

RESEARCH ARTICLE

**ANALYSIS OF CONSTITUTIONAL COURT
DECISION NUMBER 46/PUU-XIV/2016 RELATED
TO LGBT AND COMMUNITY ATTITUDE**

Michael Velando¹✉

¹ Advocate at Joko Purwanto Law Office, Semarang, Indonesia

✉ michaelvelando449@gmail.com

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ABSTRACT

The Constitutional Court in Decision Number 46/PUU-XIV/2016 had pros and cons in the community. One of the materials that became the pros and cons of the decision was regarding the existence of LGBT. This study discusses the Constitutional Court's Decision Number 46/PUU-XIV /2016, especially concerning LGBT. There are two important topics contained in this study, namely (1) normative juridical analysis of the Constitutional Court Decision Number 46/PUU-XIV/2016 related to LGBT and (2) community attitudes towards LGBT after the Constitutional Court Decision Number 46/PUU-XIV/2016 This study concludes that Constitutional Court Decision Number 46/PUU-XIV/2016 is legally normative and does not conflict with statutory regulations. Decision of the Constitutional Court Number 46/PUU-XIV/2016 actually refers to the laws and regulations that govern the provisions of the ruling for the Constitutional Court. The attitude of the community related to LGBT after the Constitutional Court Decision Number 46/PUU-XIV/2016 was in fact influenced by various factors.

Keywords: *Decision; Constitutional Court; Community Attitude.*

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INTRODUCTION

Decision of the Constitutional Court Number 46/PUU-XIV/2016 had caused various controversies among the people. One of the controversies over the Constitutional Court's Decision Number 46/PUU-XIV/2016 is related to Lesby, Gay, Bisex, and Transgender or commonly referred to as LGBT. Among those who are pro against the Constitutional Court's Decision Number 46/PUU-XIV/2016 states that the decision is appropriate because it is in accordance with the applicable legal corridor. Constitutional Court is considered to have carried out the mandate of the constitution by making decisions in accordance with the Constitutional Court's Decision Number 46/PUU-XIV/2016. The community who are contravening the Constitutional Court Decision Number 46/PUU-XIV/2016 states that the Constitutional Court has ratified and protected LGBT groups. The Constitutional Court is considered unable to maintain moral values that can be damaged by LGBT (Sihombing, 2019: 17).

The Constitutional Court actually in substance in the Constitutional Court Decision Number 46/PUU-XIV/2016 states that formulating new criminal acts that function to criminalize LGBT perpetrators as requested by the applicant is not the authority of the Constitutional Court. The authority of the Constitutional Court is only limited to canceling laws that contradict the 1945 Constitution. The authority to formulate new norms including new criminal acts, according to the Constitutional Court is the authority of policy makers or legislators, namely the House of Representatives and the Government. This authority is an open legal policy and the Constitutional Court advises the Petitioner to take such a procedure.

However, the Constitutional Court Decision Number 46/PUU-XIV/2016 has in fact become a public object which is then interpreted publicly based on their respective perspectives. As a result, many diverse responses from the public related to the Constitutional Court Decision Number 46/PUU-XIV/2016. Even the Constitutional Court Decision Number 46/PUU-XIV/2016 immediately became a stir

in the mass media so that it can be said that the Constitutional Court Decision Number 46/PUU-XIV/2016 has been interpreted freely by the general public (Anggraini, 2017). Interpretation of the public based on their respective perspectives is actually a natural and legal thing. However, this free interpretation will give some clarity regarding the actual content or meaning of the Constitutional Court Decision Number 46 / PUU-XIV / 2016, especially concerning LGBT.

This article will analyze the Constitutional Court's Decision Number 46/PUU-XIV/2016 concerning LGBT. In addition, this article will also examine the community's attitude in responding to LGBT after the Constitutional Court Decision Number 46/PUU-XIV/2016. The analysis conducted in this study is not a single interpretation of the Constitutional Court Decision Number 46/PUU-XIV/2016. The analysis conducted in this study aims to provide a substantial description of the Constitutional Court's Decision Number 46/PUU-XIV/2016 concerning LGBT. Therefore, the analysis carried out in this study is by using normative juridical analysis. This article will also provide an overview of community attitudes towards LGBT after the Constitutional Court Decision Number 46/PUU-XIV/2016.

This paper examines and analyzes two main point, *first*, how is the normative juridical analysis of the Constitutional Court Ruling Number 46/PUU-XIV/2016 related to LGBT? And *second*, what is the attitude of the community towards LGBT after the Constitutional Court Decision Number 46/PUU-XIV/2016?

METHOD

This article is written based on the results of research conducted using qualitative research approaches and types of juridical-normative research. This research approach is carried out qualitatively in order to describe or describe the phenomena captured in the research as it is. This phenomenon is a phenomenon of the theme of this study which is related to the Analysis of the Constitutional Court Decision Number 46/PUU-XIV/2016 related to LGBT and Community Attitudes. The phenomena captured in this study are then described and written as they are in narrative form (Soekanto, 1983: 250). This study uses a type of normative juridical research that researchers will examine related to the Constitutional Court Decision Number 46/PUU-XIV/2016 legally and then associated with normative aspects (Ibrahim, 2009; Arifin, Waspiah, & Latifiani, 2018).

NORMATIVE JURIDICAL ANALYSIS OF THE CONSTITUTIONAL COURT RULING NUMBER 46/PUU-XIV/2016 RELATED TO LGBT

Before discussing related to the Constitutional Court Decision Number 46 / PUU-XIV / 2016 concerning LGBT. First, the position of the Constitutional Court must be seen. Article 24C Paragraph (1) of the 1945 Constitution states that "The Constitutional

Court has the authority to adjudicate at the first and last level the decision is final to review the law against the Basic Law, to decide on disputes over the authority of state institutions whose authority is granted by the Law Basic, decide upon the dissolution of political parties, and decide disputes about the results of general elections ". Referring to the provisions of Article 24C Paragraph (1) of the 1945 Constitution, then the validity of an authority of the Constitutional Court is to adjudicate at the first and last levels the decisions of which are final to review the law.

Petitioners of the Constitutional Court Decision Number 46 / PUU-XIV / 2016 also in the main petition states that several Articles in Law Number 1 of 1946 concerning Criminal Law Regulations or the Criminal Code Book especially Article 292 relating to LGBT conflict with the Law -Basic grounds of 1945. So presumably the Constitutional Court stated that Article 292 was contrary to the 1945 Constitution. The existence of the petition then the Constitutional Court then gave a ruling namely the Constitutional Court's Decision Number 46 / PUU-XIV / 2016. At this point, the position of the Constitutional Court Decision Number 46 / PUU-XIV / 2016 is clearly in accordance with statutory provisions.

One of the births of the Constitutional Court Decision Number 46 / PUU-XIV / 2016 is the existence of a request from the petitioner for Article 292 of the Criminal Code. Article 292 is considered as an article relating to LGBT and contradicts the 1945 Constitution. Article 292 of the Criminal Code states that "Adults who commit obscene acts with minors of the same sex, are aware of or are appropriate or appropriate he must expect things to be immature, to be sentenced to prison for up to five years ". There are two reasons why the article is against the constitution and needs to be overturned or even expanded. The first reason is the normative reason. Article 292 is considered contrary to Article 1 paragraph (3), Article 28D paragraph (1), Article 28G paragraph (1) of the 1945 Constitution. Philosophically Article 292 is considered not in line with family security which is an important part of life in the state. At least, for these two reasons, the petition to expand the norms of Article 292 of the Criminal Code is submitted.

The Constitutional Court Judge stated in his legal judgment that the petition of the petitioner in substance to expand the norms of Article 292 of the Criminal Law Code was not acceptable. The Constitutional Court is of the opinion that the expansion of norms in Article 292 of the Indonesian Criminal Code will affect several things including:

1. Changes in the perpetrators namely from the beginning only adults can be convicted for committing obscene acts with minors. The existence of an expansion of the norm then all adults or minors can be convicted if committing obscene acts with the same sex either adult or immature.
2. There is a change in the nature of violating the law, namely from the beginning it is necessary to know that it is not yet mature to be no longer necessary to know that it is immature.
3. There is a change in the reason for criminal eradication. That is because the loss of an element should be known, because an element worth knowing is one of the reasons for criminal eradication.

The Constitutional Court in legal consideration stated that the extension of norms proposed by the applicant was over the limit. That according to the Constitutional Court is no longer an extension of norms but has already formulated a new criminal act. The formulation of new criminal acts according to the Constitutional Court will eliminate or add new phrases to the norms of criminal law. This will clearly change the nature of legal opponents. Especially if it is not done by adjusting the threat and the form of criminal charges. In view of the formulation of Article 292 of the Indonesian Penal Code, there is also a criminal threat. Do not let the formulation of a criminal act with threats and the imposition of a criminal out of harmony so that it can provide injustice. The Constitutional Court in one of the legal considerations also stated that the petition of the petitioner was contrary to the principle of legality. Whereas the principle of legality is very substantive in criminal law (Constitutional Court Decision Number 46 / PUU-XIV / 2016: 439).

There are also other interesting considerations in the Constitutional Court's analysis. The Constitutional Court is of the opinion that:

"... is it right if the Court that hears the norms can expand the meaning contained in the norms of criminal law which are the result of criminal policy forming the law? Once again this is because it involves criminal law where the principle of legality is applied strictly. Besides, just because the content of a norm of law is incomplete or not fully able to accommodate the aspirations that develop in society does not automatically mean that the norm of the law is contrary to the 1945 Constitution, especially in the field of criminal law" (Decision of the Constitutional Court Number 46/PUU-XIV/2016: 441).

The legal considerations of the Constitutional Court are very interesting. The Constitutional Court is of the opinion that the norm or content of a law that does not reflect or accommodate the interests of the people cannot be said to be in conflict with the constitution. Especially if the norm or material content is a criminal law. Opinions from the Constitutional Court like that clearly can be concluded that not entirely the wishes of the people are accommodated in the constitution. This means that the 1945 Constitution as a constitution can conflict with the interests of the people. The interests of the people are not always in harmony with the constitution. Therefore, do not be surprised if the Constitutional Court Decision Number 46 / PUU-XIV / 2016 does not provide satisfaction to all the people and raises the pros and cons in the community. That is because the Constitutional Court Decision Number 46 / PUU-XIV / 2016 as an interpretation of the constitution cannot accommodate all the interests or aspirations of the public.

In addition to the Constitutional Court giving the opinion, the Constitutional Court also gave another opinion in the Constitutional Court Decision Number 46/PUU-XIV/2016. Another opinion of the Constitutional Court is that the Constitutional Court is a negative legislature, so it cannot form new norms or articles.

Whereas in reality the Constitutional Court has issued a positive legislature decision in which there is conditionally constitutional or conditionally unconstitutional. But this is not the norm of criminal law. Policies related to the formation of new norms especially those concerning criminal law are part of the open legal policy (Constitutional Court Decision Number 46 / PUU-XIV/2016: 441-442).

Legal considerations or opinions of the Constitutional Court in the Constitutional Court's Decision Number 46 / PUU-XIV / 2016 makes it difficult to analyze juridically normative especially concerning LGBT. One of the considerations of the Constitutional Court judges in the Constitutional Court Decision Number 46 / PUU-XIV / 2016, especially regarding LGBT, is that the Constitutional Court is a judicial court that is negative in nature so that it is impossible to grant petitioners' requests to expand or even create new norms such as petitioners' petition against Article 292 Criminal Law Book. In the perspective of the negative legislature theory, the petition of the petitioner clearly cannot be granted. Given the negative legislature or negative legislature is the authority that exists in the judicial institution testing the legislation. Negative legislature authority is basically just a peel of the norm. The Constitutional Court only has the authority to state that a norm is contrary to a higher norm or a law that contradicts the 1945 Constitution (Martitah, 2016: 8).

That authority must be held by the Constitutional Court if it is guided by the theory of negative legislature. This condition has actually been applied by the Constitutional Court. This can be seen from the decision of the Constitutional Court which tends to be negative legislature. Martitah (2016: 8) in his book states that:

"Through its decision, the Constitutional Court can grant the petition by stating that the material contained in paragraphs, articles, sections, or the entire Act contradicts the 1945 Constitution.¹¹ This is as stipulated in Article 57 paragraph (1) of the Constitutional Court Act which states, the decision of the Constitutional Court whose verdict states that the material paragraph content, article and / or part of the Act contrary to the 1945 Constitution, does not have binding legal force. The provision shows that the Constitutional Court's decision in the case of judicial review of the Law with the 1945 Constitution is that the material contained in the paragraph, article and / or part of the law does not have binding legal force. It is in this context that the Court acts as a negative legislator or invalidator of norms¹² and is not a norm maker or positive legislator. This is the *khittah* of the establishment of the Court. As a negative legislator, the Constitutional Court can only eliminate the existing norms in a law if it contradicts the 1945 Constitution because the Constitutional Court is not allowed to add new norms to the Act which actually becomes the authority of the legislative body. This is expressly stated in Law No. 24 of 2003,

which stated that the Court was limited to removing norms (negative legislators)” (Martitah, 2016: 8).

This opinion clearly gives the meaning that the Constitutional Court has been limited by the constitution and legislation to issue decisions that are negative legislature. The Constitutional Court as a negative legislature as mandated by the constitution and laws and regulations must be implemented consistently. This is because the State of Indonesia is a state of law. Article 1 paragraph (3) of the 1945 Constitution has clearly and expressly stated that the State of Indonesia is a state of law. The meaning of the article is none other than that state life must be based on law. Including the Constitutional Court in making decisions as part of state life to always be based on law. One of the laws that must be carried out by the Constitutional Court is to run the laws and regulations governing the Constitutional Court (Asshiddiqie, 2005: 55). This is consistent with the opinion of Jimly Asshiddiqie (2005: 55) which states that:

"In the constitution it is emphasized that the state of Indonesia is a State of Law (*Rechtsstaat*), not a State of Power (*Machtsstaat*). It contains an understanding of the recognition of the principles of the rule of law and the constitution, the adoption of the principle of separation and limitation of power according to the constitutional system stipulated in the Basic Law, the existence of guarantees of human rights in the Basic Law, the existence of the principle of free and non-judicial justice. taking sides that guarantee the equality of every citizen in the law, and guarantee justice for everyone including the abuse of authority by the ruling party. In understanding the rule of law, the law holds the highest command in the administration of the state. What really leads in the administration of the country is the law itself in accordance with the principle of 'The Rule of Law, and not of Man', which is in line with the notion of '*nomocratie*', namely the power exercised by law, '*nomos*' (Asshiddiqie, 2005: 55 -56).

Decision of the Constitutional Court Number 46 / PUU-XIV / 2016 that rejects the petition of petitioners for Article 292 of the Indonesian Criminal Code from the perspective of the negative theory of the legislature and the concept of the rule of law can be said to be correct. The absence of expansion or addition of norms in the Constitutional Court Decision Number 46 / PUU-XIV / 2016 indicates that the Constitutional Court is implementing a negative legislature and the concept of the rule of law. The opinion of the Constitutional Court which states that the policy to expand or add new norms is an open legal policy or authority of the legislators namely the People's Representative Council and the Government indicates that the Court is really serious about implementing negative legislature. Moreover, the Constitutional

Court also strengthens its opinion that the expansion or addition of criminal law norms is clearly not possible to be carried out by the Constitutional Court.

In fact, the Constitutional Court has been very aware that expanding or adding new norms will clearly exceed the authority of the Constitutional Court as a negative legislature. Such conditions are certainly not good for Indonesia's state administration system. This will cause the Constitutional Court to have greater authority than what has been regulated by the constitution and legislation. The Constitutional Court will also become an institution that is free from checks and balances because it adds authority through oneself.

The next analysis that needs to be done is if the Constitutional Court based on the negative legislature theory then repeats Article 292 of the Criminal Code. Of course the conditions that occur are there will be a legal vacuum. As a result, adults who commit same-sex acts with minors cannot be convicted. That is because there are no more provisions governing it. The Indonesian people will clearly be disadvantaged because it can threaten the morals of the Indonesian people based on religious values according to the first principle of Pancasila, namely Godhead. Thus, it is clear that the Constitutional Court Decision Number 46 / PUU-XIV / 2016 regarding Article 292 of the Criminal Law Code from the perspective of the negative legislature theory is correct. The applicant is better to make an effort to ask the legislators to expand or create new norms related to LGBT and the like. Expansion or making of new norms in legislation through the formation of laws in this case the House of Representatives and the Government will be better and constitutional. Judging from the concept of the rule of law, it can also reflect the rule of law in accordance with the mandate of Article 1 paragraph (3) of the 1945 Constitution.

Even so, the actual petition of the petitioner cannot be said to be false. If seen from the positive legislature theory. An application can be said to have a great opportunity to be granted. Positive legislature theory is nothing but finding new norms and regulating. Expansion or addition of new norms that are regulating as requested by the applicant can be said in accordance with the theory of positive legislature. If the Constitutional Court in making decisions rests on the positive legislature theory, then the decisions of the Constitutional Court can expand or make new norms that are governing. The condition is actually already outside the rules in force. But according to the positive legislature theory, the expansion or making of new norms can be done in order to fill the legal vacuum if there is a potential legal vacuum (Martitah, 2016: 121).

In reality, the Constitutional Court has issued several decisions that are positive legislature. There are at least two Constitutional Court decisions that are positive legislature. The two decisions are Decision of the Constitutional Court Number 102 / PUU-VII / 2009 and Decision of the Constitutional Court Number 4 / PUU-VII / 2009. The Constitutional Court in issuing these two decisions that are positive legislature certainly has legal considerations. Legal considerations of the Constitutional Court Decision Number 102 / PUU-VII / 2009 for example according to Martitah (2016: 120-121) are:

"In consideration of the legal ruling, the Constitutional Court stated that the rights of citizens to vote have been determined as human rights and constitutional rights of citizens so that the constitutional rights must not be impeded or impeded by various provisions and procedures any administrative matter, in this case makes it difficult for citizens to exercise their voting rights. The Court considered that the provision requiring a citizen to be registered as a voter in the DPT was merely an administrative procedure and therefore the administrative matter must not deny substantial matters, which in this case was the right of citizens to vote (right to vote) in the Presidential Election.

On the other hand, in the context of the 2009 Presidential Election, the urgency of the implementation of the Presidential Election ballot made the DPT improvement through updating the data very difficult for the KPU. Related to these conditions, in order to maintain the fulfillment of the constitutional rights of citizens and not cause harm to the constitutional rights of citizens, the Constitutional Court considers that the use of a valid KTP or passport to vote is the most logical solution, even also commonly applied in elections in countries other countries. Of course the Constitutional Court's choice in this very short time has many risks in the holding of elections, both at the level of the central executive and the polling station (TPS) level.

In its conclusion the Court stated that the Petitioners' Petition against Article 28 and Article 111 of Law No. 42 of 2008 has legal grounds, but the Constitutional Court considered that the petition of the Petitioners was conditionally constitutional as long as it did not eliminate the voting rights of citizens who were not registered in the DPT in the Presidential Election. Realizing the potential for chaos in the organization of the voting in the Presidential Election, finally the Constitutional Court finally attached a set of ammunitions which actually contained positive legislature content (finding new and regulating norms) as outlined in the decision verdict "(Martitah, 2016: 120-121).

Then the judge's consideration in the Constitutional Court Decision Number 4/PUU-VII / 2009 as described by Martitah (2016: 124), namely:

"In consideration of the legal ruling, the Constitutional Court stated that from the perspective of legal morality, namely justice, the formulation of such norms, even though it met procedural

requirements, could not necessarily be categorized as a legal policy that could not be tested for constitutionality as the Government's statement, because legal norms were a quo clear does not fulfill a sense of justice "(Martitah, 2016: 124).

The existence of a positive Constitutional Court ruling raises questions. Why the Constitutional Court Decision Number 46 / PUU-XIV / 2016 related to LGBT, namely Article 292 of the Criminal Law Code is not positive legislature. There are at least two reasons that can answer that question. First, the petition of the petitioner to the Constitutional Court which indirectly to give a ruling is positive legislature, especially with respect to Article 292 of the Indonesian Criminal Code. The Constitutional Court, as mentioned earlier, said that this condition was not possible. The Constitutional Court cannot expand or add new norms because the norm is a norm of criminal law. The reason given by the Constitutional Court is indeed acceptable. Given the two decisions that are positive legislature there is no norm of criminal law that is extended or added.

Second, viewed from a juridical-normative perspective, it is very clear that the Constitutional Court is a judicial institution that examines laws that have negative legislative decisions. This can be seen from several regulations concerning the Constitutional Court. Article 24C Paragraph (1) of the 1945 Constitution states that the Constitutional Court has the authority to adjudicate at the first and last level the decision is final to examine the law against the Constitution, to decide on disputes over the authority of state institutions whose authority is granted by the Constitution, decide upon the dissolution of political parties, and decide on disputes over the results of general elections.

Furthermore, the regulation of the law governing the decision of the Constitutional Court, one of which is Article 50A of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that the Constitutional Court in examining laws against the Act The Basis of the Republic of Indonesia in 1945 does not use other laws as a basis for legal considerations. Article 51A paragraphs (3), (4) and (5) of Law Number 8 of 2011 concerning Amendment to Law Number 24 of 2003 concerning the Constitutional Court states that:

- (3) In the case of a request for testing in the form of a request for formal testing, the examination and decision made by the Constitutional Court shall be based on the laws and regulations governing the procedure for the formation of laws and regulations.
- (4) In the case of a request for a test in the form of a formal test application, the thing that is requested to be terminated in the application for testing as referred to in Article 31 paragraph (1) letter c includes:
 - a. grant applicant's petition;

- b. states that the formation of the afore mentioned law does not meet the provisions of the formation of laws based on the 1945 Constitution of the Republic of Indonesia; and
 - c. states that the law has no binding legal force.
- (5) In the case of a request for a test in the form of a request for a material test, the thing that is requested to be terminated in the application for testing as referred to in Article 31 paragraph (1) letter c includes:
- a. grant applicant's petition;
 - b. state that the material contained in the paragraph, article and / or part of the said law is contradictory to the 1945 Constitution of the Republic of Indonesia; and
 - c. states that the material contained in paragraphs, articles, and / or parts of the said law does not have binding legal force.

The next article is still in the same regulation, namely Article 57 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court which states that:

- (1) Decision of the Constitutional Court whose ruling states that the material contained in paragraphs, articles, and / or parts of the law is contrary to the 1945 Constitution of the Republic of Indonesia, the material contained in paragraphs, articles, and / or parts of the said law has no binding legal force.
- (2) Decision of the Constitutional Court whose ruling states that the formation of the said law does not meet the provisions of the formation of a law based on the 1945 Constitution of the Republic of Indonesia, the law has no binding legal force.
- (2a) The Constitutional Court's decision does not contain:
 - a. *amar* apart from as referred to in paragraph (1) and paragraph (2);
 - b. orders to lawmakers; and
 - c. the formulation of norms as a substitute for norms from laws declared contrary to the 1945 Constitution of the Republic of Indonesia.
- (3) The decision of the Constitutional Court which grants the Application must be published in the State Gazette of the Republic of Indonesia within a period of no longer than 30 (thirty) working days after the decision is pronounced.

If you observe in detail the articles and paragraphs contained in Article 24C paragraph (1) of the 1945 Constitution and Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court. In fact, there is no formulation of norms or articles which state that the Constitutional Court's decision is positive legislature. In fact, Article 51A paragraphs (3), (4) and (5) and Article 57 of Law Number 8 of 2011 concerning Amendments to Law Number 24 of 2003 concerning the Constitutional Court concluded that the decision of the Constitutional Court was negative in legislature. Thus, it is very clear that from the perspective of the Constitutional Court Decision Number 46 / PUU-XIV / 2016 which is a negative legislature is appropriate.

PUBLIC ATTITUDES TOWARDS LGBT AFTER THE CONSTITUTIONAL COURT DECISION NUMBER 46/PUU-XIV/2016

As mentioned earlier that the Constitutional Court Decision Number 46/PUU-XIV/2016 received pros and cons responses in the community. This means that there are various attitudes from the public towards the Constitutional Court Decision Number 46/PUU-XIV/2016. This article will analyze public attitudes especially towards LGBT after the Constitutional Court Decision Number 46 / PUU-XIV / 2016. Before further analyzing this matter, what needs to be done first is to look at the condition of the community after the Constitutional Court Decision Number 46 / PUU-XIV / 2016.

The condition of the community after the Constitutional Court Decision Number 46/PUU-XIV/2016 actually can also be seen a little backward. Before the Constitutional Court Decision Number 46/PUU-XIV/2016, there were several regional governments that had regulated matters related to LGBT in the form of Regional Regulations. However, these regulations in reality do not have a clear legal basis so it is possible to conflict with the laws and regulations above. Since the state of Indonesia is a state of law, the process of canceling regional regulations must go through a court (BBC News Indonesia, 2018). Some Local Governments which in reality have made regulations on LGBT indicate that the Regional Government has an attitude towards LGBT especially before the Constitutional Court Decision Number 46 / PUU-XIV / 2016.

Indonesian society after the Constitutional Court Decision Number 46/PUU-XIV/2016 clearly has a different attitude. The survey conducted by Saiful Mujani Research and Consulting (SMRC) after the Constitutional Court Decision Number 46/PUU-XIV / 2016 presents data that there are 88% of people in Indonesia who feel threatened by the existence of LGBT. Indonesian people generally reject the existence of LGBT because of religious teachings that prohibit LGBT. However, the majority of Indonesian people state that forms of discrimination against LGBT should not be done (Pratiwi, 2018; Putri & Arifin, 2018). The Indonesian Council of Ulama (MUI) also gave a stance on the Constitutional Court's Decision Number 46/PUU-XIV/2016. MUI expressed concern with the Constitutional Court Decision Number 46/PUU-XIV/2016 which could make LGBT legal in Indonesia. Yet according to the religions in Indonesia, LGBT is not allowed (Rahadian, 2017; Dewi & Arifin, 2019).

The Indonesian Young Entrepreneurs Association (APMI) also gave a similar attitude to the MUI. APMI believes that the Constitutional Court Decision Number 46/PUU-XIV/2016 can legalize LGBT and threaten Indonesia's future generations (Zubaidah, 2018). Normative responses come from the Ministry of Religion. The Minister of Religion stated that the Constitutional Court Decision Number 46/PUU-XIV/2016 must be respected as part of the rule of law (Sabandar, 2017).

On social media, community responses to LGBT vary, starting with pros and cons (Anggraini, 2017; Juliana & Arifin, 2019). Community responses varied between

pros and cons and also community attitudes that were not always linear as the results of the SMRC survey. People who don't like LGBT apparently don't want discrimination against LGBT. Whereas in attitude theory, attitude is directly proportional to action (Pakpahan, 2017: 349-350). Why does that happen? There are several factors that influence people's attitudes towards LGBT after the Constitutional Court Decision Number 46/PUU-XIV/2016. Factors that influence community attitudes include cultural factors, factors of reality within oneself, factors of community leaders, factors of religious and educational institutions, personal emotional factors, and mass media factors (Izzah, 2012: 107). These factors will determine the attitude of the community towards LGBT after the Constitutional Court Ruling Number 46/PUU-XIV/2016.

CONCLUSION

Decision of the Constitutional Court Number 46/PUU-XIV/2016 indeed raises the pros and cons in the community. But after being analyzed in depth from the point of theory and regulation. Decision of the Constitutional Court Number 46/PUU-XIV/2016 can be said to be correct. From the perspective of negative legislature theory, Constitutional Court Decision Number 46 / PUU-XIV / 2016 has been guided by that theory. Then the regulation governing the ruling of the Constitutional Court also implied that the ruling of the Constitutional Court was a negative legislature. The accuracy of the Constitutional Court Decision Number 46/PUU-XIV/2016 does not mean that the public attitudes are one voice towards the Constitutional Court Decision Number 46/PUU-XIV/2016 in this case agree. The community in fact has a different attitude towards the Constitutional Court Decision Number 46/PUU-XIV/2016, especially regarding LGBT. There are many factors that influence the attitudes of the community such as cultural factors, the reality within oneself, community leaders, religious and educational institutions, personal emotions, and the mass media.

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