

A decorative graphic consisting of several overlapping, semi-transparent rectangular blocks in various colors: red, yellow, lime green, blue, purple, and pink, arranged in a staggered, overlapping pattern.

SHARIA LAW

AND THE PRINCIPLE OF NON-DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

A JOINT PUBLICATION BETWEEN ASEAN SOGIE CAUCUS
AND HUMAN RIGHTS WORKING GROUP (HRWG)

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INTRODUCTION

The heated debates around sexual orientations and gender identities and expressions (SOGIE) in Southeast Asia have culminated in a wide range of discriminatory policies and practices aimed at repressing people with different sexual orientations. Invariably, the reasoning behind such objections to LGBT (lesbian, gay, bisexual and transgender people) mostly rests upon the idea that LGBT is incompatible with religious teachings and local cultures; though, factually, people with different sexual orientations have always been part of the society.

At the regulation level, some countries in Southeast Asia also target and discriminate against LGBT people. For example, the penal codes of Brunei, Malaysia, Myanmar and Singapore – a leftover from these countries' history as British colonies – still outlaws sex between consenting male adults, and is often also known as the "sodomy law." There are also laws prohibiting transgender people from changing their name and gender in Malaysia, Vietnam, Thailand and the Philippines. Media

regulations mean that there is a dearth of the kind of LGBT characters and content that might improve social understanding and acceptance.²

In Indonesia, campaigns, policies and practices that discriminate against members of LGBT communities tend to be prevalent in places where Sharia law is enforced, such as Aceh. In Brunei, the discriminatory regulations directed at repressing LGBT practices were formalized into Islamic Criminal Law in 2014, and its Procedural Law was later adopted in early 2019.

At the global level, LGBT issues have been met with resistance by various religious groups that take on a 'moral' obligation to safeguard family values. Christianity, Judaism and Islam have been advocating sex strictly for reproductive reasons, and they have made systematic efforts to fight against what they presume to be 'sexual deviation'. Christians today are broadly divided into conservatives and liberals when it comes to matters pertaining to homosexuality. Their major disagreements stem from the textual

interpretations of the Bible, as well as the differing understanding of the significance and effects of historical changes on Biblical understanding.³

A significant change took place in early 1970s when the American Psychiatric Association (APA) declared that homosexuality was not an illness, and subsequently dropped homosexual behaviors and other sexual orientations off the list of mental illnesses and psychological disorders in 1974. This declaration was later adopted by the World Health Organization (WHO). Since then on, homosexuality has been incorporated into sexual orientation categories, and the rights of homosexual people have been mentioned in various human rights documents at international, regional and national levels.⁴

APA's declaration has not addressed the key issues that affect members of LGBT communities, who continue to suffer from stigma, discrimination and violence. The growing attention of international communities on LGBT issues have resulted in the strengthening of human rights norms that ensure equal protection for all people. In addition, some countries have come to recognize marriage equality by legalizing same-sex marriage⁵,

for instance, the United States, where sodomy used to be considered as a criminal act.⁶

While Asmawi and Yuli Yasin, quoting Lucie Cviklová, underline that Muslim countries seem very far from the ability to adopt international human rights standards and principles to ensure that LGBT people savor basic rights, as do the heterosexuals.⁷

The plights and vulnerabilities of LGBT people have been taken into account in supporting the evolution of human rights norms that put in place certain mechanisms protecting members of LGBT communities. LGBT people are among the most oppressed communities who experience multiple discrimination and violence on various grounds; these are sheer violations of human dignity. A notable development of LGBT rights is evident with the adoption of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, a document containing the principles by which to respond to gross human rights violations against LGBT people, as well as to respond to issues surrounding intersexuality.⁸

Therefore, international communities respond to this situation using a rights-based perspective by deliberating 'LGBT' in international human rights bodies. In June 17, 2011, the United Nations Human Rights Council (UNHRC) passed the Resolution 17/19 on Human Rights, Sexual Orientation and Gender Identity. The adoption of this first-ever resolution that addresses specifically the issue of LGBT rights has been described as a momentous and historic occasion in the struggle for the rights of LGBT individuals. On this occasion, the HRC expressed grave concern over the violence perpetrated against LGBT individuals, and they reiterated the imperative nature of the application of fundamental human rights for every human being without discrimination of any form.

Additionally, in December 2011, the UN High Commissioner of Human Rights, Navi Pillay, with the mandate of the HRC Resolution, presented to the United Nations a report highlighting the disastrous effects of the criminalization of homosexuality. The presentation of this report was followed by a meeting comprising a UN panel of experts during a HRC session in March 2012, while a more generalized attitude against homophobia has also been evident within other organs

and agencies of the United Nations, particularly the UNESCO.⁹

Islamic Sharia, Equality among Humans, and Sexual Orientation

As discussed earlier, homosexuality is largely considered to be incompatible with Islam. Proponents of this idea put forward various arguments on theological and juridical grounding to justify the prohibition of LGBT practices in Islam. One of what have been seen to be the most compelling arguments is the story of Prophet Loth, who is believed to have been punished by Allah for such practices.

Scott Siraj al-Haqq Kugle opines that Islam has a rather positive stance toward sexuality as compared to other traditional religions. Scott narrates, "Scholars in the contemporary period have not lived up to the standards and frankness of pre-modern Islamic scholars, and much work has yet to be done on the question of sexuality in Islamic scripture, law, and society. Many scholars and Islamic leaders in the present shy away from honest discussions of sex and sexuality, with all its promise and problems".¹⁰

According to Husein Muhammad, an Indonesian Muslim scholar, Islam basically appreciates sexuality as an intrinsic and basic human aspect, for both males and females, that has to be managed in a healthy manner. He believes that, in the language of religion, sex is a God-given gift. For that reason, too, Islam does not advocate or promote a life of celibacy and asceticism. Sexual desire must be gratified insofar as one is in need of it; marriage legitimizes such sexual desire and practice.¹¹

The Quran does not specifically address the issue of sexuality, nor does this holy book refrain from the discussion on sexuality. Some of Quranic verses boldly explain sex as a reality (sunnatullah); however, most of this discussion revolves around sexual relation between a husband and a wife rather than sex as an individual's right.¹²

Outside of a lawful marriage, as prescribed by the Islamic jurisprudence, no other form of sexual activity is permissible. In accordance with the classical understanding of the fiqh, any extra-marital (unlawful) sexual relations are illegal, with corresponding criminal law sanctions. Unlawful sexual

intercourse is identified as zina, which is a major offense.¹³

According to Husein, the Quran discusses marriage as an institutionalization of social-sexual relationship, but rarely does it touch upon the topic of sex as a right inherent within each individual. As such, it gives rise to the misunderstanding and misconception that the gratification of sexual desire can only be done in wedlock, and that sex is only permitted between a husband and a wife.¹⁴ Sexual orientation issues is a taboo subject-matter in Islam, and as a result of that, the discourse on these issues in Islam is dominated by classical views that tend to be discriminatory as seen from the lens of human rights.

Muhsin Hendricks highlights that there have been attempts in the past to raise the topic of homosexuality within Islam and to highlight homoeroticism within Muslim communities. Yet there is a lack of literature on the issue from a theological perspective. However, the book is an academic piece of work, and it does not provide uncomplicated answers to the ordinary Muslim.¹⁵

On the one hand, there is a lack of scholarly attention from the Muslim communities on matters pertaining to sexual orientation in Islam, and on the other hand, LGBT practices are largely seen to be deviant by broad public. In many Muslim countries, there have been both direct and indirect oppression against LGBT practices.

Javaid Rehman and Eleni Polymenopoulou argue that the prohibition of homosexuality is rooted in the theologico-juridical corpus of Medieval Islam. This corpus consists mainly of jurisprudence of the major Islamic Schools of Thought (madhhab) or fiqh, within Sunni Islam, and is followed by most contemporary Islamic scholars.¹⁶ The prohibition of homosexual practices is rooted in embedded belief that the institution of marriage can only be made possible by a marriage contract. It goes without saying that, for that reason, most of classical Islamic laws prohibit homosexual practices. "All the major doctrines within the Sunni and Shi'a traditions, and most notably the Shafi School, agree that homosexual intercourse (liwath) is analogous to heterosexual zina, and should therefore be rejected," Javaid Rehman and Eleni explained.¹⁷

Using the above-mentioned perspective as a point of departure, some contemporary Muslim scholars have begun to rethink how Islam behaves toward sexuality, including homosexuality. By and large, sexuality is deemed a taboo in many Muslim communities, and many opt to put the problems around sexuality under the rug rather than starting discussions on the topic in public spaces or academic terrains. Some high education institutions have even come to prohibit any discussion on LGBT issues.¹⁸

Muhsin Hendricks, for instance, in his article attempts to reveal that Islam, at its very core, does not condemn non-heterosexual sexual intimacy. Quoting Kecia Ali, he argues that the prohibition of same-sex marriages in Islam does not stem from the Quran, but rather from the legal construction of marriage and that sexual relationships are both gendered and hierarchical.¹⁹

Employing the same strategy, Scott Kung'le tries to shine light on the fact that it is the dominant, often negative interpretation of Islamic scriptures that mystifies Islam's stance toward homosexual relationship. He opines that,

in the attempt to correct the interpretations of the majority of Muslims on this topic, it is rather mistaken to repudiate the old traditions; instead, he argues that we need to highlight that such interpretations are not based upon the basic principles of Islam.²⁰ As such, the most possible pathway to shedding light on the true Islamic perspective of sexual orientation is to base interpretations on true Islamic teachings (as contained in the Quran and Sunnah), instead of challenging scholarly traditions that have existed for ages.

Diversity as a Basic Argument

Contemporary Muslim scholars approach the issues of LGBT using the perspective of 'diversity values,' as contained in the Quran. Scott is one of such Muslim scholars who frame LGBT issues in the discourse of diversity, emphasizing that Islam is tolerant of all forms of diversity, be it gender, race, ethnicity, language, or culture. He explains that, "At its most basic level, Islam is a religion that positively assesses natural diversity in creation and in human societies", and "The Qur'an respects diversity in physical appearance, constitution, stature, and

color of human beings as a natural consequence of Divine wisdom in creation."²¹ Providing examples of Quranic verses (QS. Al-Nur/24:30), which are clarified by Prophet Muhammad with the statement "Men who are not attracted to women," Scott concludes that "It is therefore reasonable to conclude that the Quran accepts the existence of diversity in sexuality and sexual orientation."²² From this point of view, the diversity of sexual orientations innate (natural), as stated in QS. al-Isrâ/17:84.²³

Scott goes on to emphasize that:

“**The above examples show that the Qur'an asserts that creation is diverse on so many levels and that this variation is not random or mistaken and is never to be assessed negatively. With the Qur'an's vivid portrayal of diversity at so many levels of the natural and human world, it would be logical to assume that this diversity of creation plays out on the level of sexuality as well. It is also plausible to assert that, if some Muslims find it necessary to deny that sexual diversity is part of the natural**

created world, then the burden of proof rests on their shoulders to illustrate their denial from the Qur'anic discourse itself. The Qur'an certainly implies that some people are different in their sexual desires than others when it mentions "men who are not in need of women (Surat al-Nur 24: 30)."²⁴

For this reason, too, Husein Muhammad argues that same-sex attraction in Islamic tradition should be called 'khuntsa' instead of 'mukhannats.' By definition, the word 'mukhannats' in Islamic literature is used to refer to men who are perceived as effeminate. Meanwhile, 'mutarajjilah' describes women who are perceived as masculine.²⁵ Husen even goes to explain in detail that in the (old) Muslim world, there were men who had sexual attraction toward people of the same sex; these include al-Watsiq bin Mu'tashim (w. 847 CE), the last caliph of early Abbasid Dynasty, and Hasan bin Hani, also known as Abu Nawas (750-810 CE), a well-known poet and witty scholar at the time.²⁶

Husein emphasizes that sexual orientations are not socially constructed; rather, they are inherent and pre-destined by Allah. Quoting Ibn Jakar al-'Asqallani,

in Fath al-Bari bi Syarh Shahih al-Bukhari, Husein advocates the discussion on classical Islamic jurisprudence. Muslim scholars categorized al-mukhannats into two groups; one is called mukhannats khalqy, or inherent (natural) homosexuality, and mukhannats bi al-'amdi, or homosexuality as a social construct. They have also decided the laws that apply to each group. They declare that those who fall under the category of 'mukhannats khalqi' or min ashli khilaqatihi (inherent homosexuality) must not be demeaned, stigmatized or punished. Condemnation and punishment shall only be done to mukhannats bi al-qash al-'amdi.²⁷

Musdah Mulia, Chairperson of Indonesian Conference on Religion and Peace, also puts forward a similar argument, saying that, "Sexual orientation is irreversible, predestined character. No one can even choose to be born with certain sexual orientation. Study about sexual orientation concludes that there are several variants, among others: heterosexual, homosexual, bisexual, and asexual."²⁸

In addition, it is crucial to distinguish between the verses of the law and the

verses of the story, which certainly cannot be directly linked with the rules of law. In this context, the story of Loth seems similar to the story of Sodom and Gomorrah. Not all verses of the story can be used as the basis of moral law because they may be metaphors.

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Homosexuality is not Liwath

The argument that makes its point of departure in the concept of diversity and the divine foreordaining of sexual orientations has allowed contemporary Muslim scholars to propose alternative interpretations and theological arguments on LGBT issues, challenging the often negative, predominant interpretations and arguments put forward by other Muslim scholars. Now, how about the Quranic verses that tell of the story of Prophet Loth? Aren't these verses enough to serve as the basis on which to see Islam's stance toward homosexuality?

To answer this question, Muslim scholars have advanced clearer interpretations, differentiating between sexual orientations and sexual behaviors. It is of primary importance to draw a distinction between both, as this distinction will allow us to see Islam's stance toward homosexuality. Homosexuality is an inherent aspect of an individual; in other words, one is born with it. On the other hand, sexual behavior refers to acts performed by an individual with his/her consciousness.

Husein emphasizes that homosexuality does not fall within the confines of 'liwâth' or 'lûthi' as both acts refer to the sexual relations practiced by the people of Prophet Loth (man 'amila 'amala qawm Lûth), which are condemned by the Quran. In this case, according to Husein, al-Thabari refers to the people of Prophet Loth as Sodom, who practiced sodomy. As such, it can be concluded that homosexuality is not synonymous to liwath (sodomy) because homosexuality refers to same-sex attraction, whereas liwath refers to an anal intercourse (sexual act), instead of vaginal intercourse³⁰. Liwath can be done within both homosexual and heterosexual relations.³¹ As also mentioned by Muhsin, Muslims should differentiate between sin and the

sinner. Muhsin concludes that, "Therefore, some orthodox Muslim clergy would preach that it is acceptable for someone to have an attraction to a person of the same sex, but it is sinful to act upon that attraction."³²

He goes on to explain that:

“***It would not be correct to single out male-to-male sex as the sole purpose for destruction of Sodom. Sexual practices in historical Babylon should also not be seen in isolation from idolatrous beliefs and patriarchal pursuits for power and dominance. Sex under repressive conditions and in exploitive societies has often been used to assert dominance by patriarchal chauvinistic men. Non-consensual sex which is tantamount to rape has much more to do with an associated need to dominate rather than sexual gratification. In the case of Sodom the victims were not only virgin girls but also young men coerced into having sex with temple priests as part of their idolatrous rituals. According to the Quran, Sodom stands to be the first nation ever to commit the crime of subjecting***

vulnerable men to coercive sex with the aristocrats.³³

It begs the question: how did the negative interpretations of homosexuality come into place? Musdah Mulia argues that, "Islamic interpretation is heavily hegemonies by heteronormativity, an ideology which obliges human beings to have partners of opposite sex, and must abide by the rule of heterosexuality which establishes the condition that the objective of marriage is for the purpose of procreation, to give birth to descendants."³⁴ Such a view leads many Muslims to believe that, "Heteronormativity sees that normal, good, natural, and ideal sexuality is heterosexual, marital, reproductive, and non-commercial one. In contrast, homosexuals, gays or lesbians, and prostitution are considered immoral, unreligious, forbidden, social disruption."³⁵

The meaning of the behavior of sodomy which is prohibited as a sexual act contained in the Quran must be interpreted as a unity of value that is to be revealed. In these verses, the Quran did not only tell the story about the sexual behavior of the people of Lut, but rather the abomination committed against people who pass or guests. Therefore,

refers to verses that tell about Lut and number commentators (namely Al-Razi, Al-Thabari, and Ibn Asyur), Ulfah Yusuf concluded that that the abomination of the people of Luṭ might exceed cutting off the road, beating, stone throwing, and insults to forcefully penetrating men, which means committing "rape".³⁶ Thus, making these verses as an argument to punish sexual behavior committed by someone as something abominable is irrelevant. Thus, making these verses as an argument to punish sexual behavior carried out by someone as something abominable is irrelevant, because one of the important things conveyed by the Quran in these verses is more likely because sexual behaviour is carried out by force or rape.

Brunei Sharia Penal Code, LGBT and International Human Rights Laws

Brunei is the first country in Southeast Asia to declare the implementation of Sharia law through the announcement made by Sultan Hassanal Bolkhiah in October 2013 (No. S69).³⁷ The implementation came six months after His Majesty announced the gazette of Sharia Penal Code Order on October 22nd, 2013.³⁸

According to Brunei's Report to the UPR in 2014, the Sharia Penal Code Order is an Order that relates to laws in respect of Sharia crimes and any matters connected therewith and is aimed at providing basic human rights. The Order will be implemented gradually in three phases to ensure sufficient time to introduce the Order to the public and to allow for its proper and effective enforcement. The Order generally applies to both Muslims and non-Muslims, and its applicability to: i) Muslims only; ii) non-Muslims only; and iii) both Muslims and non-Muslims, depends on the types of offences as stated in the Order.³⁹

In a royal decree, Sultan Brunei said "With faith and gratitude to Allah the almighty, I declare that tomorrow, Thursday, 1 May 2014, will see the enforcement of sharia law phase one, to be followed by the other phases".⁴⁰ According to the Sultan in his decree that "the move was 'a must' under Islam, dismissing 'never-ending theories' that sharia punishments were cruel in comments clearly aimed at detractors. 'Theory states that Allah's law is cruel and unfair but Allah himself has said that his law is indeed fair'," quoted by The Guardian.

Additionally, Sultan of Brunei also said in his titah that, outside perception that the

Penal Code, which is the Civil Criminal Law currently in use, had been rendered obsolete, was incorrect. According the Sultan, main purpose of Shariah Penal Code adoption is for the God's instruction. He said, "Remember, our focus is on Allah The Al-Mighty alone, seeking His approval only, neither looking left or right in search of others' approval. We have never viewed others in a negative light because what they do is within their rights and up to their individual choices. We also do not expect them to accept and agree with us, but it is sufficient if they respect us as we duly respect them."⁴¹

Brunei planned to implement the Syaria Penal Code gradually. The first phase beginning on May 2014 introduces fines or jail terms for offences ranging from indecent behavior, failure to attend Friday prayers, and out-of-wedlock pregnancies. The second phase of implementation covering crimes such as theft and robbery is to be implemented later this year, involving more stringent penalties such as severing of limbs and flogging. Finally, punishments such as death by stoning for offences including sodomy and adultery will be introduced.⁴²

By 2018, preparation had been made so as to put the Sharia law into force, and the

Bruneian Government enacted the Sharia Court Criminal Procedure Code Order on March 5. This Code came into effect a year later in 2019, which was met with criticisms from international communities.

Islamic Criminal Law and its Implementation in Nation-State Context

According to Muslim scholars, the implementation of Sharia law varies across different countries. Sharia law was replaced by colonial laws during the era of Western colonization, but it did not cease to operate. Rather, Sharia was shifted from the public to the private domain, that is, to regulate family matters (*ahwal al-syakhsyiyah*). Meanwhile, colonial laws replaced the existing civil and criminal laws. This period marked the transition from the use of Islamic law to that of European law, as symbolically demonstrated by the abolition of caliphate system by the Ottoman Empire in 1924.⁴³ This phenomenon exists in almost all Southeast Asian countries, including the Muslim-majority parts of southern Thailand and southern Philippines. Some of Indonesian laws today are remnants of the Dutch colonial

laws. In Brunei, the Sharia law that was enacted in 2013 is meant to replace its Western laws (Brunei Penal Code Chapter 22).

After freeing themselves from the shackles of Western powers, some Muslim countries restored the use of Islamic criminal laws in the context of nation-state, but others continued to implement the laws inherited from their prior colonial governments.⁴⁴ With Saudi Arabia being the exception, some Muslim countries resumed Islamic criminal laws through legislations despite the fact that the knowledge traditions on this topic had been expunged by the colonial governments. In practice, Sharia law is often 'transplanted' into colonial-inherited laws. This is due to the systemic inadequacy of Islamic law, hindering the holistic implementation of Islamic criminal law, which was restored during the post-independence period.⁴⁵

Generally, Sharia law today is implemented in the context of nation-state, which is vastly different from that of Islamic sultanate. Given the popularity of this system, it is rather difficult to repudiate the concept of nation-state and

its corresponding political structures and stand firm with the old model. This model of government entails the centralization and bureaucratization of state administration and law, as well as professional and accountable governance that upholds certain principles, regardless of the citizens' differing backgrounds.⁴⁶

Any form of discrimination or favoritism on the basis of race, religion, cultural heritage, or sexual orientation is incongruous with the system of nation-state. In the studies of political Islam, some Muslim scholars have differentiated the characteristics of nation-building politics that are rested upon religion and citizenship. In contemporary context, a nation-state is no longer built on certain identities of a particular group (for example, religion) but on the collective or shared identities of members of a given state/country. Consequently, every citizen has equal rights and status, and every law or regulation that is enacted to discriminate against particular groups is seen as irrelevant and repugnant. A consensus reached by a nation comprising members of diverse backgrounds must be embodied in a constitution that is just and equal.⁴⁷ Human rights are an indivisible part of

nation-state, as expressed in the Vienna World Conference in 1993, "All human rights are universal, indivisible, interrelated, and interdependent."

The UN Special Rapporteur on Freedom of Religion or Belief (FoRB) stresses that, to some extent, human rights can go hand-in-hand with a state that upholds an official religion. This is albeit the fact that in reality, this type of system tends to discriminate against members of minority groups. For example, queer Muslims face a multitude of challenges, of which one is rejection, anchored by the belief that homosexuality is a major sin in Islam and punishable by death under Sharia law.⁴⁸ As a duty-bearer, a state has the obligations to respect, protect and fulfill human rights. To perform its obligation to respect human rights, the Special Rapporteur on FoRB explains that a state should repeal criminal laws that discriminate against certain people, and textbooks used for school education should not contain stereotypes and prejudices that may stoke hostile sentiments against followers of certain religions or beliefs and groups that suffer systematic discrimination, including women and LGBT persons.⁴⁹

On the other hand, the implementation of Sharia law in a nation-state that is tied to international human rights laws must be consented to by its citizens.⁵⁰ In other words, the implementation of Sharia law must be morally justified by observing human rights norms, which have become one of the moral foundations of global communities.

Discriminative views against LGBT people do not only result in substantive biases in the interpretation of sacred texts; they can also trigger and augment hate speech and violence perpetrated in the name of religion. There is a strong connection between discrimination in law and practice, and incitement to violence in the name of religion and violence itself, as noted by the UN Special Rapporteur on FoRB on his thematic report. Violence against LGBT people is often justified and legitimized by discriminatory laws built on religious laws and/or supported by religious authorities. Some examples of such laws include those that criminalize adultery, homosexuality, and cross-dressing. The Special Rapporteur on FoRB also stresses the Human Rights Committee's concern on the issue of hate speech and manifestations of

intolerance and prejudice by religious leaders against individuals on the basis of their sexual orientation, in a broader context of acts of violence, including killings of LGBT people.⁵¹

To respond to the growing challenge on identity and sexual diversity that should be seen through the lens of religious values, in June 2016 the UN Special Rapporteur on FoRB and Muslims for Progressive Values held a conference on freedom of religion or belief and sexuality. Javaid Rehman, one of the resource persons, said, "There are also positive references to sexual diversity in religious scripture, including the Qur'an. For this reason, there is merit not only to pursue a secular approach in upholding human rights but to also turn to religious traditions for inspiration. The issue we have is not so much religion itself; it is the desire to exclude, to discriminate, to ostracize certain communities who have not had power."⁵²

Therefore, experts in Islamic laws, the broader Muslim communities and countries that recognize Islamic laws as their sources of law should rethink and review such sources (Quran) and

compose a normative framework to protect and respect the rights of people with different sexual orientations. It should be done for the purpose of not only applying Islamic laws in everyday life, but also respecting and protecting every human's rights.

Jinayah, Islamic Jurisprudence and the Quran's Point of View

Matters pertaining to liwath are covered in Part I of the Brunei Sharia Penal Code of 2013 and Part IV on the Offences, Chapter I on the Sariqah, Hirabah, Zina, Zina Bil Jabar, Liwat, Qazae Drinking Intoxicating Drinks and Irtidad. Specifically, liwath is governed under Section 82-85 of the Brunei Sharia Penal Code of 2013 as follows:

Liwat (Section 81)

- 1. Any person who commits liwat is guilty of an offence and shall be liable on conviction to the same punishment as provided for the offence of zina.*
- 2. For the purposes of this Order, "liwat" means sexual intercourse between a man and another man or between a man and a woman other than his wife, done against the order of nature that is through the anus.*

Proof of liwat (Section 81): Liwat shall be proved in the same manner as provided for the offence of zina.

Attempt to commit liwat (Section 84): Any person who attempts to commit liwat or attempts to cause the commission of liwat is guilty of an offence and shall be liable on conviction to the same punishment as provided under the section 71 or 72, as the case may be.

Abetting commission of liwat (Section 85): Any person who abets the commission of liwat is guilty of an offence and shall be liable on conviction to the same punishment as provided under the section 73 or 74, as the case may be.⁵³

Before further discussing the Islamic criminal law of Brunei, it is pertinent to reiterate the point that has been put forward in the beginning of this Policy Brief, that is, that according to some Muslim scholars, homosexuality is related to sexual orientation, while sodomy is a part of sexual behaviors. In addition, referring to classical Islamic traditions, we can see that Islamic scholars differ in opinions on homosexuality. Musdah Mulia argues that Imam Syafi'i, for example, underlines that homosexual practices

subject to punishment are only those that are committed in public spaces. Other scholars, such as Abu Yusuf and al-Auza'i, opine that homosexual should be charged the same punishments as those applicable to heterosexuals who commit adultery.⁵⁴

Additionally, there are no historical facts that support that homosexual practices were punishable by death during the life of Prophet Muhammad. Musdah Mulia also adds that first execution of a homosexual person happened after his prophet hood, during the period of Abu Bakar. During this time, a homosexual couple was sentenced to death. Later, at the time of Caliph Umar Ibn Khattab, he ordered that a homosexual person be burned alive. However, because there was an objection to it, the punishment was then changed into stoning.⁵⁵

Muhsin Hendriks also notes that other orthodox Muslims take a different stance on homosexuality, advocating that one must hate the sin and not the sinner. "This perspective views homosexuality not in terms of sexual orientation, but rather as a sexual act which involves anal penetration. Therefore, some orthodox Muslim clergy would preach that it is

acceptable for someone to have an attraction to a person of the same sex, but it is sinful to act upon that attraction."⁵⁶

According to progressive Muslim scholars, there is no corporal punishment for homosexuals. Any hadith that has been referred to condemn homosexuals and impose corporal punishment on the homosexual is considered invalid (dha'if).⁵⁷ Referring to Muhammad Jalal Kiskh, Ulfah Yusuf also stated that all of the hadith used by Islamic scholars to assert hudud sentences for homosexual or lesbian perpetrators are weak in terms of genealogy.⁵⁸

This view is in line with the fact that the Quran itself does not explicitly stipulate punishments against homosexual practices. Contemporary Muslim scholars argue the verses that talk about Prophet Loth's people are read mainly as historical narratives, putting emphasis more on sexual practices rather than sexual orientations. They highlight historicity more than the legality. In the view of Muslim for Progressive Values, it is said that:

“***The Qur'an does not contain language that explicitly criminalizes same-sex acts or love.***”

“***In this regard, the hadd punishments prescribed for crimes of homosexuality and same-sex relations is assuredly un-Islamic and not rooted in any credible interpretation of Qur’anic scripture. Additionally, there is no documentation of the Prophet ever having prescribed punishment for same-sex love.***”⁵⁹

For that purpose, too, Muslim for Progressive Values emphasize that, “In addition, it is crucial to distinguish between the verses of the law and the verses of the story, which certainly cannot be directly linked with the rules of law. In this context, the story of Luth that seems similar to the story of Sodom and Gomorrah. Not all verses of the story can be the basis of the moral law because they may be metaphors.”⁶⁰ This is based on Islamic law principles that determined through authoritative methods and processes as has been done by Islamic jurisprudence figures based on the Quran and Sunnah. In Islamic jurisprudence theory (Ushul Fiqh), hudud is something that states the sentence clearly in the Quran, not based on verses that contain multiple interpretations as in the verses of the stories of previous prophets.⁶¹

More than that, referring to Muhammad Jalal Kiskh (Khawatir Muslim fi al-Mas’ala al-Jinsiyyah), Ulfah Yusuf stated in her book, that both the Qur’an and the Sunnah take part in clarifying some of the punishments meted out (hudud) to sinners in Islam. Even if commentators generally agree on the punishments mentioned in the Qur’an such as the punishment for fornication and thievery, they disagree over punishments attributed to the Prophet, and chief among these is the death penalty by stoning for the married fornicator. She said, that “I would like to point out that the absence of an absolute and explicit punishment in the Qur’an for liwāt (homosexual) and sihāq (lesbian) has engendered disagreement between religious scholars and commentators, for such hypothetical issues are based on interpretation and analogy.”⁶²

Interpretation of the commentators who stated that the punishment for lesbian was based on al-Nisa/4 verses 15 and 16 are actually irrelevant, because these two verses do not at all emphasize the meaning of “fahisyah” (abomination) which means of homosexual behavior. Referring to the hadith describing verse 15 of QS An-Nisa, citing Fakhru al-Razi in

Mafatih al-Ghayb, Ulfah Yusuf emphasized that the purpose of the word “fahisyah” in this verse is about adulterous women, not lesbian.⁶³ Ulfah Yusuf stressed, it is clear thus that there is disagreement over the punishment for homosexuality and lesbian in the Qur’an. This is because of the divergence among mufassir and religious scholars between those who seek to link lesbian and especially homosexuality to adultery, whose punishment is clear in the Qur’an, and those who search in the hadiths of the Prophet, peace be upon him, for punishment for both. Even though the attribute of abomination qualified both the adultery and male liwāt, this common meaning is relative and does not mean they are equal in punishment, for in language abomination is an expression for anything abhorrent to the soul and offensive to the tongue until it reaches the limit of its kind.⁶⁴

Sharia legislation stipulating punishment, corporal or otherwise, for same-sex love is drawn from ahadith reports, which are of debatable authenticity and value. In fact, through scholarship it has been corroborated that “The most popularly cited hadith to rebuke and criminalize homosexuality is false,” and that this

hadith “appears not to have originated from the Prophet himself but rather with a second-generation follower of the Prophet (a follower prone to exaggeration, fabrication, and ideological extremism).⁶⁵

Regarding this opinion, quoted Muhammad Jalal Kiskh, Ulfah stated that it is odd that the entire Prophet’s hadiths which condemn liwat and decree punishment for them who commit it have been attacked for their lack of authenticity. For instance, al-Tirmidhi, one of Islamic scholars in hadith, finds the hadith, in which the Prophet, peace upon him, cursed three times those who commit liwat and stated: “Verily, what I fear most for my nation is the deed of the People of Lot.” Commentators, as Jalal Kiskh wrote, also rejected the hadith, “Whoever you find doing the action of the People of Lot, execute the one who does it and the one to whom it is done” on the basis of some disagreement over its attribution to ‘Akrama ‘an Ibn ‘Abbā in the chain of transmission (isnad). They also said that the hadith that “sihaq (lesbian) among them [was] adultery” had a weak chain of transmission. The hadith that “when a man rides a man, God’s throne is shaken” was described as weak and

meager in content. The narrator in Ibn 'Abbas's hadith, "If a Luthi (the people of Luth) were to die without repentance, he is transformed in his tomb into a pig" was described as mentioning unknown people, and one of its sources, Ismail Ibn Um Dirham, was not an authoritative voice. Ibn al-Jawzi has even included this hadith in the list of fabricated hadiths.⁶⁶

In this context, as concluded among religious scholars in the Discussion conducted by the UN Special Rapporteur on Freedom of Religion and Muslims for Progressive Values, since the Qur'an does not explicitly mention homosexuality in terms of jurisprudence, and positivist interpretations of jurisprudence are drawn from sources that do not inherently stipulate provisions for adjudication or abide by any legal framework, it was concluded that Islamic law cannot be located and that any system of Sharia law is positivist and political in nature, a secular product disguised as divine jurisprudence.⁶⁷ It will be related to the fact that the Qur'an is interpreted by jurists belonging to different schools of Islamic thought, which are often times ideologically conflicting along sectarian fault lines.⁶⁸

Quran is the main source of Islamic law, while fiqh is mostly derived from the thoughts of mujtahid. However, in practice the implementation of Sharia law does not take into account these aspects proportionately. Experts of fiqh (Islamic jurisprudence) are far more focused on the judgment of sodomy and than that of sexual orientations. At the substantive level, there are stark differences among fiqh experts' views on the types of punishment applicable to people who perform sodomy, or why they should be punished at all. All of the four Sunni schools of thought consider sodomy to be an offence, but they distinguish sodomy that is done with a man from that with a woman. The latter is called *liwat sughra* (light sodomy).⁶⁹

That sodomy is considered an offence is largely a result of the Quran's unclear stance on this topic. In fact, the Quran does not stipulate any judgment or punishment against people who practice sodomy. Sodomy is, then, equated with *zina* (pre-marital sex), on which provisions are specified in the Quran. The three main schools of thought in the Islamic jurisprudence—Maliki, Syafi'i and Hanbali—equate sodomy with *zina*, whereas the

Hanafi school of thought puts sodomy under the category of ta'zir, which means that regulations pertaining to this matter are entirely left up to the state/country. Mun'im Sirry opines that such differences indicate that Islamic jurists in the classical era repudiated the hadiths that ordered the killing of those who practiced sodomy, as often quoted by conservative members of the Muslim communities to justify their views.⁷⁰

As such, it is important to return to the authoritative texts of Islamic belief—the Quran and Sunnah—to review the accuracy of the well-established schools of thought in Islam. This approach is not meant to challenge or refuse Sharia law; rather, it is pertinent to use the source texts (Quran and Sunnah) to have a clear, well-rounded understanding of how Islam really views LGBT⁷¹ as violence and discrimination against LGBT people are often based on the Islamic traditions or schools of thought, which are the products of mujtahid thinkers. In other words, if Quran is used as the main reference, punishment against LGBT people should be limited to certain criminal acts and/or practices that are clearly specified in the Quran, considering that hudud itself is interpreted as 'limits that cannot be comprehended by humans.'⁷²

In addition, it is also important to look at how Islamic criminal law is implemented in a comprehensive manner, especially in terms of procedural law. With regard to zina, for example, Islamic law takes particular carefulness in assessing a case by ensuring that there are at least four witnesses. If this requirement is not met, the accuser will be sentenced to 80 lashings.⁷³

It goes to show that the systems of justice in the implementation of Sharia law must be coherent and rested upon the idea of rahmatan lil alamin⁷⁴ (a blessing to the universe), as is the central idea of Sharia law itself. This idea of justice and blessing should be embodied and translated into the justice system of Islam. When the implementation of Sharia law discriminates against certain people, it fails to uphold its own intrinsic, basic principle, which is to bring justice and blessing to the world and every human being.

CONCLUSION

It is relevant to put a spotlight on the regulations pertaining to homosexual practices in several Muslim countries (including Brunei, which has incorporated them into its criminal law), and evaluate such regulations holistically in reference to the original, authoritative texts of Islamic belief (Quran, Sunnah and their scholarly interpretations by Muslim thinkers in classical era).⁷⁵

The Sections 82-85 of Brunei Sharia Penal Code Order of 2013 equate homosexual practices with zina. Consequently, the implementation of such Order has to abide by the rigid and strict rules of Islamic criminal law. In situations in which such a law has been enacted, various stakeholders should take extra care. They should question and be watchful, assessing not only the potential dangers that the law can pose to minority and vulnerable groups, but also whether the law achieves or upholds the very principle of Islamic law itself: justice. Failure in holistically understanding Islamic law might be counter-productive to the principle of the law itself: rahmatan lil alamin.

It is also important to shine light on how Quran views sexuality and responds to different sexual orientations in a comprehensive manner. The absence of hudud (laws that are mandated and fixed by Allah) should be read as a sign that guides how Muslim communities should behave toward people with different sexual orientations. In Islam, discussions on sexuality fall under the category of mu'amalah (transactions or dealings among humans), instead of 'ibadah (service to Allah). As such, the principles of mu'amalah must be observed and used as the basis of decision-making on matters that pertain to sexuality issues. It is also important to emphasize that the fiqh of sexuality is ijtihâdi in nature, which means that it is a product of human reasoning instead of ta'abuddi, or God-given.⁷⁶

In the context of nation-state, a state carries the obligations to ensure equality before the law and bring justice to its citizens without discrimination of any kind, including sexual orientations. Criticisms from the international communities on the implementation of

Sharia law against LGBT are logical, considering that Bruneian government must protect the rights of all of its citizens. Meanwhile, the implementation of Sharia law that runs contradictory to the principle of Islamic norms should be continually reformed.

A rights-based approach and perspective should be upheld as it allows a state to function as a duty-bearer without hindering it from performing moral religious obligations. Abdhullah Ahmed An-Naim says:

“**...human rights should be defined by the people who accept and live by them on the ground, and not imposed by former colonial powers on their former colonies or by delegates of post-colonial states, and international bureaucrats. Second, human rights norms must be implemented through realistic contextual steps that are suited to the needs and resources of relevant communities, and not by enacting high-sounding legislation to be presented at sanitized meetings of international organizations, and diplomatic or academic conferences. Third, strategies of**

implementation must be deeply contextual, and under the control of the human subjects of these rights everywhere.”⁷⁷

This statement should not be used to justify norms that are discriminatory or contrary to human rights norms. Rather, the state should plan out comprehensive strategies to ensure the full enjoyment of human rights by all of its citizens. The state should also provide alternative ways to curb widespread misconceptions about differing sexual orientations, instead of legitimizing those misconceptions by enacting discriminatory laws. An-Naim explains, “We need to go beyond bureaucratic, formulistic ideas – to inspire the imagination of people, and to drive change.”⁷⁸

Therefore, legitimizing discriminatory views and using those views to justify the implementation of Sharia law is counter-productive to the principles of human rights. As a duty-bearer, a state should exhaust available resources and mechanisms to ensure the full enjoyment of human rights by all of its citizens without any form of discrimination. ■

ENDNOTES

- 1 - Joint publication between ASEAN SOGIE Caucus and Human Right Working Group (HRWG), Study case Brunei Sharia Penal Code.
- 2 - "A Small Step Forward for ASEAN LGBT Rights"; <https://thediplomat.com/2014/03/a-small-step-forward-for-asean-lgbt-rights/>
- 3 - See, Lucie Cviklová, "Advancement of human rights standards for LGBT people through the perspective of international human rights law", in Journal of Comparative Research in Anthropology and Sociology, Volume 3, Number 2, Winter 2012, p. 49.
- 4 - Husein Muhammad, et.al., Fiqh Seksualitas, p. 19.
- 5 - Abudllahi Ahmed An-Naim, "On Human Rights, the Secular State and Sharia today", Interview on the UNESCO Courier, January - March 2019, p. 48.
- 6 - Lucie Cviklová, "Advancement of human rights standards for LGBT people through the perspective of international human rights law", p. 50; Abudllahi Ahmed An-Naim, "On Human Rights, the Secular State and Sharia today", p. 48.
- 7 - Asmawi and Yuli Yasin, "International Human Rights Law and the Progressive Muslim's Perspective on Lesbian, Gay, Bisexual, and Transgender Status in Indonesia", Advances in Social Science, Education and Humanities Research, volume 162, (International Conference on Law and Justice (ICLJ 2017)), p. 55.
- 8 - The aim of these principles is to improve the interpretation of human rights treaties but, they have not become part of international human rights law yet. The signatories made efforts that the Yogyakarta Principles should become international legal standard with which all States must comply, but some states have expressed reservations. See, Lucie Cviklová, "Advancement of human rights standards for LGBT people through the perspective of international human rights law", in Journal of Comparative Research in Anthropology and Sociology, Volume 3, Number 2, Winter 2012, p. 48
- 9 - Javaid Rehman and Eleni Polymenopoulou, "Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World", Fordham International Law Journal, Volume 37, Issue 1, 2013, p. 2-3.
- 10 - Scott Siraj al-Haqq Kugle, "Sexuality, Diversity, and Ethics in the Agenda of Progressive Muslims"
- 11 - Husein Muhammad, et.al., Fiqh Seksualitas, p. 32.

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12 - Ibid.

13 - Javaid Rehman and Eleni Polymenopoulou, "Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World", p. 10.

14 - Husein Muhammad, et.al., *Fiqh Seksualitas*, h. 32

15 - Muhsin Hendricks, "Islamic Texts", p. 31

16 - Their views are based principally upon the Quranic parable of the Prophet Lot (Luth in Arabic).

17 - Javaid Rehman and Eleni Polymenopoulou, "Is Green a Part of the Rainbow? Sharia, Homosexuality and LGBT Rights in the Muslim World", p. 10.

18 - See, Kyle Knight, "Indonesia's anti-LGBT drive should concern all Asia", Human Rights Watch, 20 February 2018, retrieved from <https://www.hrw.org/news/2018/02/20/indonesias-anti-lgbt-drive-should-concern-all-asia>

19 - Muhsin Hendricks, "Islamic Texts", p. 33.

20 - Scott Kugle, *Sexuality Diversity and ethnic in the age*, p. 195.

21 - Scott Kugle, *Sexuality Diversity and ethnic in the age*, p. 195 and 196

22 - Scott Kugle, *Sexuality Diversity and ethnic in the age*, p. 195; See also, Muhsin Hendricks, "Islamic Texts", p. 36.

23 - Asmawi and Yuli Yasin, "International Human Rights Law and the Progressive Muslim's Perspective on Lesbian, Gay, Bisexual, and Transgender Status in Indonesia", p. 56.

24 - Scott Kugle, *Sexuality Diversity and ethnic in the age*, p. 196.

25 - Husein Muhammad, et.al., *Fiqh Seksualitas*, p. 32

26 - Ibid.

27 - Husein Muhammad, et.al., *Fiqh Seksualitas*, h. 93; Scott Kugle, *Sexuality Diversity and ethnic in the age*, p. 197.

28 - Musdah Mulia, "Understanding LGBT Issues in Islam: Promoting the Appreciation of Human Dignity", article delivered at 2nd CSBR Sexuality Institute, 11 - 18 September 2009, in Istanbul.

29 - Asmawi and Yuli Yasin, "International Human Rights Law and the Progressive Muslim's Perspective on Lesbian, Gay, Bisexual, and Transgender Status in Indonesia", p. 56.

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30 - According to Muhsin's explanation, Sodom was undoubtedly the wealthiest city on the biblical Vale of Siddim in Babylon. According to Verse 15:16 of the Quran, the city was situated directly on the trade highway known today as the Arava highway. Archaeological findings and historical usage of the highway confirm that merchants often traded with Sodom and passed from opposite sides through this highway. Sodom, known for its amenities and location on the highway, was a necessary resting point for travellers. Muhsin Hendricks, "Islamic Texts", p. 38.

31 - Husein's understanding is based on a comprehensive reading of the Quran. He goes beyond textual interpretation to look at the socio-cultural contexts in which such texts were revealed. He takes this position with the convictions that any text used as a reference in Islam is always bound to the principal mission of the revelation of Islam to humankind, which is to free humanity from injustice and oppression, and to achieve the basic goals of Islamic Sharia (maqâshid alsyarí'at). See more in Hisein Muhammad, et.al, Fiqh Seksualitas, p. 95

32 - Muhsin Hendricks, "Islamic Texts", p. 36.

33 - Muhsin Hendricks, "Islamic Texts", p. 36.

34 - Musdah Mulia, "Understanding LGBT Issues in Islam: Promoting the Appreciation of Human Dignity", p. 4.

35 - Asmawi and Yuli Yasin, "International Human Rights Law and the Progressive Muslim's Perspective on Lesbian, Gay, Bisexual, and Transgender Status in Indonesia", p. 56; See, Muhsin Hendricks, "Islamic Texts", p. 39; See also, "Understanding Quran as an Ecumenical Manuscript: A Reformist's Take", written by Hera Dini, July, 17 2015, available at <https://magdalene.co/story/understanding-quran-as-an-ecumenical-manuscript-a-reformists-take>; compare this opinion with Ulfah Yusuf, Hairat Muslimah: fi al-Mirats, wa al-Zawaj, wa al-Jinsiyyati al-Mitsliyyah, (Sahr li al-Nasyr: 2008), 3rd edition. See English version, Olfa Youssef, The Perplexity of a Muslim Women: Over Inheritance, Marriage, and Homosexuality, (London and New York: Lexington Book, 2017), translated by Lamia Benyoussef.

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36 - Ulfah Yusuf, Hairat Muslimah: fi al-Mirats, wa al-Zawaj, wa al-Jinsiyyati al-Mitsliyyah, (Sahr li al-Nasyr: 2008), 3rd edition, p. ... See English version, Olfa Youssef, The Perplexity of a Muslim Women: Over Inheritance, Marriage, and Homosexuality, (London and New York: Lexington Book, 2017), translated by Lamia Benyoussef, p. 9; see also, Amine Tais, "The Quran and Sexuality", June 16, 2016, accessed from <http://aminetais.com/the-quran-and-homosexuality/>

37 - Order made under Article 83 (3), Law on

38 - "Brunei Darussalam Implements Syariah Law", in Brunei Darussalam Newsletter, May 2014, Volume 29, Issue 5, published by the Department of Information Prime Minister's Office, Brunei Darussalam (online version is available).

39 - National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Brunei Darussalam, Document number: A/HRC/WG.6/19/BRN/1

40 - "Brunei Darussalam Implements Syariah Law", in Brunei Darussalam Newsletter, May 2014, Volume 29, Issue 5; "Sultan of Brunei unveils strict sharia penal code", The Guardian, 30 April 2014, <https://www.theguardian.com/world/2014/apr/30/sultan-brunei-sharia-penal-code-flogging-death-stoning>

41 - See also, "Brunei Darussalam Implements Syariah Law", in Brunei Darussalam Newsletter, May 2014

42 - "Sultan of Brunei unveils strict sharia penal code", The Guardian, 30 April 2014; See also, "Brunei Darussalam Implements Syariah Law", in Brunei Darussalam Newsletter, May 2014

43 - Abdullahi Ahmed An-Naim, Islam and the Secular State: Negotiating the Future of Shari'a, (USA: Harvard University Press, 2008), p. 330.

44 - Generally, the 10 countries observed in the research are categorized into two groups; the first group includes those whose the minority of the population support the use of Sharia as the basis on which laws are enacted (Lebanon, Turkey, Indonesia, Iran, and Morocco), and the other comprises countries whose majority of the population support the implementation of Sharia law (Egypt, Pakistan, Jordan, and Bangladesh). See Tahir Wasti. The application of Islamic Criminal Law in Pakistan: Sharia in Practice. Leiden and Boston: Brill. p.1.

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45 - Tahir Wasti, *The Application of Islamic Criminal Law in Pakistan*, p. 3.

46 - To find out more about the characteristics nation-state, read Abdullahi Ahmed An-Naim, *Islam and the Secular State: Negotiating the Future of Shari'a*, (USA: Harvard University Press, 2008), h. 86-87

47 - Ahmad Sueadi, dkk., ed., *Islam, Konstitusi, dan Hak Asasi Manusia*, (Jakarta: The Wahid Institute, 2009), p. 102

48 - Muhsin Hendricks, "Islamic Texts: A Source for Acceptance of Queer Individuals into Mainstream Muslim Society", *The Equal Rights Review*, Vol. Five (2010), p. 31

49 - Heiner Bielefeldt, *Freedom of Religion or Belief: Thematic Report of UN Special Rapporteur 2010 - 2016*, (Bonn: International Institute for Religious Freedom, 2017), p. 261

50 - Abdullahi Ahmed An-Naim, *Islam and the Secular State*, p. 95.

51 - Heiner Bielefeldt, *Freedom of Religion or Belief: Thematic Report of UN Special Rapporteur 2010 - 2016*, p. 252.

52 - Muslims for the Progressive Values, "Conference Summary: Freedom of Religion or Belief and Sexuality", conducted by The UN Special Rapporteur on FoRB and Muslims for the Progressive Values, Geneva, 8 - 9 June 2016, p. 23.

53 - Article 81 - 85 Syariah Penal Code Order 2013.

54 - Musdah Mulia, "Understanding LGBT Issues in Islam: Promoting the Appreciation of Human Dignity", p. 4

55 - Musdah Mulia, "Understanding LGBT Issues in Islam: Promoting the Appreciation of Human Dignity", p. 4

56 - Muhsin Hendricks, "Islamic Texts: A Source for Acceptance of Queer Individuals into Mainstream Muslim Society

57 - This opinion can certainly be argued that the Hadith of that corporal punishment is narrated by many reporters of Hadith such as Malik ibn Anas, Abu Daud, al-Turmudzi, Ibn Majah, Ibn Hibban, al-Tabrani, al-Hakim, and al-Baihaqi. See, Asmawi and Yuli Yasin, "International Human Rights Law and the Progressive Muslim's Perspective on Lesbian, Gay, Bisexual, and Transgender Status in Indonesia", p. 56.

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- 58 - Ulfah Yusuf, Hairat Muslimah: fi al-Mirats, wa al-Zawaj, wa al-Jinsiyyati al-Mitsliyyah.
- 59 - Muslims for the Progressive Values, "Conference Summary: Freedom of Religion or Belief and Sexuality".
- 60 - Asmawi and Yuli Yasin, "International Human Rights Law and the Progressive Muslim's Perspective on Lesbian, Gay, Bisexual, and Transgender Status in Indonesia", p. 56.
- 61 - See, Muhammad Abu Zahrah, Ushul al-Fiqh, (Beirut: Dar al-Fikr al-Arabi, 2010); see also, Jasser Auda, Maqasid al-Shariah as Philosophy of Islamic Law: A System Approach, (London: The International Institute of Islamic Thought).
- 62 - Ulfah Yusuf, Hairat Muslimah: fi al-Mirats, wa al-Zawaj, wa al-Jinsiyyati al-Mitsliyyah, p. 205
- 63 - Ulfah Yusuf, Hairat Muslimah: fi al-Mirats, wa al-Zawaj, wa al-Jinsiyyati al-Mitsliyyah, p. 206
- 64 - Ulfah Yusuf, Hairat Muslimah: fi al-Mirats, wa al-Zawaj, wa al-Jinsiyyati al-Mitsliyyah, p. 207
- 65 - Muslims for the Progressive Values, "Conference Summary: Freedom of Religion or Belief and Sexuality".
- 66 - Ulfah Yusuf, Hairat Muslimah: fi al-Mirats, wa al-Zawaj, wa al-Jinsiyyati al-Mitsliyyah, p. 214.
- 67 - Muslims for the Progressive Values, "Conference Summary: Freedom of Religion or Belief and Sexuality", p. 7
- 68 - Muslims for the Progressive Values, "Conference Summary: Freedom of Religion or Belief and Sexuality", p. 7
- 69 - In Shia school of thought, sodomy is permissible, but it would be better to avoid it. Munim Sirry, Islam, LGBT, dan Perkawinan Sejenis, Rabu, 2 Maret 2016, <https://indonesiana.tempo.co/read/64822/2016/03/02/masirry/islam-lgbt-dan-perkawinan-sejenis>
- 70 - Munim Sirry, Islam, LGBT, dan Perkawinan Sejenis, <https://indonesiana.tempo.co/read/64822/2016/03/02/masirry/islam-lgbt-dan-perkawinan-sejenis>; See also, Muhsin Hendricks, "Islamic Texts", p. 33
- 71 - Contemporary Muslim thinkers agreed that authoritative texts in Islam should be used as the foundation of Islamic law. See Asaf A. A. Fysee, Outline of Muhammad Law, Out line of Muhammadan Law, (London: Oxpord University Press, 1955), cet. II, p. 21.

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72 - According to Abu Zahra, the only criminal acts that are mentioned in the Quran are zina (QS. An-Nur: 2; QS. Al-Anfal: 38), qazaf, accusing someone of perpetrating zina but unable to provide evidence (QS. Al-Nur: 4), pencurian (QS. Al-Maidah: 38), dan hirobah, burglary and murder (QS. Al-Maidah: 33 - 34). Lihat lebih lanjut, Abu Zahrah, Al-'Uqubah: Al-Jarimah wa al-'Uqubah fi al-Islam, (Kairo: Dar al-Fikr Al-Arabi, tth.).

73 - Abu Zahrah, Al-'Uqubah: Al-Jarimah wa al-'Uqubah fi al-Islam.

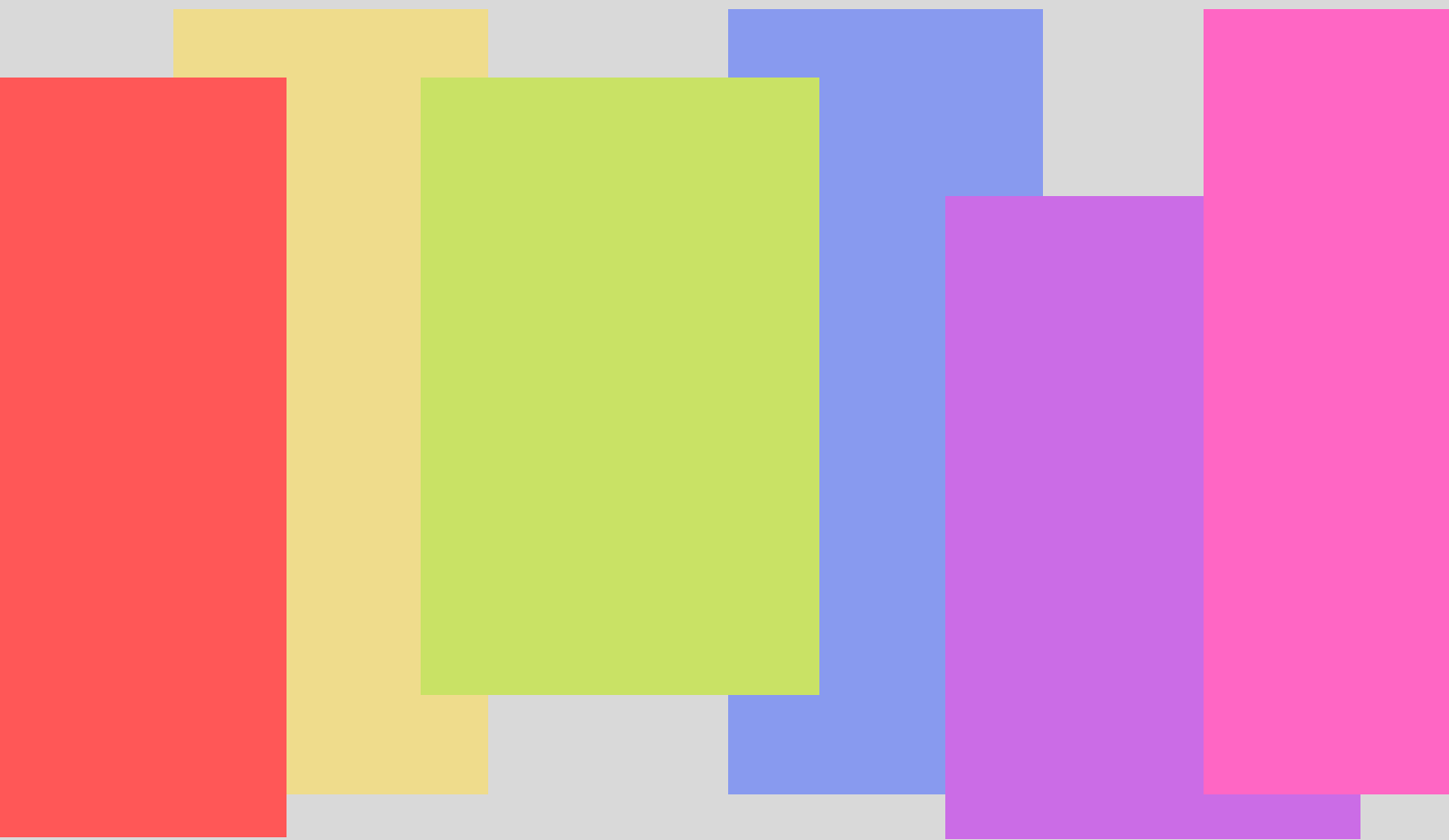
74 - The concept of Islam as rahmatan lil alamin affirms that the application of Islamic Shari'a must go beyond normative-moralist claims which place Islamic teachings as a tool to discriminate or position those who are different as a lower group. On the contrary, this normative moralist view actually prevents the implementation of Islamic Shari'a in line with its true nature, is represented by the principles of compassion and justice for all of humanity (rahmatan lilalamin). See, Abdullahi Ahmed An-Naim, Islam and the Secular State: Negotiating Future of Shari'a, (Harvard University Press, 2008), p. 246; See also, Nyong Eka Teguh Imam Santosa, "Foundation of the Society of Mercy: Trust, Justice, and Ethics", in Advances in Social Science, Education and Humanities Research (ASSEHR), volume 125 (1st International Conference on Intellectuals' Global Responsibility (ICIGR 2017)).

75 - According to Abu Zahra, the only criminal acts that are mentioned in the Quran are zina (QS. An-Nur: 2; QS. Al-Anfal: 38), qazaf, accusing someone of perpetrating zina but unable to provide evidence (QS. Al-Nur: 4), pencurian (QS. Al-Maidah: 38), dan hirobah, burglary and murder (QS. Al-Maidah: 33 - 34). Lihat lebih lanjut, Abu Zahrah, Al-'Uqubah: Al-Jarimah wa al-'Uqubah fi al-Islam, (Kairo: Dar al-Fikr Al-Arabi, tth.).

76 - Husein Muhammad, et.al., Fiqh Seksualitas, p. 34

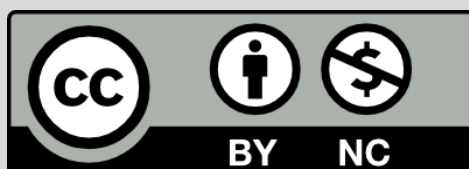
77 - Abudllahi Ahmed An-Naim, "On Human Rights, the Secular State and Sharia today", Interview on the UNESCO Courier, January - March 2019, p. 47

78 - Abudllahi Ahmed An-Naim, "On Human Rights, the Secular State and Sharia today", Interview on the UNESCO Courier, January - March 2019, p. 47



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The journey to find the connections between religion and sexuality is continuous. This document is a work in progress. Activists, scholars and everyone are deeply encouraged to contribute ideas and insights that we may weave into this body of thought.



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