophet, which is called al-Qarafi, 'actions in the capacity as a messenger' or referred to as *al-tasarruf bi-al-risalah*. *Second*, the Sunnah for specific purposes beyond the direct transmission of the message. These Sunnahs are to be understood and used in Islamic law according to the context. *Third*, the Sunnah in the field of decisions or daily actions which Ibn 'Assyria calls non-

¹⁹ Quthb.

²⁰ Quthb.

instructional purposes.²¹

Of the three types one part of the hadith is displaced and is not part of divine knowledge or revealed law. Category (c) is the part that was later excluded from jurisprudence. Hence the traditions that will be taken are categories (a) and (b) that deal with LGBT. The hadith narrated by At-Tirmidhi on this matter reads: "*Allah, the Almighty, will not look upon a man who has intercourse with another man (homosexual) or (has intercourse with) a woman from his anus.*" (HR Tirmidhi no. 1165).²² This Hadith explains that Allah dislikes homosexual behavior and sodomy. This Hadith is in line with the Hadith narrated by Ahmad: "*Cursed is the one who has intercourse with animals, cursed is the one who does the deeds of the people of Luth (peace be upon them). He said repeatedly, three times about liwath (homosexuality, the deed of Lot, peace be upon him).*" (HR. Ahmad).²³ Which this Hadith explains that Allah SWT will curse people who commit sexual deviations such as fucking animals and Liwath or homosexuality. Meanwhile in the narration of Baihaqi it reads; "*If my people have legalized five things, then they will be destroyed (1) if rebellion arises, (2) drinking alcohol, (3) men wearing silk, (4) and taking vomit, and (5) men are satisfied with men and women are satisfied with women (the spread of homosexuals and lesbians).*" (Reported by Baihaqi in Shu'abul Iman). This Hadith elaborates on the five things that lead to the destruction of a people, and one of them is the outbreak of homosexuality and lesbianism. The narration in Bukhari reads: "*Ibn 'Abbas (Radhiyallahu anhum) reported: Rasûlullâh Sallallahu 'alaihi wa sallam cursed men who resemble women and women who resemble men*" (HR. Al-Bukhâri).²⁴ This Hadith alludes to Transgender, where many men resemble women or vice versa. What is meant by the Hadith is the way of dressing, grooming, walking and talking. Including today's Transgender which is classified as complex because it changes the genitals and others through surgery. The Hadith in terms of sanad is classified as sahih because it has tsiqah narrators.²⁵

The third classification is in the aspect of urf or customs. Customs in Indonesia are historically based on strong cultural, religious and customary values, which generally recognize marriage as a bond between a man and a woman. This is the social norm that is firmly held in Indonesian society and all religions in Indonesia have a similar view of it. deviant behavior cannot be taken for granted.²⁶ In order to validate the entire cognition, the relationship between arguments with the specifications of sharia, fiqh, uruf, and kanun will be redrawn. It will be presented in

²¹ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

²² Muhammad Nashiruddin Al-Albani, "Shahi Sunan Tirmidzi - Seleksi Hadits Shahih Dari Kitab Sunan Tirmidzi," *Kitab Sunan Tirmidzi*, 2007, 1–933.

²³ Rahma Juwita, Kamarrudin, and Halumatussa'diyah, "Homoseksual Dalam Perspektif Tafsir Al Qur'an Al Adzim Karya IbnuKatsir Dan Al Azhar Karya Buya Hamka (Studi Komparatif Atas Penafsiran Qs. Al A'raf Ayat 80-84)," *Jurnal Dirasalah Al-Qur'an Dan Tafsir* 1, no. 1 (2022): 1–21.

²⁴ Muhammad Muhsin Khan, *Shahih Al-Bukhari : The Translation of The Meaning Op Sahih Al-Bukhari Arabic-English* (Riyadh: Darussalam, 1997).

²⁵ Juwita, Kamarrudin, and Halumatussa'diyah, "Homoseksual Dalam Perspektif Tafsir Al Qur'an Al Adzim Karya IbnuKatsir Dan Al Azhar Karya Buya Hamka (Studi Komparatif Atas Penafsiran Qs. Al A'raf Ayat 80-84)."

²⁶ Febby Shafira Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 2 (2022): 210–31, <https://doi.org/10.15294/ipmhi.v2i2.53740>.

a graph that reflects the cognitive character of the system as follows ;²⁷

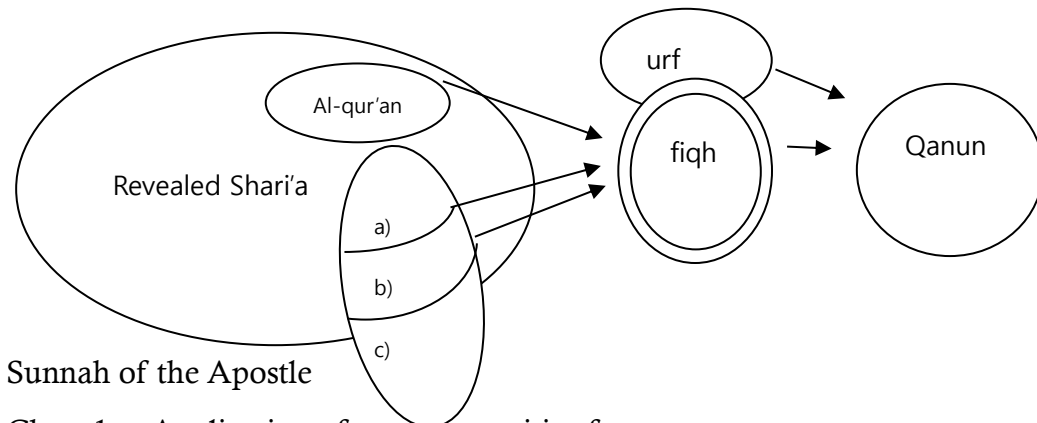


Chart 1. Application of system cognitive features

Based on the analysis of cognitive features of the system approach to the arguments have been traced, the conclusions are obtained; *first*, LGBT behavior is haram in Islamic teachings, and Allah cursed it because it is the behavior of the ignorant people of the prophet Luth. *Secondly*, in addition to LGBT behavior, having relations with animals and having sex with the wife from behind is an abominable act that logically violates and contradicts human instincts. *Third*, wearing clothes resembling that which is not its nature is haram and is the work of the devil.

2. Wholness Feature

Islamic law must be seen as a whole with integrity, not as separate parts. Therefore, the application of Islamic law needs to be seen holistically and integrated. *Wholeness* is a revision of traditional ushul fiqh with its reductionist and automistic character (relying on one nash ignoring others). The solution that can be applied is to operate the thematic interpretation function without any restrictions on a particular verse.²⁸ In this study there are several verses of the Koran that talk about LGBT behavior. The legal basis will be a recommendation to fully analyze the position of LGBT. These verses will be analyzed systematically in order to obtain the interpretation and substance of the mission of a nash. The nash-nash are among others:

Table 1. Nash that Discusses LGBT

No	Surah	Translation
1.	QS Al-A'raf: 80	<i>"And (We also sent) Lot, when he said to his people, Why do you commit an abominable deed, which no one before you has ever committed."</i>

²⁷ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

²⁸ Mohammad Lukman Chakim and Muhammad Habib Adi Putra Habib, "Kesetaraan Gender Dalam Fikih Perempuan Perspektif Maqasid Syariah Jasser Auda," *MAQASHID Jurnal Hukum Islam* 5, no. 1 (2022): 47–60, <https://doi.org/10.35897/maqashid.v5i1.831>.

2.	QS Al-A'raf: 81	<i>"Indeed, you have lusted after men instead of women. You are indeed a transgressing people."</i>
3.	QS. An-Naml 27: 54	<i>"Indeed, you have lusted after men instead of women. You are indeed a transgressing people."</i>
4.	QS. An-Naml 27: 55	<i>"Why do you go to men to fulfill your desires, and not to women? Indeed, you are a people who do not know (the consequences of your actions)."</i>
5.	QS. Asy-Syu'ara' 26: 165	<i>"Why do you go to the male among men (to commit homosexual acts)"</i>
6.	QS. Asy-Syu'ara' 26: 166	<i>"And have you forsaken those (women) whom God created to be your wives? You are (indeed) transgressors."</i>
7.	QS. Al-A'raf 7: 83	<i>"Then We saved him and his followers, except his wife. She was among those who were left behind."</i>
8.	QS. Al-A'raf 7: 84	<i>"And We showered them with rain (stones). So, see what will be the end of those who sinned."</i>
9.	QS. Al-'Ankabut 29: 28	<i>"And (remember) when Lot said to his people, You are really doing a very abominable deed (homosexuality) which none of the people before you has ever done."</i>
10.	QS. Al-'Ankabut 29: 29	<i>"Is it proper for you to go to men, to rob and to do evil in your meeting places? So the answer of his people was none other than to say, Bring upon us the punishment of Allah, if you are of the righteous".</i>
11.	QS. Hud 11: 78	<i>"And his people soon came to him. And they had always committed abominable deeds. Luth said, "O my people, these are my daughters, they are more pure for you, so fear Allah and do not dishonor my name against my guests. Are there none among you who are clever?"</i>
12.	QS. Az-Zariyat 51: Ayat 34	<i>"marked from your Lord to (destroy) those who transgress"</i>
13.	QS. Al-Qamar 54: 33	<i>"The people of Lot also rejected the warning"</i>
14.	QS. An-Nisa' 4: 119	<i>"And I will surely mislead them, and I will awaken in them empty dreams, and I will send them to cut off the ears of cattle, (and they will actually cut</i>

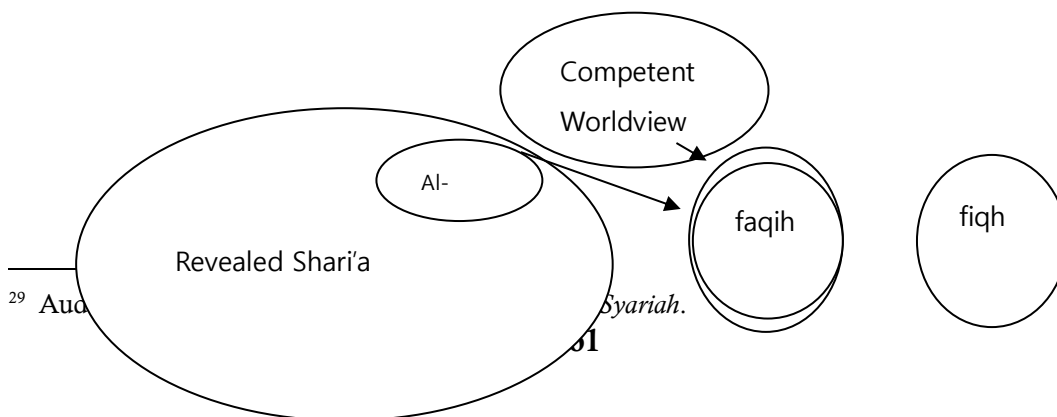
them off), and I will send them to change the creation of Allah, (and they will actually change it)." Whoever takes the devil as a protector besides Allah, then indeed, he has suffered a real loss."

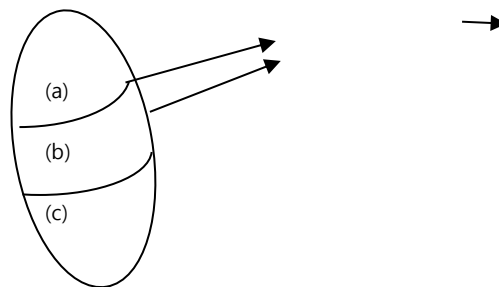
From the verses that have been collected related to LGBT can be divided into three categories. The first category is al-A'rāf : 80 al-A'rāf : 81, al-Naml : 54, al-Naml : 55, ash-Syu'ara : 165 and ash-Syu'ara : 166 explains the form of lesbian and gay behavior which is an abominable act (*fashiyah*), exceeding the limit and bringing bad consequences. Meanwhile, the second category is al-A'rāf : 83 al-A'rāf : 84 al-'Ankabūt : 28 al-'Ankabūt : 29 Hūd : 78 Ae-Dzariyat : 34 al-Qamar : 33 . Verses that discuss the punishment and punishment of lesbian and gay offenders in the form of punishment given to the people of Luth who transgressed and Allah's promise to destroy the people of Luth. The third category is Q.S al-Nisā' : 119 which discusses the prohibition of transgendering, where changing Allah's creation is a misguided act and Allah will give a real loss. From the thematic interpretation, it can be concluded that the LGBT (*Lesbian, Gay, Bisexual, and Transgender*) act is prohibited because it is an act of *mungkar*, exceeding the limits and can bring Allah's punishment.

3. Openness Feature

The *openness* feature is used to compare outside thoughts in the system. This is because the closure to other ideas is a door to ignorance, thus making thinking frozen and undeveloped. As for the mechanisms used towards openness and self-reform, there are two mechanisms expected in Islamic law, in order. *First*, Changes in law with changes in *worldview* (*worldview*) cognitive character of a *fakih* . *Second*, 'philosophical openness', both of which are proposed as mechanisms for self-renewal in the Islamic legal system.²⁹

Changes in law with changes in *worldview* or cognitive disposition of a *fakih* can be described as follows;





Sunnah of the Apostle

Chart 2. Competent worldview change position

The worldview in the chart is shaped by what is around. Whether in terms of religion, knowledge, environment, scientific matters and so on.

The case of LGBT marriage, when viewed openly from the perspective of religion, legislation and human rights (HAM) recognized in Indonesia can be said to be counter and some do not have clear legal certainty. As explained earlier, Islamic teachings do not recognize LGBT marriage because it is considered a deviation, as well as other religions recognized in Indonesia. Meanwhile, from a human rights perspective, Indonesia is a country that recognizes human rights as the existence of a nation that must be respected. Chapter XA of the 1945 Constitution is a special chapter that regulates human rights in Indonesia. In addition, Indonesia also recognizes the UDHR 1948 (*Universal Declaration of Human Rights* 1948) which is the highest international human rights instrument. However, when it comes to LGBT, the behavior is considered deviant so it cannot be taken for granted. There are many fundamental reasons for people to reject this deviation, both on the basis of religion, and culture.³⁰

The 1948 UDHR does not essentially specify that marriage and sexual orientation should be male and female or vice versa; however, it does not necessarily mean that the behavior of LGBT people should be permitted or supported. In addition, the 1948 UDHR, article 29, paragraph 2, sets limits. The UDHR guarantees the right of everyone to practice and believe in their religion. This is in line with national laws, such as Article 28J (2) of the 1945 Constitution of the Republic of Indonesia, Article 69 (1), and 73 of Human Rights Law No. 39/1999, which stipulate that everyone who has human rights must also respect the human rights of others. These restrictions include maintaining the security and public order of a democratic society as well as meeting the moral, ethical, and orderly requirements of community, national and religious life. Legislation prohibits marriages that are recognized as legally entered into as per Article 28B of the 1945 Constitution of the Republic of Indonesia, and marriages may only be entered into by a man and a woman as per Marriage Law No. 1/1974. However, there is generally no national law that defines LGBT behavior as a criminal offense, although it does not endorse it either.³¹

The context of human rights protection for LGBT in Indonesia is only the protection of their human rights in the form of guarantees in the health aspect in

³⁰ Dhamayanti, “Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia.”

³¹ Dhamayanti.

order to recover and get out of the disease, not protecting their orientation because LGBT is considered a disease, as also stipulated in Article 25 UDHR 1948.³² In terms of health, a number of studies have suggested that LGBT people are dangerous because they are more at risk of health problems other than sexually transmitted diseases, both physically and mentally than heterosexuals. In addition to the dangers of sexual deviance, LGBT people in general are also higher in terms of drug abuse, alcohol abuse and the tendency to use cigarettes or even experience depression and suicide compared to heterosexual individuals.³³ In addition, based on the 2010 UNAIDS report, LGBT actors are one of the groups most at risk of HIV, which is around 7.3%, prostitutes around 4.9%, and injecting drugs around 9.2%, being the second highest after injecting drugs.³⁴

Meanwhile, the second renewal in the openness of Islamic legal theory is philosophical openness which in this case will adopt the openness of Ibn Rushdi (*everroes*) in philosophical investigations. This selection is because it is considered more suitable for the Islamic legal system to maintain its self-renewal.³⁵ Ibn Rushdie (*everroes*) emphasized a very open stance towards human knowledge. According to him, apart from the Quranic command to Muslims to reason and think about God's creation, *everroes* emphasized the importance of the benefits of philosophical reasoning based on common sense 'regardless of the religion of the bearer.'³⁶

The ultimate goal of Islam is right knowledge and right action. In the scope of LGBT has been explained earlier in the Qur'an and hadith, that the forms of LGBT acts should be shunned because it is forbidden by Allah SWT. Not only that, philosophically, human nature is to like the opposite sex, this is in order to continue the offspring and maintain human existence on earth. So this prohibition is because logically the act is despicable, it violates normal human nature and is a dirty act because without disgust it involves the dirtiest areas of humans so that according to research it is more susceptible to disease.

4. *Interrelated Features (Interrelated Hierarchy)*

Systems have a hierarchical structure, in which a system is built up and smaller sub-systems under it. The interrelationship can determine the goals and functions to be achieved. The *Interrelated Hierarchy* feature provides improvements to two dimensions of *Maqashid Shariah*. The first dimension improves the reach of *Maqashid* and the second improves the *Maqashid* of the person covered by *Maqashid*. In improving the range of *Maqashid*. *Maqashid* is developed from concrete to

³² Marwah Nazria N Harahap, Risky Munthe, and Marzuki Manurung, "Kasus LGBT Dalam Negara Dan Perspektif Alquran & Tafsir Surah Al A'raf Ayat 80," *Hijaz: Jurnal Ilmu-Ilmu Keislaman* 1, no. 4 (2022): 11–14, <https://doi.org/10.57251/hij.v1i4.452>.

³³ Hasnah Hasnah and Sattu Alang, "Lesbian, Gay, Biseksual Dan Transgender (Lgbt) Versus Kesehata: Studi Etnografi," *Jurnal Kesehatan* 12, no. 1 (2019): 63–72, <https://doi.org/10.24252/kesehatan.v12i1.9219>.

³⁴ Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia."

³⁵ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

³⁶ Jasser Auda, *Maqasid Al-Shari'ah As Philosophy Of Islamic Law A System Approach* (Washington DC: Internasional Institute of Islamic Thought (IIIT), 2016).

comprehensive modern *Maqashid*. Jasser Auda classifies the *Maqashid* hierarchy into three parts. First, *maqashid ammah* is a general and universal goal in sharia law, such as justice, equality, tolerance, and comfort. These sharia *maqashids* fall under the emergency category if they fall under the traditional *maqashids*. Second, *maqashid khassah* are objectives related to matters of knowledge. Third, *maqashid juz'iyah* are objectives that contain the benefits or wisdom underlying a particular legal text. These goals are interrelated and support each other in a harmonious placement.³⁷

Maqashid ammah is a traditional *maqashid* included in the *daruriyat* category, which means it refers to human survival. So this is in line with one of the important purposes of marriage, which is to preserve offspring and human survival. To achieve this, marriage must be between heterosexual couples, because homosexual or LGBT marriages do not produce offspring. Meanwhile, from the aspect of *maqashid khassah* on LGBT marriage can not be justified either, because many chapters of science that contradict it. One of them is found in article 3 of the Codification of Islamic Law (KHI) which reads "that the purpose of marriage is to create a family of *sakina, mawadda, and warahmah*. So the purpose of marriage will not be realized in LGBT marriage. In general, the above rejection of LGBT marriage is in line with *maqashid sharia marriage (maqashid an-nikah)* there is a primary (*daruriyah*), namely *hifdzu al-nasl* whose application is to protect offspring and family. Then the *maqashid sharia* of secondary marriage (*hajiyah*), to create a family that is *sakinah, mawaddah wa rahmah*. While the tertiary (*tahsiniyah*) is to fulfill human biological and psychological needs, because every human being actually lives in pairs.³⁸

The second dimension is the improvement of the range of people covered by the *maqashid*. If the traditional *maqashid* is individualized, then the hierarchy-interrelated feature is a contemporary *maqashid* theory that provides a public and social dimension. It has also been previously explained in the openness feature, then after everything is interconnected with each other, the implication is that *maqashid* can reach the community, nation and the interests of humanity in general. For example, in the classical *maqashid sharia* function, the protection of religion *hifdz an-din* (protection of religion) is changed to *hifdz al-huriyyah al-i'tiqad* (protection of freedom of belief). This public *maqashid* is the priority when dealing with individualized matters. As in the case of LGBT marriage in the name of freedom of expression, so it must be tolerated. The Indonesian state upholds tolerance, accepting differences, but not deviations. LGBT cannot be seen as a form of deviation of personal problems (*privacy*), but seen as a social phenomenon or social deviation because it is contrary to the norms prevailing in society.

5. Multi-dimensionality feature

A system does not emerge as a single entity, but rather is the result of multiple dimensions that are cohesively interconnected. The system is formed by various

³⁷ Badrud Tamam and Risna Ismawati, "Tradisi Larangan Nikah Ngalar Ngulon Di Daerah Purwoharjo Banyuwangi Perspektif Teori Sistem Jasser Auda," *Jurnal of Islamic Family Law*, 2022, 101–25.

³⁸ Muhamad Taufiq, "Nikah Sirri Perspektif Maqashid Syariah," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 1, no. 2 (2019): 114, <https://doi.org/10.19105/al-manhaj.v1i2.3138>.

dimensions that are interrelated with each other. Because this system covers a wide range of aspects, Islamic law can be likened to a system. The Quran and Hadith as the main texts in Islam, of course, include elements of universal values. These values are very varied and cover various dimensions of life, such as worship, technology, natural environment, social life, justice, and so on.³⁹

Philosophical investigation, meanwhile, is popular with the tendency to think in one or two dimensions. Conflicting ideas and tendencies are sometimes seen from only one dimension. This makes arguments appear contradictory, rather than complementary. This causes conflicts to end in *zero-sum games*, rather than *win-win games*. Phenomena and ideas in popular investigations are often expressed in dichotomous terms, making them seem contradictory, such as religion/science, empirical/rational, collective/individual, and so on. Dichotomies pay attention to only one factor, while they may be complementary in other dimensions.⁴⁰

Related to LGBT religiously has been explained that LGBT can not be justified. Based on thematic studies also found the conclusion that LGBT is haram, scholars of the four madhhabs also agreed without any difference that homosexual behavior is a great sin, because it is against nature. Meanwhile, not only in religion, scientifically LGBT behavior is not a genetic fact but because of the environment so that it can be treated with therapy. Then the fact that LGBT people are more susceptible to infectious diseases such as HIV, anal cancer and so on is very dangerous for survival.⁴¹

Empirically, LGBT people generally reject such behavior as not in line with norms and destructive to generations. However, this does not contradict the ratio. To continue the life of mankind need heterosexual relationships, because homosexuals can not get offspring, logically it is also not possible genetic factors, because if that is the case, then the person concerned may not be born in the world. As for adopting children as a form of realist thinking, then this is not normalistic, in the long run the generation will continue to decline. So the realist and the normalist in order to support each other then remain with heterosexual relationships. Meanwhile, LGBT is universally and collectively against fitrah, specifically and individually dangerous for survival. Even in the dimension of reason and material, LGBT is contrary to common sense. Therefore, based on various relevant dimensions, LGBT is not relevant.

6. Purposefulness Feature

The system must have a clear output. This output can be divided into two, *goal* and *purpose*. A good system can be judged by its purpose, although it is done in various ways. The previous five features of *cognitive nature*, *wholeness*, *openness*, *interrelated hierarchy*, *multidimensionality*, and then purposefulness are interconnected and cannot be separated. All other features are made to support purposefulness in the Islamic legal system as a fundamental feature in the system of thought. Therefore, the validation of *ijtihad* must be determined based on the level of achievement of the

³⁹ Mohammad Lukman Chakim and Habib, "Kesetaraan Gender Dalam Fikih Perempuan Perspektif Maqasid Syariah Jasser Auda."

⁴⁰ Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

⁴¹ Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia."

intent and purpose.⁴²

With regard to LGBT marriage, based on cognitive system analysis of the arguments that have been traced, it is found that let alone perform LGBT marriage, LGBT behavior is also a forbidden act because it includes acts beyond the limits, contrary to instinct and violate nature. This is in line with the next feature, namely openness (*wholeness*), which by using thematic interpretation method produces three groups of verse categories, including; first, the verses that explain the form of *Lesbian* and *Gay* behavior as an abominable act (*fashiyyah*), beyond the limits and bad consequences (al-A'rāf : 80 al-A'rāf : 81, al-Naml : 54, al-Naml : 55, ash-Shu'ara : 165 and Shu'ara : 166). Second, the verses that discuss the punishment and doom of *Lesbian* and *Gay* offenders in the form of destruction (al-A'rāf : 83 al-A'rāf : 84 al-'Ankabūt : 28 al-'Ankabūt : 29 Hūd : 78 Ae-Dzariyat : 34 al-Qamar : 33). Third, the verses that prohibit transgender because it is the work of the devil.

The *openness* of religions in Indonesia does not recognize LGBT marriage. As for human rights recognizing freedom, the 1948 UDHR does not specify that sexual orientation or marriage must be male and female or vice versa. However, the UDHR has restrictions on the practice of religion and it is specifically contained in the marriage law in Indonesia. Then according to research in the health aspect, sexual deviant behavior is more susceptible to infectious diseases. While philosophically it violates human nature and includes dirty deeds.

The sub-systems are *interrelated* (*Interrelated Hierarchy*) with each other both in terms of the range of maqashid, and the range of people covered. In the range of maqashid, LGBT marriage does not support maqashid ammah or khassah and is not in line with maqashid sharia marriage. Then on the range of people covered by the case of LGBT marriage is not only a matter of individual sexual deviation, in general it is a social deviation. While in multidimensionality by taking from the entities of the opposite dimensions of both religion and science, empiric and ratio, realist and normalist, universal and collective, as well as intellectually and materially, it is concluded that lgbt marriage is irrelevant. Therefore, in order to achieve the general benefit of humanity based on systems analysis, the best marriage is heterosexual marriage, not homosexual marriage.

Conclusion

In general, marriage laws in Indonesia only recognize the marriage of a man and a woman. This is stated in Article 1 paragraph 1 of the 2019 Marriage Law which only recognizes heterosexual marriages, because they must follow the teachings of their respective religions. As for the marital status of LGBT, there are no specific rules governing either the Marriage Law, the Civil Code (KUHPperdata) or the Criminal Code (KUHP). The Criminal Code only regulates the crime of same-sex abuse, not homosexual relationships. In the perspective of system theory Jasser Auda LGBT marriage in Indonesia is forbidden. The results of the analysis of six features of the system, namely; first *cognitive* (*cognitive* nature) found that LGBT marriage is forbidden because it violates nature, human instinct, and is the work of the devil. In the feature of *wholeness*, it is also forbidden because it is an abomination, exceeds the limit, and brings punishment. As for the *openness* feature, LGBT marriage is harmful

⁴² Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah*.

to religion, society, health, and various other fields. Then on the *Interrelated Hierarchy* feature, LGBT marriage is not in accordance with maqashid al-ammah, khassah and juz'iyah and the position of humans as social creatures, which is contrary to the norms. While in the multidimensionality feature (*multidimensionality*) all dimensions support each other to prefer heterosexual marriage not homosexual. Then as for the last, namely goal-oriented (*Purposefulness*) in general for the sake of the benefit, it rejects LGBT marriage and remains in heterosexual marriage.

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