

# Human Dignity and Religious Morality: LGBTQ Rights in Secular and Islamic Legal Discourse

Muhammad Nur Islami, Mohammad Hanaan Alfarizi

Faculty of Law, Universitas Muhammadiyah Yogyakarta, Indonesia

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## ABSTRACT

This paper explores the legal ethical positioning of LGBTQ rights within two distinct normative frameworks: secular legal systems grounded in liberal human rights values and Islamic jurisprudence rooted in divine moral order. The study examines how the principle of human dignity, a central tenet of modern human rights discourse, intersects and often conflicts with traditional religious morality concerning gender and sexual identity. While secular legal traditions increasingly recognize LGBTQ rights as extensions of personal autonomy and equality, Islamic legal discourse often upholds heteronormative ethics derived from classical interpretations of the Qur'an and Hadith. Through a comparative-analytical approach, the paper identifies key points of convergence and divergence between these two frameworks, particularly in their conceptualization of dignity, legality, and moral permissibility. The findings suggest that meaningful engagement between secular and religious legal systems requires an acknowledgment of deeply rooted epistemological differences while exploring possible areas of legal reconciliation, especially in multicultural societies. By presenting this normative comparison, the paper contributes to a more nuanced understanding of legal pluralism in addressing complex human rights issues involving sexuality and belief.

**Keywords:** Human Dignity; Human Rights; Islamic Law; LGBTQ; Legal Pluralism; Secular Law

## INTRODUCTION

The emergence of LGBTQ rights as a pressing legal and moral issue has sparked intense global debate, particularly in societies characterized by legal pluralism and strong religious traditions. As international human rights law continues to expand protections for sexual orientation and gender identity, tensions inevitably arise in contexts where these evolving norms conflict with established religious values.[1] One of the central points of contention lies in how different legal systems interpret and apply the principle of human dignity, especially in relation to LGBTQ individuals. While secular legal systems tend to conceptualize human dignity in terms of personal autonomy, freedom of expression, and the right to self-identification, Islamic legal discourse often grounds dignity within the framework of divine command and communal morality.[2]

The universalization of human rights, particularly the call for non-discrimination on the basis of sexual orientation, poses a challenge to religious legal traditions that view certain sexual behaviors as incompatible with divine law. Within Islamic jurisprudence (*fiqh*), same-sex relations are typically framed not only as moral transgressions but also as violations of social order, guided by interpretations of the Qur'an and Hadith.[3] This creates a deep normative divide between secular and Islamic approaches to law, morality, and personhood.

This paper seeks to explore this divide by conducting a comparative analysis of LGBTQ rights within secular legal systems and Islamic legal traditions. The analysis adopts a normative-legal approach, employing doctrinal comparison through literature-based research and conceptual legal interpretation. It systematically examines primary sources (e.g., Qur'an, Hadith, international human rights instruments), secondary legal commentaries, and judicial decisions to draw analytical contrasts between both frameworks.

## THEORETICAL FRAMEWORK

The legal and moral status of LGBTQ rights is inextricably linked to foundational concepts such as human dignity, morality, autonomy, and religious authority. These concepts are not neutral, they are embedded within specific philosophical, theological, and legal traditions. To understand the normative divergence between secular and Islamic legal systems on LGBTQ issues, it is essential to examine how each system constructs and operationalizes key legal-philosophical ideas, particularly human dignity and moral legitimacy.

This section outlines the theoretical foundation for the comparative analysis undertaken in this paper. It begins with an overview of the concept of human dignity within international human rights discourse, followed by an exploration of morality and normativity as constructed in Islamic law. Together, these frameworks reveal the distinct epistemological and normative logics that shape legal approaches to sexuality and identity in different legal cultures.

### Human Dignity in Human Rights Discourse

Human dignity is widely regarded as the cornerstone of modern international human rights law. It is enshrined in foundational instruments such as the Universal Declaration of Human Rights (UDHR, 1948), which open by affirming that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”[4] Over time, this principle has evolved into a normative justification for expanding legal protections related to identity, autonomy, and non-discrimination, including those that pertain to sexual orientation and gender identity.

Within secular legal systems, human dignity is often conceptualized as the right of individuals to live free from degrading treatment, to exercise self-determination, and to develop their identity without unjustified interference.[5] This liberal-egalitarian understanding supports the inclusion of LGBTQ rights as essential to the realization of dignity, arguing that denying such rights constitutes a form of moral and legal exclusion. Courts in various jurisdictions, particularly in Europe and Latin America, have increasingly invoked dignity as a rationale for recognizing same-sex unions, prohibiting discrimination, and affirming gender identity rights.[4]

Critically, the secular understanding of human dignity tends to be anthropocentric and individualistic, rooted in Enlightenment ideals of rationality and freedom. This framing assumes a universal subject capable of autonomous choice, which can be in tension with religious frameworks that locate dignity within divine intent and moral duties. As such, while the appeal to dignity is nearly ubiquitous in rights discourse, its interpretation varies significantly across legal and cultural contexts.[6]

### Morality and Normativity in Islamic Law

In Islamic legal thought, morality and law are fundamentally intertwined within a divine epistemological framework. Unlike in secular systems where the law may evolve through social contracts or liberal interpretations of justice, Islamic law, commonly referred to as *Shari'a*, derives its normative authority from divine revelation.[7] This foundational distinction produces a unique relationship between legality and morality: one in which moral imperatives are not merely social constructions or individual preferences but are grounded in the will of God (*Allah*) as expressed in the Qur'an and elaborated through the Sunnah (Prophetic traditions), along with juristic tools such as *ijmā'* (consensus), *qiyās* (analogy), and *maṣlaḥa* (public interest).[8]

The moral dimension of Islamic law is deeply embedded in the concept of *ḥalāl* (permissible) and *ḥarām* (prohibited), which are not merely legal categories but reflect divine evaluations of human behavior. The preservation of morality (*ḥifẓ al-'ird*) is considered one of the essential objectives (*maqāṣid ash-sharī'a*) of Islamic law, alongside the protection of religion, life, intellect, progeny, and property. This moral teleology influences the regulation of personal conduct, including matters of sexuality, which are deemed not purely private choices but acts that bear communal, spiritual, and legal significance.

Same-sex sexual behavior, in classical Islamic jurisprudence (*fiqh*), is generally regarded as a violation of both moral and legal codes. It is typically categorized under *faḥīsha* (grave indecency), often analogized with the acts attributed to the people of Prophet Lūṭ (Lot), which serve as the primary Qur'anic reference point. Jurists across major Sunni and Shi'a schools, such as the Ḥanafī, Mālikī, Shāfi'ī, and Ḥanbalī, generally concur on the prohibition of same-sex acts. However, there are notable differences: for instance, the Ḥanafī school often prescribes discretionary punishment (*ta'zīr*), while some Mālikī and Ḥanbalī interpretations treat it analogously to *zinā*, carrying severe fixed penalties (*ḥadd*). The Shāfi'ī school, meanwhile, emphasizes procedural evidentiary standards, making implementation legally difficult despite moral condemnation. These differences reflect the diversity of reasoning and legal hermeneutics across Islamic jurisprudence.[9] Importantly, this consensus reflects not merely a juridical judgment but a broader theological and cosmological stance that views sexual differentiation and heterosexual union as divinely ordained components of social and metaphysical order.

Modern interpretations within Muslim-majority societies have sought varying degrees of reform, with some scholars advocating for contextual reinterpretations (*ijtihād*) and others defending the immutability of traditional positions.[5] However, even among reformist voices, the scope of permissible reinterpretation is often constrained by the reverence for scriptural texts and the embeddedness of moral norms in the collective religious consciousness of Muslim communities. Attempts to reconcile LGBTQ rights with Islamic law, therefore, often face epistemological resistance, as they challenge not only specific rulings (*aḥkām*) but the underlying ontological assumptions about human nature, divine will, and the role of law in guiding moral conduct.[10]

Furthermore, the notion of human dignity (*karāmah*) in Islamic thought, while profound, is not unbounded; it is intricately linked to the fulfillment of divine obligations (*taḳlīf*) rather than autonomous self-expression. In this framework, dignity arises not from the assertion of individual desire, but from obedience to God's commandments and the cultivation of virtuous character.[3], [5] This theocentric paradigm stands in contrast to the anthropocentric liberal model and underscores the difficulty of applying secular rights-based approaches to sexuality within traditional Islamic jurisprudence.

Nevertheless, the plurality of interpretive traditions within Islam suggests that while classical positions remain dominant, there is space for scholarly engagement, contextual re-reading, and legal reform, particularly in light of changing social realities and human rights discourses. Such efforts, however, must navigate a delicate balance between fidelity to divine sources and responsiveness to contemporary ethical challenges.

## Legal Perspective On Lgbtq Rights

### Secular Legal Approaches

Secular legal systems, particularly those rooted in liberal democratic traditions, have undergone significant normative evolution in their treatment of LGBTQ identities. At the heart of this transformation lies a philosophical commitment to individual autonomy, personal freedom, and the protection of human dignity as non-negotiable values of the legal order.[11] These principles, deriving from Enlightenment rationalism, the liberal tradition of rights, and post-war human rights jurisprudence, form the foundation for modern legal recognitions of sexual and gender diversity.[11]

One of the defining features of secular legal approaches is their normative separation between law and theology. This separation allows legal systems to conceptualize rights, duties, and moral permissibility independent of religious doctrine. Within this framework, sexual orientation and gender identity are increasingly seen not as deviant traits but as integral aspects of one's personhood. Consequently, the denial of legal recognition or protection to LGBTQ individuals is framed as a violation of the very principles that ground the rule of law: equality, non-discrimination, and the inherent worth of all persons.

At the international level, the development of LGBTQ rights has been significantly shaped by the growing interpretive body of human rights law. While foundational instruments such as the Universal Declaration of Human Rights (1948) and the International Covenant on Civil and Political Rights (1966) do not explicitly

mention sexual orientation or gender identity, subsequent interpretive efforts, particularly through treaty bodies and special rapporteurs, have expanded their scope to include LGBTQ-related protections.[12] The landmark decision of the United Nations Human Rights Committee in *Toonen v. Australia* (1994), which interpreted “sex” under Article 26 of the ICCPR to include sexual orientation, was a pivotal moment. This decision catalyzed a wave of decriminalization efforts and influenced domestic and regional jurisprudence globally.[13] For instance, the South African case of *National Coalition for Gay and Lesbian Equality v. Minister of Justice* (1998) represents a powerful legal affirmation of LGBTQ dignity in a post-apartheid context, where the Constitutional Court struck down sodomy laws as incompatible with human dignity and equality. Conversely, in Malaysia, the *Mohd Azmi bin Mohd Said* case (2021) illustrates how Islamic legal reasoning is invoked to criminalize same-sex conduct under Sharia-inspired statutory law, raising questions about compatibility with international human rights norms.

In the European context, the European Court of Human Rights (ECtHR) has progressively asserted the rights of LGBTQ individuals through a series of cases that establish sexual privacy, family life, and legal recognition as components of the right to respect for private and family life under Article 8 of the European Convention on Human Rights. In *Dudgeon v. United Kingdom* (1981),[13] the Court struck down laws criminalizing same-sex relations in Northern Ireland, emphasizing the disproportionate interference with private life. Later decisions such as *Karner v. Austria* (2003) and *Oliari v. Italy* (2015) pushed further, requiring legal recognition of same-sex partnerships. These judgments reflect an evolving consensus among European states that LGBTQ rights are an inseparable part of the human rights framework.[12]

National jurisdictions have also demonstrated diverse pathways to LGBTQ legal recognition. In South Africa, the post-apartheid Constitution explicitly includes sexual orientation as a prohibited ground of discrimination, positioning dignity and equality as fundamental, justiciable values. In Canada, the Supreme Court has repeatedly affirmed the inclusion of sexual minorities within the ambit of Charter rights, culminating in the nationwide legalization of same-sex marriage in *Halpern v. Canada* (2003).[14] Similarly, in Latin America, countries such as Argentina and Colombia have embraced expansive legal reforms grounded in constitutional principles and supported by regional human rights jurisprudence from the Inter-American Court of Human Rights.[2]

Despite these advances, secular legal systems are not without their own internal contradictions and resistances. In many jurisdictions, particularly those with strong religious constituencies or culturally conservative values, the path toward full LGBTQ equality remains contested. In the United States, for instance, the legal recognition of LGBTQ rights through judicial interpretation, such as *Obergefell v. Hodges* (2015), has been met with sustained political and cultural opposition, leading to legal battles over religious exemptions and so-called “conscience clauses.” These tensions reveal that even within secular legal orders, the boundary between law and moral-religious beliefs is porous, and legal reforms often provoke deeper societal debates about the scope and limits of pluralism.

Nonetheless, the dominant trajectory of secular legal systems has been the gradual affirmation of LGBTQ rights as a subset of universal human rights. The liberal understanding of dignity, as self-authorship, autonomy, and freedom from harm, serves as the moral and legal justification for these recognitions. This framework positions the state not merely as a neutral arbiter but as an active guarantor of equal protection, tasked with dismantling systemic discrimination and affirming the legitimacy of diverse identities. It is within this legal and philosophical paradigm that the LGBTQ rights movement has found its most robust institutional support, particularly in the Global North.

In sum, secular legal approaches to LGBTQ rights represent a complex interplay between legal formalism, moral philosophy, and political struggle. Their expansion reflects not only the internal logic of liberal rights discourse but also the dynamic responsiveness of law to evolving social consciousness. However, the universalization of these norms remains contested, particularly when juxtaposed with religious legal systems that ground moral authority in divine revelation rather than human reason.



## Islamic Legal Considerations

Islamic legal discourse presents a markedly different conceptual foundation for understanding human rights, personhood, and sexuality when compared to secular legal systems. At its core, Islamic law (*Shari'a*) is a comprehensive moral and legal framework grounded in divine revelation, primarily sourced from the Qur'an and the Sunnah (the practices and sayings of the Prophet Muhammad).[7] These sources are interpreted and expanded upon through a complex legal methodology that includes *ijmā'* (consensus), *qiyās* (analogical reasoning), and other jurisprudential tools developed by classical scholars. Unlike secular law, which is human-made and evolving, Islamic law is viewed, particularly in its foundational precepts, as divinely ordained and immutable.

Within this framework, sexuality is not merely a private concern or a matter of personal autonomy; rather, it is understood as an act with spiritual, legal, and communal implications. The preservation of public morality (*ḥifẓ al-'ird*) is considered one of the core objectives of Islamic law (*maqāṣid al-sharī'a*), which also include the protection of religion, life, intellect, progeny, and property. These objectives guide the formulation of legal rulings, including those regulating sexual behavior. Heterosexual marriage (*nikāḥ*) is viewed as the only legitimate channel for sexual relations, serving both a procreative and a moral function. Same-sex conduct, by contrast, is typically classified under *fahisha* (grave indecency), and is widely prohibited across all major schools of Islamic jurisprudence.[14]

The Qur'anic narrative of the people of Lūt (Lot), as found in multiple chapters (notably Sūrat al-A'rāf, Hūd, and al-'Ankabūt), is the primary textual basis for the classical Islamic position on same-sex behavior. The destruction of the people of Lūt is interpreted by traditional jurists as divine condemnation of homosexual acts.[3] Though the Qur'an does not explicitly prescribe a specific legal punishment for such conduct, the Hadith literature and the legal reasoning of classical scholars fill this normative gap. Various schools differ on the appropriate legal sanction, ranging from discretionary punishment (*ta'zīr*) to *ḥadd*-level penalties (fixed punishments), with some analogizing same-sex acts to *zinā* (illicit heterosexual intercourse), which may entail stoning under certain evidentiary conditions.

Classical rulings on homosexuality are rooted in a broader metaphysical worldview that regards human sexuality as divinely ordained to be binary and complementary. Male and female are not merely biological categories, but existential roles with distinct rights and duties. This theological anthropology resists the notion of gender and sexual fluidity, which underpins many secular legal recognitions of LGBTQ rights. As such, from the perspective of traditional *fiqh*, the legalization or moral legitimization of same-sex relationships challenges not only specific rulings (*aḥkām*) but the foundational logic of the Islamic moral order.[7]

Nevertheless, the contemporary landscape of Islamic legal thought is not monolithic. While mainstream positions remain largely conservative on issues of LGBTQ rights, there exists a growing body of scholarship that engages critically with classical jurisprudence. Scholars such as Khaled Abou El Fadl, Mohammad Fadel, and Scott Siraj al-Haqq Kugle have questioned the rigidity of traditional interpretations and called for a reexamination of foundational texts through lenses such as *maqāṣid* (objectives of law),[3], [7], [14] historical-contextual analysis, and human rights ethics. These scholars argue that Islamic law, like any interpretive tradition, contains mechanisms for renewal (*tajdīd*) and contextual reasoning (*ijtihād*), which could be mobilized to address contemporary ethical dilemmas, including those related to sexual and gender diversity.

Even so, the path toward any substantial legal reform in this area remains fraught with theological, epistemological, and sociopolitical resistance. Many Muslim-majority states adopt hybrid legal systems in which *Shari'a*-influenced norms coexist with secular legal codes.[9], [15] In such contexts, LGBTQ rights are often marginalized or outright criminalized, not solely as a matter of legal doctrine but as part of broader cultural and political identity projects that position Islamic morality in opposition to what is perceived as Western liberal values. This dynamic reinforces the perception of LGBTQ advocacy as an external imposition, thereby complicating efforts to frame such rights as consistent with Islamic legal and ethical traditions.

Ultimately, the Islamic legal considerations surrounding LGBTQ rights illuminate a deeper tension between religious moral universes and secular human rights paradigms. They challenge the assumption that rights

discourse can be universally transplanted without attending to its cultural and theological embeddedness. At the same time, the internal plurality of Islamic thought suggests that while reconciliation may be difficult, it is not impossible, provided that the dialogue is rooted in mutual respect, epistemic humility, and a shared concern for justice and human dignity.

### **Normative Tensions and Legal Pluralism**

The juxtaposition of secular and Islamic legal discourses on LGBTQ rights reveals not merely a clash of specific legal provisions, but a deeper normative divergence in the philosophical foundations of law, morality, and personhood. At the heart of this tension lies a fundamental epistemological dissonance: while secular legal systems ground legitimacy in human autonomy, rational deliberation, and evolving social consensus, Islamic legal traditions derive normative authority from divine revelation, immutable moral values, and the preservation of religiously defined social order. These divergent frameworks generate competing conceptions of what constitutes justice, dignity, and legal obligation, especially in relation to sexuality and identity.

In secular systems, legal recognition of LGBTQ rights is often framed as a moral imperative to ensure individual freedom and to prevent exclusion based on personal identity. The right to define one's sexuality and gender is considered intrinsic to human dignity, and any legal prohibition is seen as an unjust imposition on personal autonomy. In contrast, within Islamic legal reasoning, dignity is not achieved through self-assertion or autonomy, but through submission to divine will (*ubūdiyyah*), moral discipline, and alignment with a divinely prescribed natural order.[3] As a result, claims to rights based on self-identification may be interpreted as acts of moral rebellion, rather than legitimate legal entitlements.

This clash becomes particularly visible in plural legal contexts, whether in Muslim-majority states with hybrid legal systems or in Western democracies with significant Muslim minorities. In such settings, conflicts emerge over whether and how to accommodate religious norms within a broader secular legal framework. For example, the refusal of certain religious institutions to perform or recognize same-sex unions, or the enforcement of religious dress codes and moral education in minority communities, often triggers legal controversies that pit liberal anti-discrimination principles against religious freedom and moral integrity. These legal frictions reflect not only different legal standards but competing worldviews about the nature of law itself.

Legal pluralism, in theory, offers a framework to navigate such tensions by acknowledging the coexistence of multiple normative orders within a single polity. However, in practice, legal pluralism is fraught with complexities, especially when normative systems make incompatible truth claims about fundamental values. The recognition of parallel legal regimes may open space for cultural autonomy, but it also risks entrenching normative enclaves that resist universal human rights principles. Conversely, the uncritical imposition of liberal legal norms may be perceived as a form of cultural imperialism, undermining the legitimacy of pluralist engagement.

The possibility of normative reconciliation depends not on erasing the differences between secular and religious legal systems, but on fostering a dialogical approach that seeks overlapping consensus. Such a framework would require both humility and creativity: humility to recognize that no single legal tradition holds a monopoly on moral truth, and creativity to construct legal mechanisms that protect individual dignity without disregarding collective moral convictions. This may include context-sensitive legal accommodations, principled exceptions, or intercultural legal reasoning that honors the plural foundations of contemporary societies.

In the end, the coexistence of LGBTQ rights and Islamic legal ethics remains a site of profound legal and moral contestation. Yet, within that contestation lies an opportunity: to reimagine the relationship between law and morality not as a zero-sum conflict but as a dynamic engagement between differing visions of the good, the just, and the human. Such engagement is essential in an age where the boundaries between legal cultures are increasingly porous and where the pursuit of justice must be tempered with an awareness of complexity and difference.

## CONCLUSION AND RECOMMENDATIONS

### Conclusions

This paper has explored the normative foundations and legal expressions of LGBTQ rights within two divergent legal paradigms: secular liberal law and Islamic jurisprudence. It has demonstrated that the apparent legal disagreements stem not from superficial divergences in policy, but from deeply embedded philosophical and theological frameworks. Secular legal systems derive their justification from human autonomy, the evolving nature of moral consensus, and the prioritization of individual dignity understood as self-expression and non-interference. In contrast, Islamic law grounds dignity in obedience to divine will, viewing human flourishing as contingent upon moral submission rather than unrestrained autonomy.

As a result, LGBTQ claims, which are largely framed in secular contexts as demands for recognition, equality, and freedom, face ontological and epistemological resistance in Islamic legal discourse, which views such identities through a lens of divine normativity and metaphysical order. This tension is especially acute in plural legal settings, where secular rights-based frameworks intersect with religious moral orders.

Yet, this divergence need not result in intractable conflict. The plural nature of contemporary legal landscapes opens space for dynamic engagement between these traditions. Recognizing the internal diversity of both secular and Islamic legal systems is essential to any meaningful dialogue. What is required is not consensus in the liberal sense, but a principled *modus vivendi* that upholds both the integrity of religious ethics and the rights of marginalized identities.

### Recommendations

In light of the foregoing analysis, the following recommendations are proposed for scholars, policymakers, and legal practitioners engaged in the intersection of LGBTQ rights and Islamic legal ethics:

1. **Foster Interlegal Dialogue:** Institutions of higher learning and legal reform bodies should facilitate sustained dialogue between scholars of Islamic jurisprudence and international human rights law to encourage mutual understanding and constructive critique.
2. **Encourage Internal Reform through *Ijtihād*:** The Islamic legal tradition possesses inherent mechanisms for legal renewal. Contemporary scholars and *muftahids* should be encouraged to revisit classical positions on sexuality and personhood using tools such as *maqāṣid al-sharī'a* and contextual hermeneutics.
3. **Promote Legal Pluralism with Ethical Safeguards:** In jurisdictions with overlapping legal systems, legal pluralism should be embraced, not as relativism, but as a structured coexistence where state law can balance religious freedoms with commitments to non-discrimination and human dignity.
4. **Develop Context-Sensitive Policy Frameworks:** Rather than imposing a one-size-fits-all model, policies addressing LGBTQ rights in Muslim contexts should be informed by local jurisprudential discourse, cultural sensibilities, and ethical considerations rooted in Islamic normative reasoning.
5. **Combat Essentialism in Rights Discourse:** Both liberal and Islamic legal advocates must refrain from depicting the other as monolithic. Emphasizing intra-tradition diversity allows for greater flexibility in finding common ethical ground.

By pursuing these recommendations, stakeholders can move beyond polemics toward a more dialogical, principled, and inclusive legal culture, one capable of honouring moral convictions without sacrificing human dignity.

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