

# PLACEMENT OF SUSPECTS OR ACCUSED OF DEVIANT SEXUAL ORIENTATION IN INDONESIA

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**Abstract:** Based on Government Regulation Number 27 of 1983 concerning the Implementation of the Code of Criminal Procedure Article 19 Paragraph (2), Regulation of the Minister of Justice Number: M.04-UM.01.06 of 1983 concerning Procedures for Placement, Treatment of Prisoners and Procedures for State Detention Centers Article 1 Paragraph (2), Government Regulation Number 58 of 1999 concerning Terms and Procedures for the Implementation of Authorities, Duties, and Responsibilities for the Care of Prisoners Article 7 states that the placement of prisoners is classified as one of them is based on sex. Ayluna Putri better known as Lucinta Luna was secured by officers of the West Jakarta Police Drug Investigation Unit, The police decided to place Lucinta Luna in a women's prison because the court decree granted Lucinta Luna's sex change request and for security and tranquility reasons, including preventing Lucinta Luna from being bullied according to this, this study aims to determine the arrangement for the placement of suspects or defendants of orientation deviations sexual. The type of research used is the normative legal research method. This study found that the regulations regarding the classification of detention areas separated by sex this regulation does not adequately respond to current social developments, because sexual orientation deviation is not solely based on sex, but there are social factors behind it so the government needs to make government regulations related to the detention of criminal offenders who experience abnormalities or deflections of sexual orientation.

**Keywords:** Detention; Suspect or Accused; Deviation of Sexual Orientation; Code of Criminal Procedure.

## I. INTRODUCTION

In the explanation of the constitution, it is explained that the State of Indonesia is a State based on law (*rechtstaat*) not based on power (*machtstaat*) (Muabezi, 2017). Based on these provisions, all actions of the ruler/government and citizens are always based on applicable laws and regulations/positive law, and may not judge themselves or vigilantes if there is a dispute (Listianto, 2018). The State guarantees that civilians are protected because it is part of human rights (Setiaji & Ibrahim, 2018). Human rights essentially govern the relationship between individuals and the state (Kirchschlaeger, 2014). This means that the state has guaranteed and protected individuals for all the rights inherent in themselves as human beings who have dignity that cannot be deprived by anyone, including the state (Brown, 2016).

Human rights have been agreed upon as international law that can serve as strong standards and guidelines for states in their treatment of individuals within their jurisdiction (Chow, 2016). In other words, human rights provide moral and legal guarantees to individuals to exercise control and encourage rules in the practices of state power over individuals, ensure

individual freedom in relations with the state, and require the state to meet the basic needs of individuals within its jurisdiction (Sabila et al., 2019). This is where the state becomes a party that has the duty and obligation to respect, protect, and fulfill the human rights and individuals residing in its jurisdiction as rights holders (Abdi et al., 2009). The enactment of Law Number 8 of 1981 concerning the Criminal Procedure Code which became effective two years later after its enactment, was motivated by the main issue regarding the need for human rights protection for perpetrators of crimes that are often violated by criminal law enforcement officials. The low condition of human rights protection for suspects and defendants facing criminal law enforcers equipped with various authorities will be improved by the Criminal Procedure Code (Setiawan, 2022).

In detention there are 2 (two) conflicting principles, namely the right to movement, which is a human right that must be respected, juridically deprived in the interest of public order that must be maintained for the community from the actions of suspects or defendants. This is proof of the privilege of criminal law, especially in the formal aspect (criminal procedural law). Therefore, Andi Hamzah reminded that detention should be carried out if it is very necessary to do so (Hamzah, 2011). However, in practice, according to Handri Wirastuti Sawitri, investigators carrying out investigation efforts tend to make arrest efforts against suspects. (Sawitri, 2011) In the Indonesian criminal law system, we know the term State Detention Center (In Indonesian: Rutan). A detention center is a place where suspects/defendants are temporarily detained before the issuance of a court decision with permanent legal force to prevent the suspect/defendant from escaping or repeating his actions. Those who inhabit the detention center are suspects or defendants (Puspitasari, 2018). The time/length of detention is during the process of investigation, prosecution, and examination in court hearings, detainees are held in detention centers during the process of investigation, prosecution, and examination in the District Court, High Court, and Supreme Court (Susanti, 2018).

In addition, the placement of prison residents according to Article 19 paragraph (2) of Government Regulation Number 27 of 1983 concerning the Implementation of the Code of Criminal Procedure states that the place of detention is separated based on gender, age, and level of examination. The phenomenon of sexual deviance controversy has become a hot topic in the community in Indonesia since Sworddut Ayluna Putri better known as Lucinta Luna stumbled into a drug case. Lucinta Luna was found to be a deviant of sexual orientation when the Head of Public Relations of the Metro Jaya Regional Police, Kombes Yusri Yunus confirmed Lucinta Luna's identity based on a decision letter from the South Jakarta District Court which granted the applicant's sex change request named Muhammad Fatah was a female with the name Ayluna Putri. Because of the case against her, Lucinta Luna was detained in a special room for the women's block of the Metro Jaya Regional Police after the police were confused about placing Lucinta Luna in a female or male detention room. The police decided to place Lucinta Luna in a women's detention room because of a Court Decree that granted Lucinta Luna's sex change request and for safety and comfort reasons, one of which was to avoid bullying Lucinta Luna.

Then as a comparison, Muhammad Millendaru Prakasa known as Millen Cyrus as a suspect of deviating sexual orientation in drug cases became one of the occupants of a male cell at the Tanjung Priok Port Police Station and was placed in a male cell according to his identity listed on his ID card, but finally the police transferred him to a special detention room, to prevent unwanted things. Vulnerability to harassment and bullying is not only experienced by suspects or defendants who have deviations in sexual orientation but can also be a problem for other suspects or defendants who are cellmates in the detention center as experienced, a woman who is a victim of harassment of other female suspects in the Bandung Class IIA Women's Detention Center. Harassment that occurs in the detention center is not only carried out by fellow suspects or defendants but can also be carried out by the warden to

the suspect or defendant as happened who received deviant behavior from a warden named Linus in the Carep-Ruteng detention center, Manggarai Regency to experience trauma and disease in his anus.

Based on the background that the researcher has described, the researcher raised a problem formulation about how the placement of suspects or defendants of sexual orientation deviation in Indonesia. As material for comparison and to determine the novelty value in this study, researchers will compare several previous scientific articles that raise the same issue, such as those conducted who raised the Impact of Visit Quality on the Psychological Condition and Violation Rate of Detainees During Detention (Yudiantoro & Wibowo, 2021). What distinguishes the previous research from this study is that the researcher raised from the positive legal aspect, specifically about the formal law. Another research was conducted who raised the Protection and Respect of Prisoners' Rights during the COVID-19 pandemic (Darwis, 2021), what distinguishes this previous study from this research is that the research conducted by Darwis discusses the scope of COVID-19, while the researcher discusses in general how the positive legal aspects are.

## **II. RESEARCH METHOD**

In this study itself, researchers use normative legal research methods (Al-Fatih, S. 2023), namely using normative case studies in the form of legal behavior products, just like reviewing laws. The analytical technique in this study researchers uses qualitative descriptive methods, namely research that aims to describe things in certain areas and moments supported by legal interpretation and focuses on analyzing aspects of justice, protection, and respect for human rights. The approaches that researchers use are the statutory approach, case approach, conceptual approach, and philosophical approach.

## **III. RESULTS AND DISCUSSION**

### **a. Legal vacuum on the placement of suspects or defendants of sexual deviation in Indonesia**

In the development of law in Indonesia related to detention, there have been many cases that in the positive law itself have not been regulated, so there is a blurring of norms, making the regulation not enough to solve the legal problem, as experienced by Lucinta Luna based on the decision letter of the South Jakarta District Court which granted the applicant's sex change request named Muhammad Fatah is a female with the name Ayluna Putri and Muhammad Millendaru Prakasa or known as Millen Cyrus as suspects of deviating sexual orientation in drug cases became one of the residents of the male cell at the Tanjung Priok Port Police Station who was placed in a male cell according to his identity listed on his ID card, but finally the police transferred him to a special detention room, to prevent unwanted things that experienced abnormalities or deviations in sexual orientation.

Indonesia as a state of law based on Pancasila must provide legal protection to its citizens (Aulia, 2019). Therefore, this legal protection will give birth to the recognition and protection of human rights for suspects or defendants who have sexual deviations in their form as individual beings and social beings in the forum of a unitary state that upholds the spirit of kinship to achieve common welfare (Ewing, 2009). That legal protection as expressed by Setiono is defined as an act or effort to protect the public from arbitrary acts by authorities who are not by the rule of law, to create order and tranquility to enable suspects or defendants who have sexual deviations to enjoy their dignity as human beings (Witasari & Setiono, 2016).

Despite carrying out sanctions, the rights of suspects or defendants are still given and protected, in terms of classifying the placement of detention suspects. The definition of a suspect is regulated in Article 1 paragraph (14) of the Criminal Procedure Code which states that:

“A suspect is someone who, because of his actions or circumstances, based on preliminary evidence should be suspected of being the perpetrator of a criminal act.”

Thus, a suspect who has a deviation of sexual orientation is someone who undergoes a preliminary examination, whether or not a suspect or defendant who has a deviant sexual orientation must be carried out in an honest judicial process by prioritizing the principle of security before the law. The definition of a suspect with the same formulation is also regulated in the provisions of Article 1 number 10 of the Regulation of the Chief of Police Number 14 of 2012 concerning Management of Investigation of Criminal Acts of Preliminary Evidence as referred to Article 1 number 14, of the Criminal Procedure Code is not specifically regulated in the Criminal Procedure Code, the definition is instead regulated in Article 1 number 21, namely:

“Preliminary Evidence is evidence in the form of a Police Report and 1 (one) valid evidence, which is used to suspect that someone has committed a criminal act as a basis for arrest.”

Thus, based on the police report and valid evidence, a person in this case a person who has a deviant sexual orientation can be determined as a suspect and can be arrested. Suspects or defendants of deviant sexual orientation have rights stipulated in the Criminal Procedure Code, namely as stipulated in articles 51 to 68 of the Criminal Procedure Code and Article 196 paragraph (3) of the Criminal Procedure Code. When exercising authority in the detention of suspects, they must be guided by the provisions in Article 21 paragraphs (1) and (2) of the Criminal Procedure Code, which states that the detention of suspects must be preceded by an arrest warrant. In the arrest warrant, the inclusion of the place where the suspect or accused will be detained must follow the authority of the police where the suspect or defendant resides so that no problems occur. If this happens, the suspect or defendant can refuse to be detained because the place where the detention was carried out had an error in the inclusion of the detention warrant. Based on the provisions in Article 1 number 21 of Law Number 8 of 1981 concerning the Criminal Code, it is explained that:

“Detention is the placement of a suspect or accused in a certain place by an investigator, or a public prosecutor or judge by his determination, in the case and in the manner provided for in this law.”

In the provisions of article 1 number 4 j of the Regulation of the Minister of Law and Human Rights Number M.HH-24. PK.01.01.01 of 2011 concerning the Expenditure of Detainees for Legal Purposes also explains detention per the contents of Article 1 number 21 of the Code of Criminal Procedure. From the article, that detention is only for suspects or defendants who are still waiting for court proceedings related to the alleged criminal act that the perpetrator committed, and if it has been decided by the court and has the force of law, it is still called the convicted person and must serve punishment for his actions. In the provisions of the Criminal Procedure Code, the detention time limit for suspects or defendants varies for each stage in a criminal case as stipulated in articles 24 to 28 of the Criminal Procedure Code. In general, the method for detention of suspects or defendants who have deviations of sexual orientation also the same method as suspect or

defendants in general, namely with an arrest warrant based on article 21 paragraph (2) of the Criminal Procedure Code and submitting a warrant to the family based on article 21 paragraph (3) of the Criminal Procedure Code. The type of detention according to the Criminal Procedure Code is stated detention or detention based on article 21 paragraph (1) of the Criminal Procedure Code; house arrest based on article 22 paragraph (2) of the Code of Criminal Procedure; and city detention under article 22 paragraph (3) of the Code of Criminal Procedure. Detention centers are where suspects or defendants of sexual orientation deviation are detained during the process of investigation, prosecution, and examination in court. As long as there is no detention center, detention can be made at the state police station, at the district attorney's office, in prison, in hospitals, and in compelling circumstances elsewhere.

Before a suspect or defendant is sentenced, the suspect or defendant is detained in the detention center during the investigation, prosecution, and examination process in the District Court, High Court, and Supreme Court. The placement of prison residents according to Article 19 paragraph (2) of Government Regulation Number 27 of 1983 concerning the Implementation of the Code of Criminal Procedure states that the place of detention is separated based on gender, age, and level of examination. Based on the Technical Guidelines of the Director General of Corrections of the Young Attorney General for General Crimes of the Young Attorney General for Special Crimes Number: Pas-08.HM.05.02 of 2014, Number: Kep-002/E/Ejp/03/2014, Number: Kep-04/F/Fjp/03/2014 concerning the Placement, Delivery, and Loan of Prisoners and/or Prisoners in point B number 1 explains that "The Prosecutor's Office as an Investigator or public prosecutor may place detainees in the State Detention Center through coordination with the fastest and immediate means submit a letter of application in writing to the Head of the State Detention Center". The provision only stipulates that the placement of suspects, namely in State Detention Centers, does not explain further regarding the placement of suspects who have deviations in sexual orientation in terms of detention.

Detention is a restriction on the freedom possessed by a person, including a citizen of a deviant sexual orientation, especially a person's freedom of movement, so detention should be carried out if it is strictly necessary for law enforcement. Detention results in the loss of a fundamental contradiction in which on the one hand detention results in the loss of freedom of movement of a person, and the other hand detention is carried out to maintain order that must be maintained in the public interest for the alleged evil acts against the suspect or defendant of deviant sexual orientation (Hamzah, 2011). Therefore, the detention action by the investigator must be under the provisions in the Criminal Procedure Code, this is to avoid errors in the implementation of detention which can have fatal legal consequences for the official who made the detention in the form of a claim for compensation or rehabilitation by the rules in article 95 of the Criminal Procedure Code. The investigator's authority in detaining the suspect is regulated in Article 20 paragraph (1) of the Criminal Procedure Code which states:

“For the purposes of investigation, the investigator or auxiliary investigator on the order of the investigator is authorized to make arrests.”

Article 21 paragraph (1) of the Criminal Procedure Code states that detention is carried out for two reasons, namely subjective reasons, namely if there is a concern that the suspect will escape, damage or eliminate evidence and or repeat the crime; second, objective reasons, namely the suspect committed a criminal act and/or attempted or aided in the criminal act in the case of:

1. The crime carries a prison sentence of five years or more;

2. Criminal acts as in article 282 paragraph (3), article 296, article 335 paragraph (1), article 351 paragraph (1), article 353 paragraph (1), article 372, article 378, article 379a, article 453, article 454, article 455, article 459, article 480 and article 506 of the Criminal Code, article 25 and article 26 (violation of the Customs and Excise ordinance), article 1, article 2, Article 4 of the Immigration Law, article 36 paragraph (7), article 41, article 42, article 43, article 47, and article 48 of the Narcotics Law.

Therefore, 2 reasons, both subjective and objective, namely that the suspect allegedly violated article 2 paragraph (1) subsidiary article 3 of the Law on the Eradication of Criminal Acts of Corruption jo. article 55 paragraph (1) of the Criminal Code where the threat of a sentence of more than 5 years then the investigator detains the suspect, is the legal basis for the detention of the suspect.

In Indonesia, the placement of prisoners is segregated according to the rules:

Old Order 1959 - 1966	New Order 1966 - 1998	Reform 1998 - Present
<p>Basic Law of Police Number 13 of 1961 concerning the main provisions of the Police State Article 13. "For investigation, the National Police has the authority:</p> <ul style="list-style-type: none"> <li>a. receiving complaints;</li> <li>b. checking identification marks;</li> <li>c. take fingerprints and take pictures of a person;</li> <li>d. arresting people;</li> <li>e. searching the body;</li> <li>f. temporarily detain people;</li> <li>g. calling people to be heard and examined;</li> <li>h. bring in members;</li> <li>i. searching courtyards, houses, warehouses, land-and-air means of transportation; disposing of goods to be used as evidence; and</li> <li>i. take other actions;</li> </ul>	<p>Article 19 paragraph (2) of Government Regulation Number 27 of 1983 concerning the Implementation of the Code of Criminal Procedure "The place of detention is separated by sex, age and level of examination"</p>	<p>Article 7 of Government Regulation Number 58 of 1999 concerning Terms and Procedures for the Implementation of Authorities, Duties, and Responsibilities for the Care of Prisoners "The placement of prisoners is determined based on classification:</p> <ul style="list-style-type: none"> <li>a. age;</li> <li>b. gender;</li> <li>c. types of criminal offenses</li> <li>d. level of examination of the matter; or</li> <li>e. for specific interests that are in accordance with needs and development" <p>In relation to Article 12 of Law Number 12 of 1995 concerning Corrections, it is determined that in the context of coaching prisoners in prisons, classification is carried out on the basis of:</p> <ul style="list-style-type: none"> <li>a. age;</li> <li>b. gender;</li> <li>c. length of sentence imposed;</li> <li>d. type of crime; and</li> </ul> </li></ul>

		e. other criteria that are in accordance with the needs or development of coaching.
Herzien Inlandsch Reglement (H.I.R) Updated Indonesian Reglemen (R.I.B.) Pasal 75 “If the evidence reasonably shows that the accused is guilty and that he or she should be detained for the purpose of the examination or to keep the commission of the act in the case prescribed in paragraph two of article 62, the public prosecutor or the prosecutors conducting the examination may issue an order for temporary detention”	Regulation of the Minister of Justice Number: M.04-UM.01.06 of 1983 concerning Procedures for Placement, Treatment of Prisoners and Procedures for State Detention Centers 1 paragraph (2) "Detainees are segregated by gender, age and level of examination”	

During the old order, the detention classification arrangements were not specifically regulated, only during the New Order period until the Indonesian reform made clearer regulations related to detention classification. From the classification of prisoner placement in the rules and articles above, one of them is classification based on sex. The classification of the placement of suspects or defendants is based only on gender where only men and women are known. Arrangements regarding the placement of suspects or defendants by sex are contentious as the placement of a person with a deviant sexual orientation will be detained. The classification of detention placement by sex has an impact on the types of detention cells that exist, namely male and female cells. The United Nations High Commissioner for Human Rights reported that: "in almost all regions, people experience violence and discrimination because of their sexual orientation or gender identity". Although not all, discriminatory attitudes towards sexual orientation deviants perceived by sexual orientation deviants are a form of human rights violations. Citizens of sexual orientation deviations are human beings who should be given respect for their rights, but a person who deviates from sexual orientation often gets discrimination caused by sexual identity and orientation.

Regarding the placement of suspects or defendants who have deviant sexual orientation under the Criminal Procedure Code, there is no specific regulation. That based on the provisions in Article 21 of the Criminal Procedure Code, it states that:

“Detention is the placement of suspects or defendants in a certain place by investigators or public prosecutors or Judges with their determination, in the case and in the manner provided for in the law.”

The provision that law enforcers in each agency have the authority to make arrests and detentions are only carried out in the process of law enforcement is still ongoing. The

Code of Criminal Procedure does not specifically regulate the placement of prisoners of deviant sexual orientation. So suspects who have a sexual deviant orientation are vulnerable to negative treatment by other suspects and can also have a negative influence on other suspects. Suspects who have deviations of sexual orientation are vulnerable in terms of protection provided by the Criminal Procedure Code only limited to their placement based on sex. However, protection for suspects who have a vulnerable sexual deviant orientation also includes a personal coaching process with programs that are in accordance with the abilities of the fostered residents themselves, as well as protection from discriminatory treatment of fostered residents from the detention center officers themselves. (Kosho et al., 2021) So that non-discrimination must be applied in terms of the treatment of suspected deviants of sexual orientation in the Detention Center. The principle of non-discrimination is to respect equality even though the suspect is a deviant sexual orientation by not discriminating, both parties, on the basis of religion, race, ethnicity, ethnicity, skin color, social status, affiliation or ideology and so on. Non-discrimination is defined as an action on the policy not to engage in discrimination (Boerefijn, 2007).

**b. Urgency of regulation on the placement of suspects or defendants of sexual deviation in Indonesia**

The homogeneous environment in prisons or detention centers makes sexual deviance a culture in prisons or detention centers. The culture will continue to increase if the suspect or defendant with a deviant sexual orientation character who is the object of the deviation, is still placed in the same room with other suspects or defendants. Providing opportunities that cannot be rejected by anyone because it is a rule where they are placed (Sutoyo & Anwar, 2019). The absence of regulations governing the placement or detention of suspects or defendants who have deviated from sexual orientation in Indonesia results in no specific picture of what form of legal protection is provided by the state for citizens fostered by sexual orientation deviation in detention centers and prisons. Some protective treatments given by detention centers or prison officers are only carried out after a problem occurs. However, there are no rules that specifically regulate legal protection for suspects or defendants of deviant sexual orientation and how rules and restrictions are preventive measures (Kosho et al., 2021).

In fact, as an Indonesian citizen, the government must guarantee and provide human rights protection for groups of deviant sexual orientation like other citizens. In fact, until now in Indonesia, the implementation, respect, protection, treatment, or enforcement of human rights is far from satisfactory, especially for groups of deviant sexual orientation (Manik et al., 2016). Positive law in Indonesia, related to detention only regulates based on sex, male and female, but the regulation does not adequately answer the social development and health of the law today, because abnormalities or deviations of sexual orientation are not only based on sex, but there are social factors and underlying compliance, so that if detention is determined to perpetrators of criminal acts who experience abnormalities or deviations sexual orientation is placed based on gender, will cause an uproar within the scope of detention, such as the case experienced by the VA of a woman who was a victim of harassment of other Women suspects who had sexual orientation deviations in the Bandung Class IIA Women's Detention Center, harassment that occurred in the detention center was not only carried out by fellow suspects or defendants but could also be committed by the warden to the suspect or defendant as happened at DHS who received deviant behavior by a warden named Linus in the Carep-Ruteng detention center, Manggarai Regency until he experienced trauma and disease in his anus.

That with this case, becomes one of the positive legal problems in Indonesia which is proof that the regulation of detention is not enough to answer legal problems in



Indonesia. Deviation of sexual orientation according to the point of view of sociology is included in deviant behavior. This action occurs due to deviations in individual and group behavior from various social rules or applicable social values and norms. Deviant behavior can be considered a source of problems because it can endanger the establishment of the social system. This means that deviant behavior is behavior that violates or contradicts normative rules (Horton & Hunt, 1999). In sociological discursion, deviation is a deviation from rules or norms and values in society. This rule arises in society because it is needed as a regulator of relationships between someone and others or between someone and society. The holding of rules and regulations in the community aims to ensure that there is conformity of citizens to the values that prevail in the community concerned (Soekanto, 2004).

Thus social norms are what should be lived and forbidden in society. The creation and formation of norms are based on social interaction between individuals and society. These norms serve to direct, channel, and limit the relationships of members of society in general (Coleman, 2011). In any society, social norms usually center on daily activities that are meaningful to its members. Centralized social norms are called social institutions, for example, the family. The family is a critique of several social norms that regulate relationships between sexes, parent-child relationships, and socialization in the family, regulating and directing daily relationships even though in the family there are normative specificities related to individuals in the family. However, general aspects of family life can also be found and these general aspects are closely related to social norms that apply in society (Coleman, 2011). Edwin H. Sutherland named his theory differential association, according to this theory deviation is a consequence of skill and mastery of an attitude or action learned from deviant norms, especially from subcultures or among deviant peers (Nickerson, 2022).

Deviant behavior is the result of learning or being learned, this means that deviance is not inherited or inherited, nor is it the result of low intelligence or brain damage. Deviant behavior is studied by a person in his interaction with others intensely. A person becomes deviant because he considers it more profitable to break the norm than not. The formation of differential associations varies depending on frequency, duration, priority, and intensity. If the above cases of sexual deviance are associated with differential association, the problem of sexual deviance can also result from knowledge of evil behavior learned in interactions with other people, and the person gets evil behavior as a result of interactions he has with people who behave with tendencies against legal norms.

Researchers can underline that if someone becomes evil, it is because the person has contact with patterns of evil behavior and also because he isolates himself from patterns of behavior that do not like the crime. Furthermore, the essential part of evil behavior or evil is studied in small intimate groups. Likewise, certain communication tools such as books, newspapers, films, television, radio, also online media, or the internet, provide certain influences, namely in suggesting to individuals to accept or reject the evil behavior. This theory argues that no evil behavior is inherited from both parents. Patterns of evil behavior are not inherited but learned through a close association. This can be exemplified, that the perpetrators of sexual deviance have deviant behavior can be caused by sexual violence or past trauma that he had experienced when he was a child or had watched pornographic scenes in videos, internet, on cellphones, pornographic reading, or if many people around him behaved defiantly to trigger deviant sexual behavior, and they feel it's a normal, normal pattern of behavior.

In terms of theology, abnormalities or deviations of sexual orientation violate the nature of the creation of the human body. Biologically, humans have been created in pairs as an accommodation for the tendency to mutual attraction between men and

women. The structure of the female body has been made to be able to conceive and give birth while the male fertilizes the female. Al-Hasan al-Bashri, as mentioned by al-Zamakhshari in his tafsir, mentions that the word "mawaddah" in verse 21 of Surah Rum which speaks of marriage is an allusion to intimate relations (jima') while rahmah is an allusion to offspring. Therefore, the nature of shahwat creation that is channeled through the institution of marriage is to obtain offspring (procreation), besides of course to share affection and love. Procreative sexual activity is important, Ibn Khaldun and Giambattista Vico, the Italian historian Angelo Bertolo warn, that the collapse of Western civilization today is nothing but the result of declining birth rates (Bertolo, 2012). Thus, the aspect of homosexuality that is subject to punishment if proven is only the dimension of the act, namely the practice of same-sex sexual relations. Both between men and women (lesbianism). Homosexuality in terms of sexual orientation which is still a tendency in the heart to like the same sex is not punished. Nevertheless, it is still a forbidden martyrdom that must be resisted and must not be allowed or vented.

With the explanation of these theories related to deviations in sexual orientation, police officials such as in the case of one of the suspects who had deviations of sexual orientation the police placed celebrities Muhammad Millendaru Prakasa or Millen Cyrus in a special cell while detained at the Tanjung Priok Port Police Station. Head of Public Relations of Polda Metro Jaya Kombes Pol Yusri Yunus said that based on his identity, Millen is male. However, with Millen's condition resembling a woman, officers placed her in a special cell. Discretionary authority is inherent in all government positions. Discretionary authority is also vested in Indonesian police officials who are investigators. The discretionary authority of investigators is regulated in Article 18 paragraph (1) of Law No. 2 of 2002 concerning the National Police of the Republic of Indonesia which regulates as follows: "In the public interest, officials of the National Police of the Republic of Indonesia in carrying out their duties and authorities may act according to their judgment." The authority to act according to one's judgment is not absolute. Within the framework of the rule of law, there is no free power. Similarly, the discretionary authority stipulated in Article 18 paragraph 1 of Law No. 2 of 2002 stated above. The limitation of discretionary authority is regulated in Article 18 paragraph (2) of Law No.2 of 2002 concerning the National Police of the Republic of Indonesia which regulates as follows: "The implementation of the provisions referred to in paragraph (1) can only be carried out in very necessary circumstances by taking into account the laws and regulations, as well as the Code of Professional Ethics of the National Police of the Republic of Indonesia."

Thus, related to the norms regarding detention in Article 19 Paragraph (2) of Government Regulation Number 27 of 1983 concerning the Implementation of the Code of Criminal Procedure which states that the place of detention is separated based on gender, age, and level of examination, it is not sufficient to answer the development of legal problems that occur such as criminal acts committed by perpetrators who experience deviations in sexual orientation So that the legal issue that occurs is a blurring of norms, it is contrary to one of the objectives of the law, namely legal certainty, because it cannot only always hope with the discretion taken by the police, regulations should be established related to detention for criminal offenders who experience deviations of sexual orientation with the aim of legal expediency within the scope of the detention. With this case, there must be *ius constituendum* (aspired law or future law) related to the detention of criminal offenders who experience sexual deviance as a step to provide legal certainty related to detention that is still not regulated in the Criminal Procedure Code and it's implementing or derivative regulations. Legal certainty itself is one of the main principles in positive law in Indonesia, as stated in Article 1 paragraph (1) of the Criminal Code which regulates the principle of legality or the principle of

nullum delictum nulla poena sine praevia lege poenali which means that no act can be subject to criminal sanctions and/or actions, except for the strength of criminal regulations in laws and regulations that existed before the act was committed. So the existence of regulations related to detention for criminal offenders who experience deviations from sexual orientation should be the answer to the problem of legal uncertainty.

#### IV. CONCLUSION

The legal vacuum regarding the detention of LGBT suspects in Indonesia refers to the lack of clarity or indecisiveness of regulations governing the detention of individuals based on their sexual orientation or gender identity. Explicitly, there is no law in Indonesia that regulates or prohibits LGBT sexual orientation. However, legal ambiguity is often used to target the LGBT community through local regulations, biased interpretations of the law, or generalized articles in the Criminal Code. This legal vacuum also raises problems from a human rights perspective. Indonesia has a constitutional obligation to protect all its citizens from discrimination, including discrimination based on sexual orientation or gender identity. However, without clear regulations, it is difficult for the LGBT community to seek legal protection or justice.

With the blurring of norms, the right of criminal offenders to be detained must see how comfortable together in the scope of detention, so that criminal offenders who experience sexual deviance should get their cell or place of detention because this has become their right. With the existence of a criminal offender who experiences a deviation of sexual orientation, it is not on the basis that they do not get their rights and they should get their rights to get a cell or detention place specifically for the convenience of the criminal offender himself or other criminal offenders who are within the scope of detention. Researchers suggest there are special arrangements in the form of government regulations to complement the regulated detention classification arrangements. The researcher also suggested that the article related to this matter is the classification of prisoner placement separated based on gender, age, level of examination, and special needs in this case sexual orientation, so that this can be an answer to the problem of legal uncertainty.

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