

Analysis of Deviant Sexual Behavior (Same-Same Marriage) from a Legal Sociology Perspective

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Abstract

This research is normative legal research that discusses sexual deviant behavior in same-sex marriages from the perspective of legal sociology in Indonesia. Based on Law Number 1 of 1974 concerning Marriage, marriage in Indonesia is defined as an inner and outer bond between a man and a woman as husband and wife to form a happy and eternal family based on the belief in the Almighty God. Therefore, same-sex marriage is not legally recognized in Indonesia. Article 1 Law no. 1 of 1974 confirms that a valid marriage is between a man and a woman, so same-sex relationships are not considered a valid marriage. Even if same-sex marriage is legally recognized abroad, Indonesia still does not recognize it as a valid marriage. From a legal sociology perspective, factors that influence the occurrence of deviant sexual behavior (same-sex marriage) include: education and knowledge, environment, family, And culture. Low education and a lack of understanding of moral values can influence individual behavior. A permissive social environment can also trigger this behavior. Apart from that, disharmonious family conditions and a culture that is starting to accept same-sex marriage in several countries are also factors that influence this deviation.

Keywords: *Deviation, Sexual Behavior, Same-Sex Marriage, Sociology of Law.*

INTRODUCTION

Sexual deviant behavior is no longer new in Indonesia or even in countries around the world (Sejenis & Pidana, 2024). Sexual deviation falls into the category of abnormal behavior. The meaning of abnormal is because the behavior has deviated from social, religious, politeness and legal norms, in addition to other norms. (Muhammadiyah et al., 2023) Sexual deviant behavior not only harms oneself, but also harms others.

There is much debate among social activists and human rights regarding the causes of sexual deviant behavior. (Ali & Sahlepi, 2021) Some say genetic factors, there are also those who believe that a person's psychological factors make a person engage in deviant sexual behavior. However, there are also those who assume that it is because environmental factors are very supportive that this behavioral deviation occurs.

(Joni Zuhendra & Abd.Rahmad, 2023) Deviant sexual behavior is common behavior in Indonesian society. Different-sex marriage or heterosexual marriage is a marriage that is known in Indonesian society as a heterosexual society, namely a marriage between two different sexes, namely a man and a woman. In reality, apart from different-sex marriages, there are also same-sex marriages, namely marriages between two people of the same sex (either a man with a man or a woman with a woman).

(Millah, 2024) Individuals who experience sexual deviance generally hide their actions and do not want to admit their mistakes. This is due to fear and worry about being rejected and discriminated against by the environment, they themselves are reluctant to admit that their sexual behavior deviates from social, moral and religious norms. Sexual issues are very sensitive issues, both morally and normatively, and can affect a person's reputation. Deviant sexual behavior arises from deviant sexual orientation. Deviant sexual behavior is carried out by people who have a deviant sexual orientation, also known as LGBT (Lesbian, Gay, Bisexual, and

Transgender/Transsexual). (Pipit Muliya, Dyah Aminatun, Sukma Septian Nasution, Tommy Hastomo, Setiana Sri Wahyuni Sitepu, 2020)LGBT consists of several groups, namely: 1) Lesbians or lesbians, namely groups of women who are physically, emotionally and/or spiritually attracted to other women; 2) Gay, namely a group of men who are physically, emotionally and/or spiritually attracted to other men; 3) Bisexual or Bisexual, namely a group of people who are physically, emotionally and/or spiritually attracted to both the opposite sex and the same sex; 4) Transgender/Transsexual or Transgender, namely a group of people who feel they have a gender identity that is different from their body anatomy, so they choose to undergo genital surgery to adjust to their desired gender identity.

(Mumtazah et al., 2023)In several western countries, the LGBT movement with its efforts to legalize same-sex marriage is increasingly widespread and recognized as another form of different-sex marriage. The United States Constitution through the Supreme Court states that it guarantees same-sex marriage on the grounds of equality before the law and the United States Constitution recognizes the rights of LGBT groups on the grounds that "marriage is a constitutional right for same-sex couples". The decision came after the filing of the Obergefell versus Hodges case through a five to four (5:4) legal decision which applied in all states (50 states) in the United States.

Based on the previous background, it is important to carry out studies related to the Analysis of Deviant Sexual Behavior (Same-Same Marriage) from a Legal Sociology Perspective. So the author formulates the problem of how to analyze same-sex marriage in Indonesia from the perspective of Law Number 1 of 1974 concerning Marriage and what are the factors in the occurrence of deviant sexual behavior (same-sex marriage) based on legal sociology

RESEARCH METHODS

The method used in this research is normative legal research, namely research into problems by looking at the sources of applicable regulations related to the title Analysis of Deviant Sexual Behavior (Same-Same Marriage) in a Legal Sociology Perspective. Normative legal research is researching law from an internal perspective with the object of research being legal norms. In other words, legal research places law as a building system of norms. The norm system in question is about principles, norms, rules of laws and regulations, court decisions, agreements and doctrines (teachings). The approach method used is a research approach through a statutory approach and a conceptual approach.

RESULT AND DISCUSSION

Same-sex marriage in Indonesia from the perspective of Law Number 1 of 1974 concerning Marriage

Article 1 of Law Number 1 of 1974 states that: marriage is "a spiritual and physical bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the belief in the Almighty God." (Mumtazah et al., 2023)Meanwhile, the definition in the Civil Code states that marriage is a legal relationship between a man and a woman for a long time. So the conclusion is that a relationship or bond is called marriage if it is carried out by partners of different types, namely between a man and a woman. (Jeka et al., 2024)Not between men and men or women and women. The concept of

marriage contained in the Marriage Law is the concept of heterosexual marriage (marriage between different sexes), namely between a man and a woman.

(Priscyllia, 2022) Marriage and birth are two sides of a coin that cannot be separated. Article 1 of the Marriage Law not only defines the meaning of marriage but also the purpose of marriage. The purpose of marriage is formulated as ideal because it is to form and foster an eternal and happy family or household between a man and a woman based on the belief in the Almighty God. According to J. Satrio in his book *Principles of Civil Law*, he states that what is meant by family consists of husband, wife and children. Furthermore, J. Satrio is of the opinion that obtaining/having children is included in the aim of marriage, namely forming a happy family consisting of husband, wife and children (offspring) (Wafi, 2020).

Same-sex marriage in Indonesia cannot be carried out and even Indonesian law does not recognize it. (Martiasari, 2019) His behavior is not only deviant but violates the norms that live and develop in Indonesia. The purpose of marriage, according to the Marriage Law, is to produce offspring. However, the existence of deviations in same-sex marriage behavior is not the desired goal. Where same-sex marriages never produce offspring, it is natural that births will result from relationships of different sexes. The purpose of marriage in customary law communities is kinship, namely maintaining and continuing offspring according to the lineage that exists in traditional communities in Indonesia, namely the father's lineage, the mother's lineage or the lineage of both. Heredity is very important in traditional communities, namely so that there are successors of a clan, title or clan and as successors (heirs) of inherited wealth and even assets inherited from ancestors.

According to Soekanto, every relationship must be guided by norms. Human relationships with other humans, human relationships with groups and relationships between groups are regulated by values or rules. The rules or norms in society are religious rules or norms, moral rules or norms, polite rules or norms, and legal rules or norms.

Deviating sexual behavior from same-sex marriages is not in accordance with the concept of Law Number 1 of 1974 concerning marriage. (Luftia Gunawan et al., 2023) In Indonesia, there is a strong opposition to this sexual deviant behavior. Even though there are a number of Indonesian citizens who carry out same-sex marriages abroad and according to the law of that country it is valid and legal, Indonesia still does not recognize these marriages as legal/illegal. (Septya Ningsih & Muhammad, 2023) If this continues, it will disrupt the principles of public order that apply in every country, especially Indonesia, which opposes same-sex marriage as sexually deviant behavior and is not based on the norms that live and develop in Indonesia.

Factors in the occurrence of deviant sexual behavior (same-sex marriage) based on legal sociology.

Based on the analysis carried out by the author, the factors that influence the occurrence of deviant sexual behavior (same-sex marriage) based on legal sociology include:

1. Education and knowledge

Of the many perpetrators of sexual deviance that occur today, education and knowledge are the main factors that influence the occurrence of sexual deviance. People who have fairly high and broad education and knowledge will think twice about committing sexual deviations, because the consequences of this behavior will have a negative impact on themselves and the people around them. Even though a small number of people with the highest level of education commit sexual deviations, they do not reach the level of marriage, only to the extent of having relationships and not having ties.

The higher the knowledge, the smaller the chance of serious risky sexual behavior.

2. Environment

A supportive environment is one of the factors in the occurrence of sexual deviant behavior. LGBT groups usually have their own place, where the environment is special for them and is hidden so that the public and law enforcement do not know about the existence of the group. If the public doesn't know about it, their number will increase day by day.

3. Family

The family has a major role in supporting the occurrence of sexual deviant behavior. Weak supervision by parents and family is an important factor in someone committing sexual deviation.

4. Culture

Free sexual behavior carried out by someone is due to the lack of awareness of the perpetrator of sexual deviation that this seriously violates the norms that live and develop in Indonesia and is contrary to the applicable legal regulations. However, due to habitual factors that are carried out continuously, this sexual deviant behavior is difficult to stop.

CONCLUSION

1. Law Number 1 of 1974 does not recognize the concept of same-sex marriage. Article 1 of Law no. 1 of 1974 concerning marriage formulates that marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on the belief in the Almighty God. Furthermore, the Civil Code defines marriage as a legal relationship between a man and a woman for a long time. So the conclusion is that a relationship or bond is called marriage if it is carried out by partners of different types, namely between a man and a woman. Not between men and men or women and women. The concept of marriage contained in the Marriage Law is the concept of heterosexual marriage (marriage between different sexes), namely between a man and a woman. Deviating sexual behavior from same-sex marriages is not in accordance with the concept of Law Number 1 of 1974 concerning marriage. In Indonesia, there is a strong opposition to this sexual deviant behavior. Even though there are a number of Indonesian citizens who carry out same-sex marriages abroad and according to the law of that country it is valid and legal, Indonesia still does not recognize these marriages as legal/illegal.
2. Factors that influence the occurrence of deviant sexual behavior (same-sex marriage) based on legal sociology include: Education and knowledge, environment, family, culture.

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