

CHAPTER 'IV
THE STRUGGLE OF LGBT ACTIVISTS FOR
THEIR RIGHTS AND ACCEPTANCE IN
MALAYSIA

The problems and its problem solving toward LGBT movement in Malaysia that explained, show how LGBT activists had never given up on their struggle to get their human rights as Malaysian citizens and acceptance as other ordinary people. The first movement began when there were pioneers who ready to take the risks of being showing up their existence and develop its movement. This can not happen without many challenges which they have even until today in the country which holds Islamic values in their national regulations, and also several actors named supporters who were being their “wing” and their fund sources. From several facts about LGBT movements in Malaysia, their most of supporters come from “High” Level. In this case the “High” level means actors who have big influence to the country, such as MNCs (ex : Starbucks), several NGOs which mission are struggle for human rights, Human Rights Watch, UNDP and UNHCR as well.

Besides, the LGBT communities in Malaysia have many supporters who were always helping them in solving LGBT movement's problems and reaching for their goal to get full of rights as other's ordinary people. The scramble of their effort to changing other people's perspective on LGBT people from negative to decisive gently success even though they live in the majority of Muslim people. Although the LGBT activists actions in promoting their culture or campaigning their rights to live peacefully and getting acceptance as the other ordinary people have been attracting to other people and some of them giving their “eyes” and “ears” (support) to the LGBT people, however, because Malaysia is one of the countries with majority Muslims people and Malaysia also

implement several Sharia Law on their regulations, those actions cannot be going as well as their ambition

Hereby the data of Malaysian legal system (regulations) about LGBT people or people who are in same-sex relationship in Malaysia according to the Stonewall's Global Workplace Equality Index

Table 3 4.1 Malaysian Legal System About LGBT Advocation

Freedom of Expression, Association and Assembly	Family and Same-Sex Relationship	Equality and Employment	Gender Identity	Immigration
Article 10 of the Federal Constitution guarantees every citizen the right to freedom of speech, expression and peaceful assembly. These rights can be restricted through parliamentary legislation. The rights of LGBT	Section 377A of the Malaysian Penal Code criminalises 'carnal intercourse', with a penalty of up to 20 years of imprisonment and possible whipping.	There are no laws on the prohibition of discrimination based on sexual orientation and/or gender identity.	The legal gender of a person cannot be changed unless errors were made pursuant to Section 27 of the Births and Deaths Registration Act	There is no mention of same-sex partners in immigration laws.

<p>people are not specifically addressed.</p>			<p>(1957) or Section 6(2)(o) of the National Registration Act (1959).</p>	
<p>Section 37(e) of the Communications and Multimedia Act (1998) prohibits publishing content that is not deemed to be in-line with public policy. This has included depictions of LGBT people and issues.</p>	<p>State Sharia laws criminalise same-sex sexual acts with a penalty of fine, imprisonment and whipping.</p>	<p>Article 8 of the Constitution provides for equality before the law for all citizens regardless of religion, race, descent, place of birth, or gender. Sexual orientation and gender identity are not included in this list.</p>	<p>However, it was decided in a recent High Court case that a person who had undergone gender re-assignment surgery be declared a man and that the National Registration Department</p>	

			amend the person's identity card to reflect this change.	
	The law on age of consent is silent on sexual acts between people of the same sex.			
	A marriage is void if the parties are not respectively male and female, as provided by Section 69(d) of the Law Reform (Marriage and			

	Divorce) Act (1976).			
	There is no legal recognition of same-sex relationships in Malaysia.			
	Laws do not currently exist for same-sex couples to adopt children.			

Source : Adopted from the “Stonewall Global Workplace Briefing” journal about Malaysian LGBT access on 28 March 2018 (Briefing, 2015)

The data of the Malaysian legal system about same-sex relationship (LGBT people) shows that Malaysian government has strict regulation to decrease the development of LGBT movements in Malaysia. That also can be reveal from the case of the arrested of transgenders women and lesbians, which was brought the tension in mass media and debate in international area at that time. The debate of the different meaning of human rights acceptance between those Malaysian national law (The Penal Code) and United Rights Human Rights Declaration involved by several international

actors. In the middle of the debate, several LGBT activists use a chance to get sympathics from other people and changing from the adverse perspectives become positive or good perspectives toward LGBT activist, indeed to achieve their goal to get more supporter.

A. The Role of Media in Changing Perspective

In the book titled “The Making Of A Gay Muslim” by Shanon Shah, who declares himself as a gay, there was famous Muslims gay who are a different nationality, Malaysian and Britainian, who survive from the discrimination of Islam. From those gay Muslims’s perspective, especially the one who originally from Malaysia, a country with majority Muslims, they assumed that the perception comes from the barbaric religion or as deviants who sully the sanctity of Islam, it can be considered that they become a victim of that phenomena. In their interview, they still doing Islamic values however the feeling unlike the across gender is a difficult thing to do, they argued that the feeling initially appear since they were children. The interview with some LGBT people which written in the book is not easy to be done however since the author of the book claimed himself as one of them (LGBT people), then the people who were interviewed by the author can “speak up” comfortably. The author claimed himself as a gay is one of the brave actions, he did research on how do LGBT movement survive in Malaysia which one of the country with majority muslims people. The publishment of this book (The Making Of A Gay Muslim), has been inspiring for LGBT people, especially in Malaysia, because this book shows “hopes” for LGBT to survive in the country with majority muslims. The role of some inspiring books (for LGBT people) was giving huge influence to the LGBT activists to create more huge movements, it is obviously for reaching their goals.

Eventhought the developing era become faster from time to time, the inspiring book can still be one of the media for LGBT activists to create more movements, however the technology of other media become one of the concerning methods of them to reveal their purposes, such as showing themselves actions (romance) in public and get acceptance , or even influencing the Government in the policies decision making. The top of LGBT movement using the role of media to spread influence and construct the positive thinking to other people's perspective about LGBT people when the one of biggest event for LGBT people in Malaysia was banned by Malaysian polices.

One of the most significant annual events for LGBT people, sexual orientation, and gender equality issues in Malaysia named Seksualiti Merdeka, succeed become popular because that event was one of the LGBT's effort in their movement to introduce their identity and reaching their primary goal. Unfortunately the annual has stopped and got banned by Malaysian policies. Malaysian police argue that their annual event brought the adverse effects for the environment because their "culture" or "identity" shows the freedom of "sex" and influence "deviant behavior" which bring negative effect for further especially for children. Although one of the biggest annual event for LGBT people, gender equality, and sexual orientation issues, has been stopped in 2011, however, the movement of LGBT communities does not cease at all. It can be seen for how to strive their efforts to get their rights and having their legal permission for same-sex marriage from the Malaysian government. Meanwhile, after the banned, several groups or communities which support or involve in LGBT issues has been using the method of "changing perspective." They were using this method by utilizing the power of technology, such as online and offline media, video campaign, and another unique campaign. Its method can be called success because

their campaign is suitable for this globalization era which every single thing in life more develop and its technology becomes more sophisticated and attractive. Most people using that advanced technology for knowledge, business, and many more, that is why most of the people's determination, the way their thinking, mostly coming from everything which comes up from technology which is sometimes those things do not prove yet by its reality.

According to Alexander Wendt's statement about Constructivism theory, he argued that

"Social structures have three elements: shared knowledge, material resources, and practice. First, social structure is defined, in part, by shared understandings, expectations, or knowledge. These constitute the actors in a situation and the nature of their relationship, whether cooperative or conflictual..." (Wendt 1992: 73)

He believed that the method to build people's perspective on looking at the fact is constructed by general recognition which creates the existence of social facts. The recognition can be formed as a paradigm, belief, ideology, even interest, and identity. It is a matter that the form of ideas can be affected by types of action which the subject will do.

The system of shared ideas, beliefs, and values also have structural characteristics, and they exert a powerful influence on social and political action. Material resources only acquire meaning for human action through the structure of shared knowledge in which they are embedded. As not far from the idea or perspective which have built by people who have a view that is not an acceptable or reasonable characteristic which will give the adverse impact on the societies. Understanding how non-material structures condition actor's identities are essential because identities inform interests and in turn actions. (Sorensen, 1999)

“Ideologies or shared belief system is a systematic set of doctrines or beliefs that reflect the social needs and aspirations of a group, class, culture, or state. Normative (or principled) beliefs are beliefs about right and wrong...” (Tannenwald 2005:15-16)

Survey the possibility of Tannenwald over; a few convictions are the conviction that the irregular wonders is now and then off-base. At that point, operators and structures are commonly constituted. Standardizing and ideational structures may well condition the characters and interests of performing artists. However, those structures would not exist if it was not for professional practices of those on-screen characters.¹⁹ In the book of *The Making of A Gay Muslim*, other thinker named Beckford, give an argument about how social construction work

“Social construction does not mean that social reality consists of nothing but text and discourse, as argued by some radical constructionists. Nor does it merely mean that ‘human beings create or construct meaning when they interact with each other.’” (Beckford, hal. p.3)

“Social construction refers to the ‘processes whereby the meaning of the category of religion is, in various situations, intuited, asserted, doubted, challenged, rejected, substituted, re-cast, and so on.’ It is a useful ‘analytical strategy’ for investigating ‘the construction of religion as a complex and variable category of human knowing, feeling, acting and relating.’” (Beckford, hal. p.4)

¹⁹ Adopt from IR Theory 2 Presentation by Mr. Winner Agung Pribadi

Those theory and concept were explaining how the method of LGBT movement's supporter influence the shape of thinking and pursuing general acceptance in Southeast Asia regions to reach legitimation from the government. Inside of the states which implement Islamic value as the source of policy, the LGBT movement will influence on how the general recognition of the people is affected by the government and create the new perspective of how adverse the LGBT movements are. However, the concept which doctrine by the government is not objective and violate the freedom of thinking. Therefore, the main object of LGBT movement is to change the perspective of the people and gain the new mindset of people which is the opposite of official doctrine. Its LGBT activists will use some methods to influence others such as media, both mass media, and social media which today people are easily attracted by anything which comes up as trends in media.

In chapter III, the writer wrote about the problems of LGBT communities in Malaysia, one of the biggest of problem's root of LGBT movement is when the banned of the most significant annual event of sexual orientation people, including LGBT people and fundamental gender equality issues. This issue became big concerned for almost Southeast Asia's countries, and others. It can be assumed that the role of media was compelling at that time because after the banned of Seksualiti Merdeka, the name of an annual event, the annual reports which are done by Human Rights Watch and United Nations Development Programme, wrote about the inconsistency of Malaysian government intolerance and protected their people reasonably. Besides those reports, several communities which were the organizers and supporters of Seksualiti Merdeka were done campaign by spreading in every media.

This theory explains how LGBT movements try to build a new perspective and influence other people who against them about human rights of freedom to choice and liberalization of thinking. Otherwise, the meaning of human rights has many different types, because every country has their meaning on human rights and its regulation, as same as the United Nation's regulation and perspective on the meaning of human rights. This media propagandas must play an essential role in the changing of people's view about how they are looking at the issues and responses.

B. International Regimes involve LGBT issues in Malaysia.

The development of LGBT movement in Malaysia, goes well if its not without their supporters, especially from the International regimes and organizations who have an essential role in every country, especially countries which involved become their member. This can be revealed from one of the fund sources of LGBT communities which come from International Organizations, named United Nations Development Programme (UNDP). UNDP was routinely giving the "aid" once a year to all LGBT communities in Southeast Asia around 8 billion USA dollar. This amount "aid" used for the needs of LGBT communities which "assumed" as the victim of their own countries' discrimination.

The assuming of discrimination toward LGBT people in Malaysia is debateable by several actors because in this case the words of discrimination and violence have many meanings in how its look in different perspectives. According to International Gay and Lesbian Human Rights Commission's (ILGHRC) Submission due to United Nations Commission on the Status of Women Annual Communications Procedures, the meaning of Violence by WHO (World Health Organization) :

“The intentional use of physical force or power, threatened or actual...that results in or has a high likelihood of resulting in injury...psychological harm, maldevelopment, or deprivation.” (Commission, 2015)

Along with the meaning of violence by WHO, on the submission due to the United Nations Commission on the Status of Women Annual Communications Procedures, ILGHRC also mentions about the forms of violence as follows

- a) Emotional violence
This kind of violence refers to the psychological terms and mental abuse, involves the prohibition of their actions and refusal by its family and social environment, or workplace. The discrimination of talking and put some words also the root of emotional violence because this type is the most influential toward psychological terms.
- b) Physical violence
This kind of violence involves the physical harrasment such as, kicking, pushing, beating, hair pulling, use electro shock therapy, bullying indeed.
- c) Sexual violence
This type of violence refers to the rape acts, showing sexual images in public, unwanted sexual touching. According to WHO this kind of violnce is :
“any sexual act, attempt to obtain a sxual act or unwanted sexula comments or advances..using coercion, by any person regardless of their relationship to the victim” (Commission, 2015)

This International Gay and Lesbian Human Rights Commission’s (ILGHRC) submission purpose is to push Commission on the Status of women (CSW) to identify and solve the problems of violence againts lesbians, bisexual and trans people in Malaysia. According to ILGHRC’s report on

2014 about *Violence : Through The lens of Lesbians, Bisexual Women, and Trans people in Asia*, and other organization involved to the documentation which interviewed 50 LBT people in Kuala Lumpur, Penang and Petaling Jaya who experienced with the violations from others. In the report stated that most of the interviewed results, the LBT people in Malaysia tend to get the emotional violence which relating to their psychological sides, the effects are being apart from society, feeling anxiety, and stress. The submission exist because of the reports by several documentary organization which cooperate with IGLHRC about the high number of the discrimination toward LBT people in Malaysia, because ILGHRC has special consultative status with the United Nations Economic and Social Council, they try to report to the highest level of international organizations. The submission succeed to become concern issue for United Nations Comission on the Status of Women and United Nations of Human Rights Council.

The vital role of International Organizations in handling international issues in every country around the world can be revealed from how the countries considering those organizations and institutions advises, in foreign policy making, sometimes national policy included, it is like the advisor for States. UNHCR remind Malaysian government about the declarations which agreed and signed by Malaysia representatives in the ASEAN Human Rights Declarations in Phnom Penh. According to ASEAN Human Rights Declaration Principles number 7 :

“All human rights are universal, indivisible, interdependent and interrelated. All human rights and fundamental freedoms in this Declaration must be treated in a fair and equal manner, on the same footing and with the same emphasis. At the same time, the realization of human rights must be considered in the regional and national context bearing in mind

different political, economic, legal, social, cultural, historical and religious backgrounds." (ASEAN, 1967)

According to the International Convention on the Elimination of All Forms of Racial Discrimination which considering to the United Nations Declaration on 20 November 1963, the protection for minorities and respect the dignity of human person must be speedily remove and to end the discrimination in all forms, the Member States agreed to follow the regulation, as follow :

“ Article 1 : 1. In this Convention, the term “racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. “ (2106, 1969)

Respond to the International Convention on the Elimination of All Forms of Racial Discrimination, most of Human Rights Watch’s reports and articles about LGBT in Southeast Asia region especially Malaysia tend to blame Malaysian people and its government because they found many discrimination acts toward LGBT people and its communities in their country. Human Rights also found that Malaysian government did not proper in implementing the human rights to all their citizens. These facts found by Human Rights Watch and the articles of Justice for Sisters’ site become the prompts for Human Rights Watch to force United Nations Committee to identify the issues and looking for Malaysian government’s effort to end the discrimination and violation toward LGBT people :

“Dozens of transgender women have been convicted under these laws. In June 2014, Islamic Religious Department officials arrested 16 transgender women and one child at a wedding in Negeri Sembilan, sentencing the women to seven days in prison. In June 2015, Religious Department officials in Kelantan arrested nine transgender women at a private birthday party; they were later sentenced to fines or prison time for wearing women’s clothing.⁴ In some cases, Religious Department officials or police have beaten transgender women or sought to extort money and sex from them during arrests.”
(Watch H. R., Malaysia: End Arrests of Transgender Women, 2014)

“Human Rights Watch recommends the Committee ask the government of Malaysia:

- *Will state Religious Departments end the practice of conducting raids targeting transgender people, and repeal provisions of state Sharia enactments that criminalize transgender people?*
- *What steps has the government taken to discourage violence by private citizens against transgender women and other members of sexual and gender minority groups, and to ensure accountability for hate crimes?*
- *Will the government establish a rights-based procedure to allow transgender people to change their name and sex marker on their identity documents?*
- *Will Malaysia pass comprehensive anti-discrimination legislation that prohibits discrimination based on gender identity, gender expression, and sexual orientation, among other grounds?*

- *What steps will the government take to reduce HIV prevalence among transgender women and other key populations?"*

(Watch H. R., Respond to the International Convention on the Elimination of All Forms of Racial Discrimination against Women, 2017)

Those submissions of the discrimination issues reports toward LGBT people in Malaysia by several international regimes, become UNHCR's resolution to stressed on its issues and take an action to discuss with the Malaysian government and warning about the discrimination issues toward LGBT people. Using the facts that found and the violation of the AHRD's principles as a weapon for debating and force Malaysian government to concern about the human rights and acceptance of a same-sex relationship (marriage) in Malaysia. The problem is because the international regimes has been involving the LGBT issues in Malaysia since the banned of Seksualiti Merdeka and they forcing its government to face the problem wisely and based on the ASEAN Human Rights Declaration's principles which mean these international regimes who support on LGBT movement want to increasing the countries which giving legal permission and social acceptance for same-sex relationship (marriage).

According to illustrated by Lawren Wade, Malaysia is one of the countries which the worst place for LGBT people, because the population majority Muslims people and the fundamental principles of the country most of based on sharia law and Islamic values. Besides of its country's principles, the issues of discrimination, physical violation toward LGBT people in Malaysia also has been spreading in overseas by the news and others media which making those perspectives. Two influential methods which done by LGBT activists for seeking attention of public, besides using the power of media which the more natural method in this

globalization era, they also the influence of articles which spreading in media, they also reaching "help" to their supporters, for example, the UNDP and United Nations of Human Rights Council. These international regimes have an important role in decision making of some countries which have done to signed and agreed on the principles of those regimes and create well-cooperate, hand in hand, to make a better world without any distractions or wars.

The concept of the international regime is a concept which emerges from the branch of neo-liberal institutionalism by Robert Keohane and Joseph Nye which explain about the behavior of states in an anarchical structure which will tend to create cooperation among states to avoid the conflict in international society. The international regime could be defined as a result of cooperation as it was defined by Stephen D Kasser in his journal titled "Structural Causes and Regime Consequences: Regimes as Intervening Variables

"International regimes are defined as principles, norms, rules and decision-making procedures around which actor expectations converge in a given issue-area or international relations. Principles are beliefs of fact, causation, and rectitude; Norms are standard of behavior defined regarding rights and obligation. Rules are specific prescriptions or prescriptions for action."

In contrast with the institutional organization, an international regime more flexible in membership structural because that is no precisely member on it. This regime understood as an essential term which often changes the interest and norms.

"Regimes defined as sets of governing arrangements that include networks of rules, norms, and procedures that regularize behavior and control its effects." (Keohane & Nye)

From the view of Keohane, to understand the existence of diversity must make by regimes and agreement which agreement is an "*ad hoc*," arrangement. The existence of international system does not appear on their own afford. The international regime comes up when there were phenomena which have to solve by cooperation from states to determine the product of behavior from the phenomena. The purpose of the international regime is to create coordination among states to coordinate the expression of the country in particular events. The government also as a fundamental part of human interactions, including the states behavior system in the international system.

When particular phenomena happen, states will tend to seek for cooperation and proposing to conducts a meeting in the international regime. The international system which established will seek for resolution by conducting rules to implicate inside of the state. When the product of the regulations conducted, the behavior of the states will change following the resolution of the regime. The behavior and human pattern will also resolve a platform for the movement.

These international regimes will gather the particular states and solve the problem by conducting several resolutions of human right. Therefore, the role international regime highly spot in the struggle of LGBT communities to defend their people. The critical role of international regime besides being "back up" for LGBT people in Malaysia, this regimes also force Malaysian government to create a new policy and give legal acceptance and permission to the sexual orientation minority people, such as Lesbian, Gay, Bisexual, Transgender.

The relation of the concept of international regime and the emerging communities of LGBT in Islamic countries is by observing on how the LGBT movement create tension in Islamic nations and proposing the states to the international regime to establish the resolution for the right of LGBT.

Knowing that the international regimes have an essential role in every country, LGBT activists seek for "help" to "hand in hand" in solving their problems, such as the acceptance means legal permission to have same-sex marriage and also get their freedom rights to showing off their "gender identity" existence in public without any distraction, discrimination or even physical harassment from other people (rights for protection).

The international regimes will gather the particular states and solve the problem by conducting several resolutions of human right. Therefore, the role international regime highly spot in the struggle of LGBT communities to defend their people. The critical role of international regime besides being "back up" for LGBT people in Malaysia, this regimes also force Malaysian government to create a new policy and give legal acceptance and permission to the sexual orientation marginalized people, such as Lesbian, Gay, Bisexual, Transgender. Eventhough this movement is still in the low-level of LGBT activist in achieving their goals, however by this movement create possibilty for them to