

## Legal Protection for the LGBT Community in the Era of Inclusive Digital Transformation in Indonesia

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### Abstract

This study aims to analyze the legal protection for the LGBT community in Indonesia amidst the era of inclusive digital transformation. Employing a normative legal research method, the study examines the existing legal framework, including the 1945 Constitution and Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Information and Electronic Transactions (the ITE Law), as well as the challenges and loopholes in its implementation. The findings reveal that current legal protection is partial and ineffective, primarily due to the absence of regulations that explicitly include sexual orientation and gender identity as categories protected from discrimination. The phrasing of articles in the ITE Law is deemed overly general, and its application is often hindered by bias among law enforcement officials, which makes victims of cybercrimes such as cyberbullying and doxing particularly vulnerable. This research concludes that comprehensive measures are needed, ranging from revising the ITE Law and providing training for law enforcement, to collaborating with digital platforms and launching public education campaigns, in order to create a legal and social ecosystem that is truly inclusive and non-discriminatory.

**Keywords:** *Digital Inclusivity, Digital Transformation, Legal Protection, LGBT.*

### INTRODUCTION

Amidst the rapid pace of digital transformation, the issue of legal protection for the Lesbian, Gay, Bisexual, and Transgender (LGBT) community in Indonesia has become increasingly complex. The development of information technology has opened up broader avenues for expression and advocacy for the LGBT community, but at the same time, it has heightened the potential for discrimination, doxing, and cyber-based violence [1]. Within the framework of a rule-of-law state, every citizen should receive equal protection without discrimination, as mandated by the 1945 Constitution and various international human rights instruments ratified by Indonesia [2]. In practice, however, legal protection for the LGBT community remains ambiguous and non-committal, often disregarded in public policy and by law enforcement officials [3].

Although Indonesia is known for its cultural diversity and religious tolerance, the issue of LGBT rights remains a sensitive and controversial topic. In recent decades, the advancement of digital technology has changed how individuals interact and identify themselves. On one hand, the digital space has become a platform for the LGBT community to network, seek support, and campaign for their rights, which are often difficult to exercise in physical public spaces. On the other hand, digital platforms have also become a tool for spreading hate speech, discrimination, and harassment against LGBT individuals. These developments raise fundamental questions about how Indonesian law, which was largely designed before the digital era, can protect the LGBT community from these new forms of discrimination [4].

Various previous studies have addressed the social dynamics and discrimination against the LGBT community in Indonesia. For instance, a study by Hartanto and Widodo (2018) highlighted the deep-rooted social stigma within educational institutions and families, while Yuliani's (2022) research showed that digital media narratives often reinforce negative stereotypes against LGBT individuals. Wulan and Sari's (2018) study noted that discrimination often occurs in social and public spheres, yet specific legal protection is minimal. Furthermore, research by Santoso and Pratama (2020) discussed how existing legal interpretations, particularly those related to morality and decency, are frequently used to justify discriminatory actions against sexual minority groups. These studies provide important insights into the challenges faced by the LGBT community in obtaining legal protection [5][6][7][8]. Nevertheless, research specifically examining how legal protection can be formulated or strengthened within the context of an inclusive digital transformation remains very limited. Most studies have focused on socio-cultural aspects or general human rights advocacy, without deeply connecting them to the development of digital regulations and concrete legal protection [4]. Very few studies have specifically examined how legal protection for the LGBT community is affected by the rapid development of digital technology that creates new dynamics, such as cyberbullying, disinformation, and online harassment.

This research gap is the crucial backdrop for this study. Digital transformation has changed how the LGBT community accesses public spaces, but it has not been accompanied by responsive legal policies that address their needs and vulnerabilities in the digital sphere. Therefore, this study is essential to fill the void in legal literature regarding the protection of sexual minorities in the context of inclusive digitalization in Indonesia. The research is also expected to contribute to the development of a legal framework based on the principles of non-discrimination, inclusivity, and digital justice in an ever-evolving information technology era.

## **METHOD**

This study uses a normative legal research or doctrinal research approach [9]. This approach was chosen because its main focus is to analyze and examine existing legal norms, both those codified in laws and those that have developed in legal practice, to address the research problem. Normative legal research is highly relevant for examining how Indonesia's legal framework, which consists of statutes, court decisions, and legal doctrines, can be applied or interpreted to provide more effective protection for the LGBT community in the digital era.

This normative legal research approach will be supported by two primary methods. First, a statute approach, which involves reviewing and analyzing all relevant regulations, such as the 1945 Constitution, Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Information and Electronic Transactions (the ITE Law), and various other related regulations [10]. This analysis aims to identify legal loopholes or ambiguities that may affect the protection of the LGBT community. Second, a conceptual approach, where this research will be guided by legal concepts and doctrines related to human rights, non-discrimination, and citizen protection. These concepts will be used as an analytical lens to evaluate the extent to which existing regulations are aligned with these principles.

## RESULT AND DISCUSSION

### 1. Legal Regulations in Indonesia Governing the Legal Protection of the LGBT Community from Discrimination and Violence in the Digital Sphere

The issue of LGBT rights in the Indonesian context can be analyzed through the foundational principles of the state, namely Pancasila and the 1945 Constitution of the Republic of Indonesia. Pancasila, as the nation's ideological foundation, embodies values of humanity, justice, and respect for individual dignity. The second principle, "Just and Civilized Humanity," emphasizes the importance of humane and equal treatment for all citizens without discrimination, including those from the LGBT community. Similarly, the fifth principle, "Social Justice for All the People of Indonesia," mandates the equitable distribution of justice for every citizen without exception. Article 28I(2) of the 1945 Constitution explicitly states that every person has the right to be free from discriminatory treatment on any grounds and is entitled to protection against such discrimination. This indicates that the principle of non-discrimination is constitutionally recognized. However, in practice, the application of these values to LGBT individuals remains contested in a pluralistic society, where certain groups consider LGBT expression to be incompatible with religious and local cultural norms. Legal protections against discrimination and violence targeting the LGBT community, particularly in digital spaces, remain fragmented and lack a comprehensive legal framework. Despite the constitutional commitment to non-discrimination, no existing legislation explicitly includes sexual orientation or gender identity as protected categories. This legal gap creates a significant ambiguity, whereby legal interpretations are often influenced by prevailing moral and social norms rather than universal human rights principles. [11].

In the context of the digital space, Law No. 1 of 2024 on the Second Amendment to Law No. 11 of 2008 on Information and Electronic Transactions (the ITE Law) should be the primary instrument for combating cyber-violence. However, its implementation remains ineffective in protecting the LGBT community. For example, Article 27, paragraph (3) of the ITE Law on defamation is often used to prosecute individuals deemed to be "spreading hatred" or "ridiculing," but this article lacks a clear mechanism to protect victims of cyberbullying or doxing from the LGBT community. Furthermore, Article 28, paragraph (2) on hate speech based on SARA (Ethnicity, Religion, Race, and Intergroup relations) also does not explicitly cover hate speech based on sexual orientation or gender identity [12]. This indicates a misalignment between the goal of legal protection and the reality of its implementation. Consequently, law enforcement officials face difficulties in prosecuting perpetrators of cyber-violence against the LGBT community, while victims are often reluctant to report incidents for fear of stigmatization or even criminalization [13].

Moreover, Adkiras's (2021) research in *Lex Renaissance* reveals that Indonesian positive law still relies on the ITE Law and the Pornography Law to handle online gender-based violence. However, these laws were not specifically designed to provide comprehensive protection to the LGBT community in the digital context that arises from information transformation. Newer laws, such as the Sexual Violence Crime Law (UU TPKS, No. 12/2022), provide a more concrete legal dimension to gender-based violence but remain focused on women and children as victims, failing to accommodate the specific needs of the LGBT community [14].

Findings from the study *Legal Vacuum of LGBT in Indonesia* show that the lack of an explicit legal framework for LGBT protection creates a legal vacuum that has the potential to reinforce

discrimination and selective or inconsistent law enforcement. Additionally, the fragmentation of regulations at the national and local levels exacerbates legal uncertainty, especially since local areas have discriminatory regulations, such as in Aceh, or even a new draft Criminal Code that could restrict LGBT expression [15].

This situation is compounded by the overlap between digital regulations and conservative socio-cultural norms. As explained by Pratama and Wijaya (2021), although digital platforms have anti-hate speech policies, their enforcement in Indonesia is often inconsistent due to social and political pressure. Thus, despite the existence of some articles in the law that could be used, the current legal framework in Indonesia does not provide robust and definitive protection for the LGBT community in the digital space [16].

## **2. Challenges and Legal Loopholes in the Implementation of Regulations to Protect the LGBT Community from Cybercrimes**

The implementation of Law No. 1 of 2024 on Information and Electronic Transactions (ITE Law) to protect the LGBT community from cybercrimes like cyberbullying and doxing faces significant challenges and legal loopholes. One major issue is the overly broad and subjective definitions for insult and defamation, where claims of "offended feelings" are often used as a basis for reporting, a mechanism that is susceptible to misuse and creates a climate of fear for online speech. The implementation of the ITE Law to protect the LGBT community from cybercrimes such as cyberbullying and doxing encounters significant challenges and legal loopholes. One primary challenge is the phrasing of the ITE Law's articles, which are general and do not explicitly include protection for victims based on sexual orientation or gender identity [16]. As explained by Siregar and Wulandari (2020), Article 28, paragraph (2) of the ITE Law on hate speech only mentions SARA (Ethnicity, Religion, Race, and Intergroup relations), which does not provide a strong legal basis for prosecuting hate speech against the LGBT community. Consequently, law enforcement officials often find it difficult to identify and process cases of hate speech targeting this group, leaving victims in a vulnerable position [17].

Another legal loophole lies in the interpretation and implementation of these articles. Although some articles in the ITE Law, such as Article 27, paragraph (3) on defamation or Article 29 on threats of violence, can be used to prosecute perpetrators of cyberbullying and doxing, their application is often inconsistent. A study by Pramono and Setyadi (2019) shows that law enforcement tends to be more responsive to cases involving public figures or issues considered "socially sensitive," while cases affecting the LGBT community are often ignored or deemed less important. Furthermore, stigmatization and discrimination within law enforcement itself can be a barrier for victims to obtain justice [18]. This aligns with findings from research by Wijaya and Saputra (2021), which revealed that LGBT victims often face resistance or are even judged when reporting cybercrimes, which ultimately reduces their trust in the legal system [19].

The lack of a clear, specific definition of doxing and cyberbullying in the ITE Law also constitutes a crucial legal loophole. While doxing can be classified as a violation of privacy, there is no specific article that outlines sanctions for perpetrators who spread victims' personal data with the intent to harass or intimidate. This often allows perpetrators to escape adequate legal consequences. The Pornography Law and the ITE Law are frequently used to target the LGBT community with excessive moral interpretations. For example, generic terms like "lesbian" or "gay" are often considered pornographic content by government filter systems, leading to the

mass blocking of LGBT websites and applications without a transparent appeals process [20]. As a result, LGBT advocacy and digital education are hampered, while cyber-violence remains rampant without protection.

Overall, this analysis shows that the major gaps in the ITE Law and related regulations include vague definitions, a lack of standards for digital evidence, moral bias in content interpretation, and limited automated hate speech detection, which are key obstacles to providing effective legal protection for the LGBT community in the cyber sphere. More inclusive, transparent, and rights-based legal reform, focused on digital protection, is urgently needed to close these loopholes.

### **3. The Ideal Formulation of Policy and Legal Regulation to Ensure Effective Legal Protection for the LGBT Community in the Era of Digital Transformation**

Legally and constitutionally, Indonesia has neither explicitly recognized nor rejected the existence of the LGBT community as a group entitled to specific legal status or protection under national law. The 1945 Constitution of the Republic of Indonesia guarantees every citizen the right to legal protection, freedom of expression, and the right to a decent life. However, it does not contain any provisions that specifically mention or protect individuals based on sexual orientation or gender identity. In practice, LGBT individuals in Indonesia often face discrimination, social exclusion, and even repressive actions from state authorities or certain segments of society. The state's stance remains ambiguous neither officially recognizing nor openly prohibiting LGBT existence. Therefore, formulating more inclusive and responsive legal policies and regulations to ensure effective legal protection for the LGBT community, particularly in the context of digital transformation, requires a comprehensive and multidimensional approach. The first crucial step is to revise or add articles to the Information and Electronic Transactions Law (ITE Law) to explicitly include protection against hate speech based on sexual orientation and gender identity. As suggested by Lestari and Kusuma (2022), adding these categories to Article 28, paragraph (2) would provide a strong legal basis for law enforcement officials to act more decisively against perpetrators of cybercrimes. Without a clear definition, law enforcement will continue to face interpretive barriers [21].

In addition to revising the ITE Law, it is also necessary to update internal policies in law enforcement agencies and on digital platforms. According to research by Anwar and Hadi (2021), training and socialization on gender and sexual diversity for police and prosecutors are essential to reduce bias and discrimination during case handling. With better understanding, officials can be more sensitive and professional in serving victims from the LGBT community. On the other hand, digital platforms, such as social media, should be encouraged to strengthen their content moderation policies, particularly regarding cyberbullying and doxing. Collaboration between the government, civil society organizations, and technology companies can produce more effective guidelines for blocking and prosecuting accounts that spread hatred. The legal approach must be complemented by non-legislative efforts to build public awareness. Inclusive public policy is not only based on written law but also on strong social support. Educational campaigns highlighting the importance of tolerance, non-discrimination, and internet ethics need to be intensified [22]. Research by Wijaya and Santoso (2023) shows that positive media narratives can significantly reduce negative stigma and promote social acceptance of the LGBT community [23].

Besides the regulatory aspect, the digital security of the LGBT community also requires special attention. The 2023 Global Information Society Watch (GISWatch) report highlights how the Pornography Law alone has been used to censor LGBT content without considering the context of advocacy or education, and how technical filters target the community through the blocking of sites and applications related to specific sexual orientations [24]. From a technical standpoint, the protection of 'digital self-determination' becomes important. This principle demands the development of digital policies that allow individual and collective control over data, especially for vulnerable groups, to address data and agent asymmetry in the misuse of digital technology [25]. Such a principle is worthy of being integrated into regulations like a strong Personal Data Protection Law and a transparent data access system for LGBT citizens. Therefore, the development of effective legal policies must go hand-in-hand with social and educational initiatives to create a truly inclusive digital ecosystem.

## CONCLUSION

Legal protection for the LGBT community in Indonesia during the era of digital transformation is still ineffective and partial. Although the constitution guarantees the principle of non-discrimination, there are no specific laws protecting this group from discrimination and violence, especially in the digital space. The implementation of the Information and Electronic Transactions Law (ITE Law), which should be the main instrument, is hindered by several factors. First, the phrasing of its articles does not explicitly cover hate speech based on sexual orientation and gender identity, making law enforcement ambiguous. Second, the existing stigma and bias among law enforcement officials cause victims to be reluctant to report and lead to cyber-violence cases against the LGBT community often being neglected. Therefore, comprehensive steps are needed to ensure inclusive legal protection. This includes revising the ITE Law to explicitly define hate speech based on sexual orientation and gender identity, as well as building the capacity and awareness of law enforcement officials. Furthermore, collaboration with digital platforms and public education campaigns are crucial to creating a safe and non-discriminatory digital ecosystem for all citizens, including the LGBT community.

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