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Fines Fatimah, PhD student

Géza Marton Doctoral School of Political Science and Law, University of Debrecen,
Hungary

E-mail: finesfatimah@ub.ac.id

ORCID-ID: 0009-0009-8308-7132

SILENCING THE RAINBOW: BETWEEN MORAL PANIC AND THE RIGHT TO DEFEND SOCIAL MORALITY IN INDONESIA

ABSTRACT

Since the early 2000s, there are increasing initiatives to regulate and suppress LGBTQ identities in Indonesia through both national and subnational legislation. These developments have been growing in speed with the spread of global information, which political, religious and moral elites have described as threatening cultural and societal values. This framing has cultivated lasting society fears that views LGBTQ identities as foreign threats warranting state intervention. Aceh's Qanun Jinayat, the only regional legislation applying criminal law to same-sex sexual conduct, is the most obvious step in criminalization. This is only a beginning of the journey, there have been numerous local ordinances, such as Peraturan Daerah (local bylaws), Rancangan Peraturan Daerah (draft bylaws), Surat Edaran Bupati (regent circular letters), and Peraturan Bupati (regent regulations) in several sections of the country with specific measures to limit the expression and the presence of LGBTQ people. Though non-criminal in character, these measures are moral governance practices that institutionalise surveillance, social control, and public stigmatisation.

This paper explains to what extent the influence of social fear of LGBTQ propaganda frames legal morality, and how the implications of Indonesian regulation influence the freedom of LGBTQ individuals' identity. This qualitative legal study considers the debate theory of legal moralism between Devlin's theory and Hart's theory. The article argues that these developments institutionalise a distinctly Devlinian form of law and moral, in which law is justified as a vehicle for enforcing shared public morality and preserving social cohesion, in sharp contrast to Hart's liberal emphasis on autonomy, privacy, and the harm principle as limits to legal coercion. By embedding moral panic within legal structures, the Indonesian state normalises identity suppression despite longstanding traditions of gender diversity.

Keywords: Moral panic, legal morality, LGBTQ rights, local bylaw, identity suppression.

1. INTRODUCTION

Over the past two decades, the regulation of sexuality and gender identity has emerged as one of the most contested arenas of law and governance in many parts of the world. In Indonesia, a Muslim-majority country often celebrated for its cultural pluralism and democratic transition, this contestation has taken a particularly pronounced legal form. Since the early 2000s, a growing number of national and subnational initiatives have sought to regulate and suppress LGBTQ identities through a dense web of criminal and administrative measures. These developments have unfolded in parallel with intensifying anxieties over globalisation, Western cultural influence, and the perceived erosion of religious and societal values.

Political, religious, and moral elites increasingly frame sexual and gender diversity as a foreign threat to Indonesian culture and morality. This framing has produced a sustained moral panic in which LGBTQ identities are no longer treated merely as private differences but are constructed as public dangers warranting state intervention. The enactment of Aceh's *Qanun Jinayat*, the only regional legislation in Indonesia that explicitly applies criminal law to same-sex sexual conduct, represents the most visible manifestation of this moral panic. Yet criminalisation in Aceh is only one part of a broader regulatory trajectory. Across different regions, a wide array of local bylaws (*Peraturan Daerah*), draft bylaws (*Rancangan Peraturan Daerah*), regent circular letters (*Surat Edaran Bupati*), and regent regulations (*Peraturan Bupati*) has introduced specific measures that restrict the presence, expression, and social participation of LGBTQ people. Although these instruments are often formally non-criminal, they operate in practice as mechanisms of moral governance that institutionalise surveillance, social control, and public stigmatisation.

These legal developments raise fundamental questions about the relationship between law and morality, the limits of state power over intimate life, and the position of minority identities within a majoritarian democratic order. They also revive a classic jurisprudential controversy: the debate between H.L.A. Hart and Lord Devlin on the enforceability of morality through law. Devlin famously defended the supremacy of shared public morality as a legitimate foundation for legal coercion, arguing that the preservation of social cohesion justified the criminalisation of conduct deemed morally deviant. Hart, by contrast, insisted that the harm principle and respect for individual autonomy and privacy must strictly limit legal intervention. While this debate originally emerged in mid-twentieth-

century Britain in response to the decriminalisation of homosexuality¹, its normative tensions remain highly relevant for understanding contemporary legal moralism in non-Western and postcolonial contexts.

Despite the growing body of scholarship on LGBTQ regulation, moral panic, and Islamic governance in Indonesia, relatively little attention has been paid to how these developments can be systematically analysed through the lens of the Hart–Devlin debate. Much of the existing literature examines particular laws, social movements, or political actors, but seldom situates Indonesian legal practices within broader theoretical discussions on the legitimacy of enforcing morality through law. This gap limits our ability to fully grasp the normative foundations of current regulatory trends and their implications for rights, citizenship, and legal authority.

The questions in this article are: first, how the social fear of LGBTQ propaganda frames legal morality, and second, how the implications of Indonesian regulation influence the freedom of LGBTQ individuals' identities.

2. METHODS

This research adopts a qualitative method, historical and statute approach, analyses the regulation concerning LGBTQ in Indonesia. The study employs a case study approach, focusing on Indonesia as the subject. Indonesia was chosen as the research object because it offers a unique combination of a plural and decentralised legal system, the strong influence of religious values in public policy, and increasing regulation of LGBTQ+ identities, reflecting the institutionalisation of moral panic. In addition, the contrast between the history of gender diversity and contemporary restrictions makes Indonesia a relevant case for examining the relationship among law, morality, and freedom of identity within the framework of legal moralism.

3. THEORETICAL FRAMEWORK

3.1. Moral panic

Moral panic is sociological concept describing situations in which a condition, episode, person, or group is defined as a threat to societal values and interests,

¹ Devlin, P.: , *The Enforcement of Morals*, Oxford University Press, London 1972, p. 3.

generating anxiety and hostility disproportionate to the actual level of harm. Typically, a moral panic involves the construction of a "folk devil", media exaggeration or distortion of events, political and expert commentary that frames the issue as a serious social problem, and demands for intensified social control or new forms of regulation.² Stanley Cohen defines Moral panic as a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests; its nature is presented in a stylized and stereotypical fashion by the mass media.³

Rothe & Muzzatti, in efforts to advance the panic framework inspired by both Cohen and Goode & Ben-Yehuda propose the following panic process:

1. Someone or something becomes defined as a threat to values or interests.
2. The threat is depicted in a recognisable form by the media.
3. A rapid build-up of public concern generated hostility.
4. Response from authorities, politicians, and moral entrepreneurs.
5. Panic results in social change.⁴

The following numbered progression, proposed by Critcher, is aligned with those applied to Cohen's definition of moral panic, as illustrated earlier in this chapter:

1. *Emergence*: A form of behaviour is perceived as threatening, creating anxiety that something is wrong, with a narrowed focus on imminent dangers.
2. *Media Inventory*: Preliminary explanations of the threat are mainly articulated via news media. The exaggeration, distortion, prediction, and symbolisation of a threat are created as actors become sensitised to danger.
3. *Moral Entrepreneurs*: Groups or organisations speculate about the nature of the problem and recommend remedies to solve the issue. They offer directions and explanations for why behaviours are taking place.

² French, P., *Moral Panic of Islamist Extremism: Elite-Engineered fear Harming the Hierarchy of Credibility*, Liverpool John Moores University, 2024, p. 25.

³ Sean P. Hier, *Conceptualizing Moral Panic through a Moral Economy of Harm*, *Critical sociology*, volume 28, issue 3, Koninklijke Brill NV, Leiden, 2002, p. 312.

⁴ French, P., op. cit, note 2, 2024, p. 16.

4. *Experts*: Like moral entrepreneurs, experts carry a particular weight which affects how the media define issues. The media also uses expert views to reinforce narratives that are in line with the news distributor's ideological value.
5. *Coping and Resolution*: The reactions of leading actors contain ideas about the required measures (remedies). Current policing powers are exploited and, if deemed insufficient, the demand for extraordinary power increases.
6. *Fade Away*: The panic ends, as '*the condition then disappears, submerges or deteriorates and becomes more visible.*'
7. *Legacy*: Potential short-lasting effects becoming a footnote in history or producing lasting changes in social policy, the law, or society's view of itself.⁵

3.2. Legal Moralism

3.2.1. Patrick Devlin engages in debate about moral and criminal law concerning the decriminalization of homosexuality

Lord Patrick Devlin⁶ is best known for his theory of legal moralism, which supports using law to uphold shared moral standards. He explained his views clearly in *The Enforcement of Morals* (1965), a response to the 1957 Wolfenden Report.⁷ The report suggested decriminalising consensual homosexual acts

⁵ French, P, op. cit. note 2, p. 17.

⁶ Patrick Devlin was born in Chislehurst, Kent in 1905. His father was a Roman Catholic Irish architect from County Tyrone, while his mother was of Scottish Protestant descent from Aberdeen. Devlin was appointed as Lord Justice of Appeal, and a year later he was made Baron Devlin of West Wick in the County of Wilts. After retiring, he served as a senior official at the University of Cambridge from 1966 to 1991.

⁷ The Wolfenden Report is a report of the Departmental Committee on Homosexual Offences and Prostitution. The government set up a committee, chaired by Sir John Wolfenden, to examine laws relating to:

1. Homosexual behaviour between consenting adults in private
2. Street prostitution (especially "soliciting" in public)

The recommendation of the report was that:

1. Homosexual acts between consenting adults in private should no longer be a criminal offence.
2. The law should distinguish between public morality and what adults do in private.

between adults in private, but Devlin disagreed. He believed society has a legitimate interest in protecting its moral values and that law is essential in maintaining social unity.

At the heart of Devlin's theory is the claim that society is bound together by a shared morality. For Devlin, moral norms are not merely private beliefs but constitute the "cement" that holds a society together. If these moral bonds are seriously undermined, society itself is at risk of disintegration. On this view, the protection of public morality is as important as the protection of political institutions or national security. Law is therefore justified in intervening to suppress conduct that threatens the moral fabric of society, even when such conduct occurs in private and does not produce immediate harm to others.

Devlin rejects the "harm principle"⁸ as an adequate limit on legal intervention. He argues that harm should not be understood narrowly as physical injury or direct economic loss. Instead, conduct that deeply offends shared moral sensibilities can itself be considered harmful to society as a whole. Moral outrage, social intolerance, and collective disgust are treated as indicators that a practice poses a threat to social cohesion. From this perspective, legal enforcement of morality is not irrational or oppressive but a necessary response to protect society's moral integrity.

Devlin argues that the Wolfenden Report incorrectly aims for a single simple principle protecting individuals from harm to distinguish crime from sin. He contends that the main purpose of criminal law is not just safeguarding individuals but also preserving society's existence and its shared moral values. There can't be a strict separation between law and morals; criminal law naturally enforces key moral principles. Historically connected to Christian teachings, current law draws its moral foundation from the community's collective sense of right and wrong, which often coincides with Christian morals where law intervenes. He believes society needs both moral guidance, mostly provided by religion, and legal enforcement. Without the moral order rooted in Christian beliefs and common sense, law alone can't sustain social unity. Any effort to limit law to preventing tangible harm while avoiding moral enforcement is both conceptually flawed and inconsistent with actual legal practice.

This led (a decade later) to the Sexual Offences Act 1967 in England and Wales. This partially decriminalized homosexuality between men over 21 in private. Because of this, Lord Wolfenden was then regarded as a hero for the homosexual community.

⁸ Devlin, P., op. cit. note 1, p. 11.

Devlin argues that criminal law is grounded in shared moral principles and that society may legitimately use the law to enforce its common morality, including in matters often regarded as purely private. He criticizes the Wolfenden Report for trying to draw a sharp line between protecting the public and enforcing morals. The Wolfenden Report had recommended decriminalizing private, consensual homosexual acts between adults and emphasized individual freedom in private morality. Devlin responds by asking three key questions:⁹

1. Has society the right to pass judgment all on matters of morals?
Ought there, in other words, to be a public morality, or are morals always a matter for private judgement? (whether society has the right to judge matters of morals)
2. If society has the right to pass judgement, has it also the right to use the weapon of the law to enforce it? (if it does, whether it may use criminal law to enforce those judgments)
3. If so, ought it to use that weapon in all cases or only in some and if only in some, on what principles should it distinguish? (if so, when and on what principles it should do so)¹⁰

On Devlin's view, there must be a public morality: a shared set of ideas about good and evil that holds society together. Society is a "community of ideas" not only in politics but also in morals, and without shared moral standards, social disintegration threatens. He uses institutions like marriage to show how political and moral structures are fused. Monogamous marriage is both a moral ideal and a social foundation. Even non-Christians, he notes, are bound by a Christian-based institution of marriage, not because of their religious beliefs, but because it is part of their society's structure and public morality.

Devlin criticizes the Wolfenden Report's language of "private morality" and "individual freedom of choice" because it appears to deny that society may make collective judgments about immorality as such. Yet, he observes, the Report still assumes that homosexuality and prostitution are immoral: it supports laws against the "corruption" of youth and against "immoral earnings," and it treats prostitution as immoral even while leaving the act itself legal, instead criminalizing brothels, pimps, and related activities. To justify these laws, the Report relies on broad ideas such as "corruption and exploitation of others," especially the vulnerable. Devlin argues that such concepts are so elastic that, in principle, they could justify state

⁹ Devlin, P., op. cit. note 1, p. 7.

¹⁰ Devlin, P., op. cit. note 1, p. 7-8.

intervention in almost any form of sexual immorality, thereby undermining the Report's attempt to carve out a protected private sphere.

At the same time, Devlin recognizes that individuals have claims to autonomy. While any immorality can, in his view, injure society, he rejects the idea of two separate spheres—a public morality and a private morality. Instead, there is a single moral sphere that contains both public and private interests, and these must be balanced. He likens this to the shared use of a highway: both the public and the individual driver have rights, but these rights must be mutually curtailed to allow everyone to use the road safely.

Devlin describes the criminal law as embodying a kind of minimum morality. The law should not aim to encode the full moral ideal that citizens might aspire to, but only to set a basic moral floor beneath which conduct will not be tolerated. There must, therefore, be a gap between the moral law and the law of the state. Good citizens should aim higher than the legal minimum. Confusing what is morally right with what should be legally enforced leads, in his view, to mistakes like the Wolfenden Committee's attempt to find a single principle that can neatly separate crime from sin.

Finally, Devlin offers a different account of the true function of criminal law than that suggested by the Wolfenden Committee. While Wolfenden sees criminal law primarily as a device to protect individuals from harm, Devlin argues that the law's fundamental purpose is to protect society itself: its institutions and the shared moral and political ideas that make social life possible. Therefore, society cannot ignore an individual's morality any more than it can ignore his loyalty; both are essential to its survival. At the same time, the examples of adultery and fornication show that the boundary between law and morals is pragmatic. These are practices that can be socially harmful, yet they are left largely outside criminal law because they are difficult and inappropriate to punish. In summary, Devlin maintains that society cannot exist without a common morality, that this morality is defined by the standards of the reasonable, right-minded person, and that while individuals may dissent from these standards, they cannot reasonably insist on complete freedom to act on their dissent when it threatens the moral foundations on which society rests. Society therefore has at least a *prima facie* right to legislate against immorality as such, with the exact reach of the criminal law determined case by case by balancing individual freedom, social necessity, privacy, enforceability, and the strength of public moral feeling.

3.2.2. HLA Hart

H.L.A. Hart is a central figure in modern legal philosophy, best known for his contribution to legal positivism and his critical analysis of the relationship between law and morality. Hart does not deny that law and morality are connected; rather, he argues that moral judgment alone is not sufficient to justify the use of legal coercion. His position is most clearly articulated in *The Concept of Law* (1961) and *Law, Liberty and Morality* (1963), *The Morality of the Criminal law* (1965), *Essay on Bentham: Jurisprudence and Political Theory* (1982), *Essay in Jurisprudence and Philosophy* (1983), where he develops a framework that distinguishes legal validity from moral approval while defending individual liberty against moralistic regulation.

At the core of Hart's theory is the distinction between law and morality. Hart maintains that the existence and validity of a legal rule depend on social facts such as its acceptance by legal officials rather than on its moral content. This distinction allows law to be critically evaluated rather than treated as inherently just. Hart emphasises that recognising immoral laws as legally valid does not endorse them; instead, it enables moral criticism and legal reform.

Hart's critique of legal moralism emerges most clearly in his response to Lord Devlin's argument that society may use law to enforce shared moral standards. Hart rejects the view that moral disapproval or social disgust provides a legitimate basis for criminalisation. Drawing on John Stuart Mill's harm principle, he argues that legal intervention is justified only to prevent harm to others. Private, consensual conduct between adults, particularly in matters of sexuality, falls outside the proper scope of criminal law, even if it offends prevailing moral views. Central to Hart's moral reasoning is the value of individual autonomy. He argues that individuals have a moral right to shape their own lives and make personal choices free from state interference, especially in intimate matters. Hart also stresses the importance of privacy, warning that legal intrusion into private life on moral grounds undermines human dignity and weakens respect for the law. Criminal law, as a coercive and stigmatizing instrument, should therefore be used sparingly and only when clearly justified.

Hart further distinguishes between positive morality and critical morality. Positive morality consists of the moral beliefs actually held by a society, while critical morality involves norms that can be rationally justified. Hart insists that law should not simply enforce majority morality, as social consensus may reflect prejudice rather than moral truth. Using law to impose dominant moral views risks

marginalising minorities and producing what Hart describes as a tyranny of the majority.

Hart challenges claims that society will disintegrate if morality is not legally enforced. He argues that pluralistic societies can tolerate moral diversity without collapsing, and that fear of moral decline often masks discomfort with difference rather than genuine social harm. Overall, Hart's theory offers a liberal and restrained account of legal authority, grounded in respect for autonomy, privacy, and moral diversity. His work remains highly relevant for evaluating laws that regulate identity and sexuality on the basis of moral panic rather than demonstrable harm.

Hart rejected Devlin's claim that violations of conventional morality are sufficiently harmful to justify the regulation of personal conduct by the state. According to Hart, social morality is not a smooth network where its damage can be equated with betrayal. Instead, this morality is considered as parts that need to be questioned whether their enforcement is appropriate for each part. In his three lectures at Stanford, Hart argued differently from Devlin, that a democratic state does not have the right to enforce moral standards for its own interests. Except in certain cases where paternalistic laws are deemed necessary, the state should respect individual freedom and only intervene to prevent or punish actions that truly cause harm. Hart's lecture material at Stanford was later published as the books "Law, Liberty and Morality" (1963) and "The Morality of Criminal Law" (1965).¹¹

4. FINDINGS

4.1. Historical and cultural view of LGBTQ people in Indonesia

Indonesia is one of the world's most populous countries, with its population officially recorded at approximately 286.693.693 people as of mid-2025¹², according to statistics published by Badan Pusat Statistik (BPS), making it the fourth most populous country globally. This large and diverse population spans thousands of islands and includes hundreds of ethnic groups, contributing to a rich

¹¹ Bello, P., *Perluakah Kriminalisasi Terhadap Perilaku Amoral? Perdebatan Patrick Devlin dan H.L. A. Hart*, Jurnal Hukum To-Ra: Hukum untuk Mengatur dan Melindungi Masyarakat, Volume 10, Issue 2/2024, p. 367.

¹² CNN Indonesia, *Jumlah Penduduk Indonesia Naik di 2025, jadi 286 Juta Orang*, <https://www.cnnindonesia.com/edukasi/20250717095433-561-1251652/jumlah-penduduk-indonesia-naik-di-2025-jadi-286-juta-orang>, 29 December 2025.

cultural tapestry and complex demographic structure. The pie chart below illustrates the proportion of the ten largest ethnic groups in Indonesia.¹³

The Javanese ethnic group is by far the largest in Indonesia, accounting for about 40.22% of the total population. They are followed by the Sundanese at 15.50%, making these two groups dominant in Indonesia’s demographic structure. Other major ethnic groups include the Batak (3.58%), Madurese (3.03%), Betawi (2.88%), Minangkabau (2.73%), Buginese (2.69%), and Malay (2.27%), while ethnic groups from Sulawesi and South Sumatra together also contribute significant portions of the population.

The argument that LGBTQ is Western propaganda spreading to Indonesia contrasts with Indonesian culture as evidence, which recognises LGBT identity as an accepted part of society.

NO	ETHNIC	DESCRIPTION
1	Bugis – Makassar	Bugis culture traditionally recognizes five genders: 1. <i>Oroane</i> (men) 2. <i>Makkunrai</i> (women) 3. <i>Calalai</i> (masculine women) 4. <i>Calabai</i> (feminine men) 5. <i>Bissu</i> (androgynous spiritual figures) Bissu is the fifth gender, which embodies all genders or none of them, it transcends gender, it could derive from the Sanskrit word <i>bhiksu</i> , meaning monk. ¹⁴
2	Javanesse- Ponorogo- East Java	“The warok (man of prowess) and his <i>gemblak</i> or <i>janthil</i> (kept boy, who dressed as a woman) are also a phenomenon in Ponorogo in East Java”
3	Javanesse- Yogyakarta	Cross-dressing has long been a common feature of Javanese performing arts. In order to avoid violating prohibitions on physical contact between unmarried male and female dancers, women’s roles in

¹³ Aulia Ulva, Tempo English, *Top 10 Most Populous Countries in the World; Indonesia Ranked 4th*, <https://en.tempo.co/read/1865157/top-10-most-populous-countries-in-the-world-indonesia-ranked-4th>, 29 December 2025.

¹⁴ Pausacker, H., *Homosexuality and the law in Indonesia, Crime and Punishment in Indonesia*, Routledge Law in Asia, New York 2021, p. 474.

		several Javanese dances—at least up until 1914—were often played by men. This was the case in Yogyakarta for dances such as the Bedaya and Wayang Wong, the dance version of wayang kulit, the shadow puppet performance.”
4	Javanese- Surakarta	In Javanese performing arts, cross-dressing has historically been common. To adhere to rules forbidding physical contact between unmarried men and women, female roles in several Javanese dances—up to at least 1914—were performed by men in Yogyakarta. This included dances such as the bedaya and wayang wong, the dance adaptation of the wayang kulit shadow-puppet 400heatre. In contrast, during the late nineteenth century at the Mangkunegaran Court in nearby Surakarta, women took on both male and female roles on stage.
5	Javanese- Surabaya	In ludruk 400heatre, which originates from Surabaya (East Java), female characters are played by male actors. Commenting on this, Peacock notes that ludruk transvestites have traditionally shown more than just a professional interest in portraying feminine roles. Nearly all of them are noticeably effeminate offstage. They wear women’s clothing at home and sometimes even in public, and some go so far as to become the ‘wives’ of men.
6	Bali	In late nineteenth-century Hindu Bali, there was generally a tolerant attitude toward male-male relationships between adult men and youths (referred to as menyelit), as well as toward same-sex relations between women. Historical accounts note that boys around 10–12 years old sometimes cross-dressed as female dancers and, following their performances, had sexual encounters

		with whichever man had placed the highest bid.
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Saskia Wieringa¹⁵ observed that same-sex relationships and gender diversity were widely accepted in various regions of Indonesia prior to the colonial period. He further noted that contemporary LGBTQ discrimination constitutes 'postcolonial amnesia,' a phenomenon wherein people, in this context the Indonesian populace, forget precolonial customs concerning gender and sexuality following the arrival of Dutch and Portuguese colonizers, who introduced homophobia. Additionally, Wieringa stated that the initial crackdown on homosexuals was executed by Dutch colonial authorities.¹⁶

Wieringa stated that homophobia was introduced by the Portuguese during their occupation of Indonesia in the 16th century. The prevailing conditions in Portugal at that time involved the arrest and burning of individuals engaged in same-sex relations. In the Netherlands, homosexuals could face imprisonment or even the death penalty. When the Dutch arrived, they brought bourgeois morality to various islands and communities in Indonesia, where trans priests were highly respected by their communities. This led the Dutch to believe that there was a necessity for Christianization.

The Dutch colonial government even established a special Morality Police unit (*zedenpolitie*) to arrest homosexual men. This incident became known as the Morality Scandal (*zedenschandaal*). Historian Marieke Bloembergen, in her book *Police During the Dutch East Indies*, writes that between December 1938 and May 1939, police throughout the Dutch East Indies conducted a massive operation against more than 200 men. Most of them were European citizens, including high-ranking officials. They were suspected of having sex with underage boys. This act, both in the Dutch East Indies and the Netherlands, was a criminal offense, even though such a ban had been in effect since 1918. Of the 223 arrested, 171 were found guilty and sentenced. Newspapers followed the raids on homosexuals with rapt attention, as such a large-scale operation had never been conducted before. The campaign was referred to in the news as a "massive housecleaning operation," "moral cleansing," or "cleansing process." Formally, police raids targeted men who had sex with underage boys (under 21). This was regulated under Article 292 of the Dutch East Indies Criminal Code. Paedophilia was a criminal offense.

¹⁵ Professor emeritus of cross-cultural same-sex relationships at Universiteit van Amsterdam, Netherlands.

¹⁶ Berita Tempo, Saskia Wieringa: *Diskriminasi LGBTQ Warisan Kolonialisme*, 22 December 2025, <https://www.tempo.co/teroka/saskia-wieringa-sejarah-gerakan-LGBTQ-kolonialisme-2101262>, 12 January 2026.

However, according to Marieke, these raids actually gave the police the authority to eradicate homosexuality. This was because, before 1938, people were rarely prosecuted for it. "It was also very clear that the police generally targeted homosexuals, especially men," Marieke wrote. After the formation of the Moral Police, homosexuals became the primary target. "Homosexuality was viewed not only as a disgrace that tarnished society's noble morals, but also as a crime".¹⁷

4.2. Today’s law’s perspective on LGBTQ in Indonesia

The following are some rules that emerged after the 1998 reform in Indonesia. The trend of restrictions based on identity has become common in various regional regulations, and some examples of these regulations can be seen in the following column,

NO	REGION	TYPE OF REGULATION	REGULATION NUMBER/YEAR	DESCRIPTION OF CONTENT	CLASSIFICATION
1	Pariaman City	<i>PERDA</i> / local Regulation	10/2018	Prohibition of LGBTQ behavior (Articles 24–25)	Explicit
2	Cianjur Regency	<i>PERDA</i> /local regulation	1/2020	Use of implicit terminology associated with LGBTQ	Implicit
3	Bogor City	<i>PERDA</i> / local regulation	10/2021	Implicit provisions encompassing LGBTQ-related conduct	Implicit
4	Aceh	<i>QANUN</i>	6/2014	Criminalization of same-sex relations	Explicit
5	Cianjur Regency	<i>PERDA</i> / local regulation	1/2020	-	Explicit
6	Tasikmalaya	<i>PERDA</i> /local Regulation	12/2009	Regulation of social life based on Islamic values and norms	Explicit, Regional Regulation of Tasikmalaya Number 12 of 2009 on Development of Life values in Societies according to Islamic Values and Social Norms in Tasikmalaya ¹⁸

¹⁷ Risa Herdahita Putri, *Razia Homoseksual Zaman Kolonial*, <https://www.historia.id/article/razia-homoseksual-zaman-kolonial>, 7 January 2026.

¹⁸ In article 5 "every Muslim is obliged to prevent and avoid despicable acts and actions that can cause loss and collapse of morals, morals and social morals." Disgraceful acts as referred to in paragraph (3), include, among others, the following: a. criminal acts of

7	Province of south sumatera	PERDA/local Regulation	13/2002	-	Regional Regulation of the Province of South Sumatera Number 13 of 2002 on Indecency Eradication in the Province of South Sumatera;
8	Palembang City	PERDA/local Regulation	2/2004	-	Regional Regulation of Padang Panjang Number 9 of 2010 on Amendment of Regional Regulation of Padang Panjang Number 3 of 2004 on Prevention, Eradication, and Prosecution for Indecent Behaviours in Society
9	Padang Panjang	PERDA/local Regulation	9/2010	-	Explicit
7	Makasar City	RAPERDA/ draft local regulation	-	-	-
8	Garut Regency	RAPERDA/ draft local regulation	-	-	-
9	Bandung Regency	RAPERDA/ draft local regulation	-	-	
10	Medan City	RAPERDA/ draft local regulation	-	-	
11	Hulu Sungai Selatan	RAPERDA/ draft local regulation	-	-	
13	Bekasi Regency	Regent Regulation (<i>Peraturan Bupati</i>)	102/2020	LGBTQ defined as a form of sexual deviation	-
14	Cianjur Regency	Surat Edaran/ Circular Letter	2018	-	-
15	Garut Regency	Aturan Ketertiban / Public Order Regulation	-	-	

corruption and abuse of position/power; b. adultery and prostitution, whether committed by people of the opposite sex or by people of the same sex (homosexuals/lesbians)

5. DISCUSSION

5.1. From moral panic to legal moralism: explaining the Indonesian regulatory trajectory

Coined in 1972, the term Moral Panic was first meant to describe how the public comes to a collective panic over threats to societal traditions and values. Moral Panics can be initiated by Interest Groups, Elites, or Grassroots groups.¹⁹ Moral panic is a sudden, strong feeling of fear in a society or other group that something or someone bad will destroy morals (standards for character and behaviour).²⁰

In Indonesia, moral panic is expressed in various ways, starting from request for judicial review submitted to the Constitutional Court with the arguments of protecting children and grandchildren/descendants from the moral decline that is occurring in Indonesia. In **2016, the Constitutional Court of Indonesia (Mahkamah Konstitusi)** became a focal point of broader efforts to criminalise same-sex relations through judicial interpretation of the Criminal Code (KUHP).²¹ A coalition of conservative groups, notably *Aliansi Cinta Keluarga* (Family Love Alliance), filed a **constitutional review (judicial review)** requesting that the Court interpret and expand certain KUHP provisions so that consensual sexual relations between adults of the same sex could be criminalised. In particular, the petition sought to reinterpret Article 292 of the KUHP—originally focused on lewd acts involving minors—and extend its application to **consensual homosexual acts between adults**, effectively creating criminal liability for homosexuality.²² Although the Court ultimately rejected the petition, the arguments advanced by the applicants reveal a distinctly Devlinian logic. Homosexuality was framed as a moral danger capable of corrupting youth, undermining family values, and threatening the moral foundations of Indonesian society. These claims did not rely on demonstrable harm to specific individuals, but rather on the perceived erosion of collective morality. The reason of the judicial review applicant are rejected on the Hart perspective, Hart explicitly rejected the

¹⁹ Thomson, Shery, Moral Panic, <https://www.ebsco.com/research-starters/social-sciences-and-humanities/moral-panic>, 15 January 2026.

²⁰ Cambridge Dictionary, <https://dictionary.cambridge.org/dictionary/english/moral-panic>, 15 January 2026.

²¹ Fines Fatimah, *Discourse on Legality of LGBT from the Perspective of Islamic Law and Indonesian Law*, Academic Journal of Business, Administration, Law and Social Sciences, IIPCCCL Publishing, Graz- Austria, Vol 5/2, July, 2019, p. 2.

²² Human Right Watch, Indonesia: Court Reviews Anti- LGBTQ Law, *Criminalizing Same-Sex Relations Raises Privacy, Discrimination Concerns*, <https://www.hrw.org/news/2016/08/23/indonesia-court-reviews-anti-lgbtq-law>, 15 January 2026.

idea that moral disapproval or social disgust constitutes harm. He warned that allowing law to enforce majority morality risks transforming legal authority into an instrument of moral tyranny. From a Hartian perspective, the attempt to criminalise consensual same-sex relations through judicial interpretation represents an unjustified intrusion into private life, unsupported by evidence of harm and incompatible with principles of autonomy and privacy.

Not only that, the making of regional Regulations is also experiencing a trend, namely the explicit use of the Islamic religion in Regional Regulations, the drafting of regional regulations is also ongoing to date and not only targets same sex sexuality/sexual activity but also limits the expression of their identity, namely restrictions or WARIA (the term for biological men who dress and behave like women).²³ in some areas in Indonesia WARIA are prohibited from appearing in public spaces on TV and so on. The Gorontalo Regency Government held a Regional Leadership Coordination Forum of Gorontalo Regency. The results of this forum were then approved in Circular Letter Number 800/BKBP/76/IV/2025 Concerning the Prohibition of Crowded Public Entertainment Activities and Party Celebrations Involving Transvestites, Singers, Alcohol, Drugs and Gambling which was signed by the Acting Regional Secretary on behalf of the Regent of Gorontalo on April 25, 2025.²⁴

Aceh's *Qanun Jinayat* stands as the most explicit institutionalisation of Devlinian legal moralism in Indonesia. By criminalising same-sex sexual conduct and prescribing corporal punishment, the Qanun translates moral condemnation directly into criminal sanction. This move exemplifies Devlin's argument that criminal law serves not merely to prevent harm but to preserve the moral fabric of society. In Aceh, the moral authority of religious norms is treated as sufficient justification for legal coercion, even in cases involving consensual conduct between adults.

At the National level, the identity of WARIA is recommended to be strictly prohibited through the MUI Fatwa,²⁵ whose recommendations are given sufficient

²³ Circular Letter Number 800/BKBP/76/IV/2025 Concerning the Prohibition of Crowded Public Entertainment Activities and Party Celebrations Involving Transvestites, Singers, Alcohol, Drugs and Gambling in Gorontalo.

²⁴ See <https://lbhmasyarakat.org/pelarangan-menjadi-waria-di-gorontalo-surat-edaran-yang-membuka-keran-diskriminasi/>, 15 January 2026.

²⁵ Fatwa MUI is a religious opinion or ruling issued by the Indonesian Ulama Council (MUI) regarding Islamic law on contemporary issues like food (halal), finance, cosmetics, and social issues. While non-binding by law, they hold significant moral and social authority among Indonesian Muslims and often influence government policy. See <https://fatwamui.com/storage/278/21.-Kedudukan-Waria.pdf>, 15 January 2026.

attention by policymakers in Indonesia. The MUI (Indonesia council of Ulama) Fatwa Commission in its session on 9 Jumadil Akhir 1418 H, coinciding with 11 October 1997 on the issue of transgenders, issued a fatwa:

- a. Transgenders are men and cannot be considered as a separate group (gender).
- b. All deviant behavior of transgenders is haram and must be attempted to return to their original nature. I am running a few minutes late; my previous meeting is running over.

This Fatwa MUI Appeal to two things, there is:

- a. The Indonesian Ministry of Health and the Indonesian Ministry of Social Affairs to guide transgenders to become normal people, by involving psychologists.
- b. The Indonesian Ministry of State Affairs and other related agencies to disband transgender organizations.²⁶

According to Ainun Najib²⁷, the MUI's position within the Indonesian state administration is actually within the state infrastructure. The MUI is an organization of Islamic scholars tasked with empowering the Muslim community. This means that the MUI exists within the community, not a state-owned institution or a representative of the state.

The MUI's fatwas are not state laws with sovereignty imposed on all citizens. They also carry no sanctions and do not require obedience from all citizens. As a socio-political force within the state infrastructure, MUI fatwas are binding and are only obeyed by the Muslim community that feels a connection to the MUI itself. The legality of MUI fatwas cannot compel obedience by all Muslims. Fatwas themselves are essentially nothing more than opinions and thoughts from individual scholars or religious institutions, which may be followed or ignored altogether.²⁸ However, even though the MUI fatwa is not a type of legislation recognized in Indonesia, the existence of this fatwa is often legitimized through regulations by government institutions so that it must be obeyed by the community.²⁹

²⁶ See <https://fatwamui.com/storage/278/21.-Kedudukan-Waria.pdf>, 15 January, 2026.

²⁷ Ainun Najib is an Indonesian Islamic scholar.

²⁸ Fatwa Majelis Ulama Indonesia dalam Perspektif Pembangunan Hukum Responsif, dalam Kedudukan Fatwa MUI dalam Sistem Hukum Indonesia, <https://www.hukumonline.com/klinik/a/kedudukan-fatwa-mui-dalam-hukum-indonesia-lt5837dfc66ac2d/>, 15 January, 2026.

²⁹ Yeni Salma, *Kedudukan Fatwa DSN dalam Sistem Hukum nasional*, <https://www.hukumonline.com/klinik/a/kedudukan-fatwa-mui-dalam-hukum-indonesia-lt5837dfc66ac2d/>, 15 January, 2026.

In conclusion, widespread fears—of moral decline, changing social values, and the influence of foreign cultural norms—have prompted even the smallest social groups to urge the state to intervene and regulate morality. Yet many of these matters should not fall under state control, much less be subject to criminal punishment. Morality is largely a family concern. The fear that homosexual ideas will corrupt children is excessive, especially when used to justify state interference. Instead, parents and families should bear primary responsibility for addressing such worries and calming moral panic. When they do not, society becomes overly reactive and pushes for the criminalization of homosexual or LGBTQ individuals in Indonesia. At present, Indonesia tends to prioritize morality defined by the majority, which worsens conditions for minorities judged by those dominant moral standards.

5.2. Implication for identity freedom

The trend, or flurry of regulations at both regional and national levels, criminalizes LGBTQ individuals, both for their sexual activity and for widespread discrimination against this group, making them afraid to reveal their identity. In the workplace, this is still taboo, and they are often avoided. A very explicit example is in the military, where strict rules prohibit same-sex acts by military officers³⁰, which can lead to dismissal from military service and imprisonment.³¹

The growing expression of LGBTQ groups, with the emergence of more and more movements, and research into organizations supporting LGBTQ are currently considered Western propaganda aimed at eradicating the nation's cultural and moral values³². However, it is worthwhile to look back and see that diverse identities, not solely consisting of men and women, have been recognized and become part of the Bugis culture. This may have been introduced through Bugis culture, but it cannot be generalized to reflect on Indonesian cultural values. Bugis culture does not represent that.

³⁰ Surat Telegram Panglima TNI (Telegram from the Commander of the Indonesian National Armed Forces) Nomor ST/398/2009 tanggal 22 Juli 2009 and Surat Telegram Panglima TNI Nomor ST/1648/2019 tanggal 22 Oktober 2019

³¹ Under Article 103 juncto Article 26 KUHPM (Indonesian Military Criminal Code) as an administrative legal measure.

³² Nursyahbani & Saskia Wieringa, *Creeping Criminalisation (Mapping of Indonesia's Laws and Regional Regulations that Violate Human Rights of Women and LGBTIQ People)*, Outright Action International, New York, 2016, p. 88.

The cumulative effect of judicial reviews, criminal regulations, administrative bylaws, and moral directives is a legal environment in which LGBTQ identity is systematically constrained. Individuals face exclusion from employment, education, public space, and political participation, not because of harmful conduct, but because their identities are framed as morally unacceptable. This configuration normalises identity suppression and transforms moral panic into durable governance.

From a Devlinian perspective, these outcomes may be defended as necessary sacrifices to preserve social cohesion. Yet Hart's theory exposes the cost of such sacrifices: the erosion of individual autonomy, the marginalisation of minorities, and the transformation of law into an instrument of moral conformity. The Indonesian case thus illustrates the enduring relevance of the Hart–Devlin debate beyond its original British context. It shows how Devlinian legal moralism, when combined with moral panic, can flourish within contemporary plural legal systems, particularly where religious and cultural authority are deeply embedded in governance.

6. CONCLUSION

The regulation of LGBTQ identities in Indonesia results from a sustained moral panic that has become increasingly institutionalised through legal and administrative means at both national and local levels. Judicial review petitions before the Constitutional Court, Aceh's *Qanun Jinayat*, the proliferation of *Peraturan Daerah* and *Rancangan Peraturan Daerah*, executive circular letters, regent regulations, and the normative influence of religious fatwas collectively create a legal environment where LGBTQ identities are seen as moral threats rather than rights-bearing individuals. Although only Aceh formally criminalises same-sex conduct, administrative and semi-legal instruments elsewhere serve as effective tools of moral governance, limiting expression, visibility, and participation in public life. These measures do not aim to prevent actual harm but to uphold dominant moral values, resulting in systemic discrimination, self-censorship, and exclusion from employment, education, and state institutions such as the military.

Analysed through the Devlin–Hart framework, Indonesia's regulatory trajectory reflects a predominantly Devlinian logic in which the preservation of perceived social cohesion justifies extensive legal intervention into private life. Moral disapproval, rather than harm, is treated as a sufficient basis for regulation, allowing law to become an instrument for enforcing conformity. Hart's liberal

critique, however, reveals the costs of this approach: the erosion of individual autonomy, the marginalisation of minorities, and the weakening of legal restraint in plural societies. The Indonesian case thus illustrates how legal moralism, when combined with moral panic and reinforced by religious and cultural authority, can flourish within a decentralised legal system while normalising identity suppression. It underscores the urgent need to reaffirm harm-based reasoning, constitutional protections, and respect for diversity as limits on the moral reach of law.

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