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Rethinking Same-Sex Marriage in the Global South : A Post-colonial Critique of Human Rights Universalism

Ilham Tohari¹, Muhammad Sulthon Zulkarnain²

¹ Universitas Islam Negeri (UIN) Syekh Wasil, Kediri, Indonesia;
email : tohari@iainkediri.ac.id

² Universitas Islam Negeri (UIN) Maulana Malik Ibrahim, Malang, Indonesia;
email : tohari@iainkediri.ac.id

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Abstract

This article explores the influence of global political will on the legalization of same-sex marriage in Third World countries, using a post-colonial and decolonial theoretical framework. By engaging with the critical perspectives of Talal Asad and Frantz Fanon, it examines how international human rights norms – particularly those framed by the Universal Declaration of Human Rights (UDHR) – are often promoted as universal values rooted in Western liberal-secular traditions. The article argues that such norms, when imposed without sensitivity to local histories, cultures, and legal traditions, risk reproducing colonial patterns of epistemic domination. Asad critiques secularism as a hegemonic discourse that erases religious and communal legal frameworks, while Fanon identifies the persistence of colonial power through normative violence embedded in global law. The article calls for a dialogical and pluralistic approach to the globalization of human rights – one that respects normative sovereignty, acknowledges epistemic diversity, and avoids reducing justice to legal conformity with Western models.

Keywords

Frantz Fanon, Global Political Will, Human Rights, Same-Sex Marriage, Talal Asad

INTRODUCTION

The development of legal recognition of same-sex marriage has seen a significant increase globally, with more than 30 countries legalizing the practice by 2025. The issue of legalizing same-sex marriage has become a complex global debate field, particularly in the context of Third World countries that are experiencing a tug-of-war between global pressures and local dynamics. Ratification of international instruments such as *the Universal Declaration of Human Rights* (UDHR) has become an entry point for agendas of universality of rights, including the right to sexual orientation and gender identity, to be institutionalized in various national jurisdictions. However, the conceptualization of rights rooted in the liberal-secular European tradition often creates epistemic and cultural friction with local norms in former colonial countries (Donnelly, 2007).

Behind the rhetoric of universality, there is a *global political will* that is not neutral. This will is manifested in political pressure, international diplomacy, and foreign aid that requires compliance with international human rights standards, including recognition of the rights of LGBTQ+ groups. This is where the debate becomes relevant: whether Third World countries really have autonomy in interpreting human rights, or are they simply an arena for the replication of Western values in the form of national law (Asad, 2003).

Drawing on Talal Asad's postcolonial theory and Frantz Fanon's decolonial approach, this article aims to explore how secularism, epistemic power, and the formalization of Western values in the UDHR became instruments of symbolic power that intervened in the legal politics of Third World countries. Asad shows that the concept of secularism in the context of human rights is not neutral, but rather a product of European history that is forced to be global (Fanon, Sartre and Farrington, 1963). Meanwhile, Fanon highlights how colonialism works not only physically, but also epistemically, creating a subaltern that is internalized in the laws and identities of postcolonial nations (de Sousa Santos, 2015).

The fundamental question raised in this paper is: how does the global political will through the ratification of the UDHR affect the legal and ethical construction of same-sex marriage in Third World countries? To answer this, a normative-critical approach is used to examine the structure of dominance in international law as well as national legal responses that are resistive, accommodating, or ambivalent. This is where the importance of articulating local epistemology and normative sovereignty as part of the decolonization of law (Mignolo, 2007).

Thus, this paper does not aim to reject the principle of human rights totally, but rather to offer a critical reading of the epistemic hegemony that accompanies the institutionalization of certain values in the name of human rights. Through a synthesis of the thoughts of Asad and Fanon, this article invites readers to consider the possibility of a more equitable and contextual legal and ethical pluralism in facing the challenges of legal globalization in Third World countries.

Global Political Will and the Institutionalization of Same-Sex Marriage

Global political will in the context of human rights has become a normative force that drives countries to adapt their national legal systems to universal principles. One of its manifestations can be seen in the international push for the legalization of same-sex marriage as a form of fulfillment of the basic right to freedom and equality. Through instruments such as the Universal Declaration of Human Rights (UDHR), the global community has exerted moral and political pressure on countries, particularly in the Third World, to ratify and implement policies that protect the rights of sexual minorities (O'Flaherty and Fisher, 2008).

The institutionalization of same-sex marriage is not only dependent on domestic legislation processes, but is also heavily influenced by global power structures. Donor countries and international institutions often require respect for LGBTQ+ rights as part of their foreign aid agenda. This creates a dilemma in Third World countries, which often still hold fast to traditional and religious values (Parker, 2007).

The global political will constructed through international forums such as the United Nations Human Rights Council, has created new normative standards that indirectly limit the space for the rule of law of developing countries. These countries are faced with a choice between maintaining the rule of law or gaining legitimacy and support from the international community (Falk, 2002).

It is important to note that global political will is not completely neutral. It contains the ideological interests of Western countries that tend to impose universal liberal values into a non-homogeneous cultural context. Same-sex marriage is a political symbol between the universality of human rights and the specificity of local culture (Mutua, 2001).

In this context, the UDHR becomes a hegemonic instrument that can blur the distinction between rights as universal values and rights as historical-cultural products. The compulsion of Third World countries to accept international norms often ignores internal deliberative processes based on communitarian values (Otto, 2007).

The consequence of the dominance of global political will is the friction between national law and international norms. This has not uncommon for resistance in the form of discriminatory regulations against LGBTQ+ groups, even though the country has ratified international human rights instruments (Helfer, 2002).

Postcolonial critics consider this practice to be a new form of legal colonialism, in which Western values are packaged as universal human rights. Talal Asad, for example, emphasizes that Western secularism is not value-free and carries epistemic assumptions that are not neutral (Asad, 2003). Frantz Fanon also sees this kind of global intervention as a continuation of the project of colonial domination, which is now taking place in the form of policy pressure (Fanon, 1998).

In a deconstructive reading, the global political will towards the legalization of same-sex marriage needs to be reviewed as a power relationship. This is not just a process of legislation, but a negotiation between the subjectivity of local law and the objectivity of global norms. Third World countries are in a dilemma: between commitment to human rights and attachment to local values (Puar, 2013).

Thus, the institutionalization of same-sex marriage in Third World countries cannot be seen only as a process of rationalization of modern law, but rather as an arena of attraction between global hegemonic and local resistance. This opens up space for the rearticulation of universal rights in a more contextual and pluralistic form (Goodale, 2019).

Polemics and Controversies of Same-Sex Marriage in Third World Countries

Same-sex marriage continues to be a controversial issue in various Third World countries. These countries, which often face pressure from the international community to align their domestic laws with the principles of universal human rights, are in a complex position between meeting global demands and maintaining conservative local cultural values (Ayoub, 2016).

Historically, many Third World countries have adopted legal systems derived from colonial legacies, which in many cases instilled Victorian-era Western moral values, including the criminalization of homosexuality. Ironically, the legal system now used to deny the legality of same-sex marriage is actually a colonial legacy, not an authentic expression of local culture (Gupta, 2008).

However, resistance to the institutionalization of same-sex marriage also grew from the cultural and religious roots of local communities. Many communities in Asia, Africa, and the Middle East reject the idea citing moral and religious norms that view marriage as an institution between a man and a woman for the purpose of reproduction and social continuation (Rahman, 2014).

Countries such as Uganda, Nigeria, and Indonesia show how anti-LGBTQ+ legal policies are used as a tool to assert cultural and legal sovereignty over the dominance of Western values. This shows that the polemic of legalizing same-sex marriage also reflects the tension between the globalization of values and legal nationalism (Kaoma and Kaoma, 2018).

On the other hand, the LGBTQ+ rights advocacy movement in the Third World is also thriving despite experiencing severe social and political pressure. In several Latin American countries such as Argentina and Colombia, local activism has succeeded in combining local values with global human rights norms to fight for legal recognition of same-sex marriage (Kramon and Posner, 2011).

This controversy has been further exacerbated by the political intervention of Western countries that have openly supported the legalization of same-sex marriage on the condition of foreign aid, diplomacy, and support for civil organizations. For many developing countries, this raises accusations of moral imperialism or value neocolonialism (Puar, 2018).

This phenomenon attracted the attention of postcolonial thinkers. Fanon assessed that the form of colonial power now appears in the form of hegemonization of values through international institutions. This means that the recognition of same-sex marriage rights cannot be separated from global power relations that place Third World countries in a subordinate position (Fanon, Sartre and Farrington, 1963).

Talal Asad added that secularism, which is the basis for many Western countries in formulating individual rights including sexual rights, is not a neutral system. It is a historical project that contains epistemic violence against non-Western traditions. Therefore, efforts to encourage Muslim countries to accept the legalization of same-sex marriage through a secular approach are considered insensitive to plurality of values (Asad, 2003).

Thus, polemics and controversies regarding the legalization of same-sex marriage in the Third World are not just legal or human rights debates, but are part of complex epistemological and geopolitical dynamics. This demands an approach that is not only normative, but also contextual, reflective of the history of colonialism, and open to legal and cultural pluralism (Merry, 2006).

The Influence of Global Political Will on the Legality of Same-Sex Marriage

Global political will plays a crucial role in promoting the legality of same-sex marriage, especially through international legal instruments such as the Universal Declaration of Human Rights (UDHR) and various human rights treaties that prioritize the principles of equality and non-discrimination. This global push reflects the international community's efforts to universally uphold human rights, which has had an impact on policy changes in various countries, including third world countries (Holzhacker, 2014). However, the global agenda does not always run smoothly because it collides with local values that are still heavily influenced by tradition and religion.

Theoretically, global political will is seen as an expression of international institutional power that promotes the harmonization of human rights norms, including the recognition of the rights of sexual minority groups. For example, pressure through UN agencies and other international organizations has provided incentives and sanctions against countries that ignore or discriminate against LGBTQ groups (Brown, 2015). This shows how the global political will can be a mechanism of normative change at the national level.

However, the process of internalizing this global norm is not linear and homogeneous. In many third world countries, there is strong resistance to the institutionalization of same-sex marriage which is seen as a form of new cultural colonialism or neocolonialism. Talal Asad's thinking criticizes how the universality of Western values, including human rights, is often enforced without regard to the local cultural and historical context (Asad, 2003). This creates tensions between the sovereignty of national law and global demands.

Frantz Fanon also provides an important analysis of the impact of colonialism that is still inherent in the legal and political systems of former colonial countries. Fanon emphasizes the need for decolonization not only in the polit-

ical aspect, but also in the value and legal structures inherited by colonialism, which often contradict local social realities (Fairchild, 1994). In the context of the legality of same-sex marriage, this means that the global agenda must be tailored to the historical and cultural conditions of third-world societies.

The influence of global political will also has implications for diplomacy and international relations strategies. Countries that reject the institutionalization of same-sex marriage often face diplomatic pressure, including restrictions on foreign aid and international criticism. Studies by Smith and colleagues show that this pressure can accelerate legal reform, but it also triggers negative reactions and polarization in local communities (Lakatos, 2020).

On the other hand, there are also local dynamics that utilize international norms to fight for the recognition of LGBTQ+ rights. Activists and civil society groups in third world countries use global human rights instruments as a tool to pressure governments in the process of legislation and advocacy. This creates an arena of negotiation between global demands and local cultural sovereignty, which is dynamic and full of complexity (Maldonado Urbina, 2020).

Nevertheless, it is important to highlight that the legitimacy of the institutionalization of same-sex marriage in third world countries depends heavily on the ability of states and societies to adapt global values contextually. Approaches that ignore cultural sensitivities tend to fail and trigger strong resistance. Therefore, intercultural dialogue and inclusivity are the key to the successful implementation of global norms (Röell, Özbilgin and Arndt, 2024).

In addition, the literature shows that the institutionalization of same-sex marriage in third world countries is often also influenced by domestic political factors, including the power of conservative and religious groups that have a major influence on the legislative process. In many cases, the global political will must deal with complex local power dynamics, so legal transformation requires a more tiered and dialogical approach (Graciela, 2020).

Overall, the influence of global political will on the legality of same-sex marriage is a dynamic process of interaction between international norms and local contexts. Postcolonial and decolonial theories are important frameworks for understanding how power and resistance operate in the realm of law and culture, as well as how third world countries negotiate their identities and sovereignty in the midst of global pressures (Ndlovu-Gatsheni, 2015).

Secularism and the Universality of Global Values Talal Asad's Perspective

Talal Asad is one of the leading figures in the study of anthropology and postcolonial theory that criticizes the understanding of secularism and the claim of universality of Western values, especially in the context of law and human rights (Asad, 2003). According to Asad, secularism is not just a separation between religion and the state, but a historical construction born from the context of Western power and modernity. Thus, secularism carries a political and ideological content that influences how those universal values are formulated and applied in the non-Western world.

In the context of the legality of same-sex marriage in third world countries, Asad invites us to question the universality of human rights values that are widely associated with Western secular norms (Mahmood, 2015). He emphasized that the acceptance of these norms cannot be separated from the cultural and religious contexts of different societies, where modern secularism as the foundation of these norms is often not in harmony with local values and practices.

Asad explained that secularism often positions religion as something private and separate from the public sphere, so that the norms that emerge are considered neutral and universal (Spivak, 1994). However, in many third-world societies, religion and religious practices are an integral part of the social and political structure, so the separation proposed by Western secularism cannot be directly implemented without ignoring this context.

Furthermore, Asad reminded that the claim of universality of human rights values has the potential to be a tool of cultural domination that forces non-Western societies to conform to Western norms, a form of cultural neocolonialism (Allen, 2008). Therefore, the application of the legality of same-sex marriage must be critically examined by paying attention to how these norms interact with long-standing local value systems.

In this perspective, Asad emphasizes the importance of seeing secularism as a dynamic and contingent process, not as a single model of modernity progress (Asad, 2015). This approach encourages dialogue and adaptation of universal norms to be relevant and acceptable in diverse cultural contexts, including the issue of legalizing same-sex marriage.

Asad also highlights that modern secularism tends to separate law from religion, which in many third-world societies is an inseparable entity (Hirschkind, 2006). Therefore, efforts to institutionalize laws related to LGBTQ+ rights need to consider the complex relationship between religion, culture, and law so as not to cause strong resistance.

In addition, Asad emphasized that universal norms do not stand alone but are shaped by global power relations, especially between Western countries and third world countries (Scott, 2004). In this case, the agenda of same-sex marriage legality is not only a matter of individual rights, but also a political issue related to the hegemonization of global values and authority.

According to Asad, the process of institutionalizing law must be carried out with a critical awareness of the historical context and power, so that universal norms can be internalized contextually and not become a tool of cultural oppression (Asad, 2003). This approach opens up space for a more inclusive dialogue between global values and local values on the issue of the legality of same-sex marriage.

Thus, Talal Asad's perspective is particularly relevant in understanding the challenges of applying secular and universal norms in the context of third-world countries. Asad's thinking reminds us that the institutionalization process does not ignore cultural and religious diversity, but rather builds a critical

dialogue to harmonize universal values with local values in a sustainable manner (Mahmood, 2015).

Decolonization of Law and Epistemic Violence: Frantz Fanon's Perspective

Frantz Fanon was a postcolonial philosopher who sharply criticized colonialism, particularly through the concept of epistemic violence and the dehumanization of colonial subjects. He argues that colonialism not only deprives land and resources, but also attacks local knowledge systems and replaces them with Western laws and values as a form of cognitive dominance (Skin and Masks, 1952). Within this framework, international law advocating the legalization of same-sex marriage must also be examined whether it is a form of universal freedom or a new form of epistemic violence.

According to Fanon, colonialism produces a hierarchical structure of knowledge, where colonial values and laws are considered superior to local systems that are considered irrational or primitive (Maldonado-Torres, 2007). This is evident in the current global discourse, where third world countries are considered 'undeveloped' if they have not yet recognized LGBTQ+ rights in the form of same-sex marriage legality. In fact, this attitude often ignores the complexity of local social and historical values.

In this context, the legalization of same-sex marriage can be part of what Fanon calls a "total replacement of cultural existence" by the colonial legal order (Philcox, 2004). Instead of encouraging intercultural dialogue, international pressure to ratify certain norms can deepen tensions between societies and countries in the third world, as well as reinforce feelings of alienation from the laws applied.

Fanon also emphasized the importance of violence as a form of resistance to colonialism. However, the violence here is not only physical, but also symbolic and epistemic (Gordon, 2015). That is, legal decolonization efforts include rejecting a single narrative of modernity and opening up space for a plurality of laws rooted in local experience. In this context, law is seen not only as a product of Western rationality, but also as a battlefield for identity struggle.

According to Fanon, epistemic violence is a systematic process of getting rid of the language, values, and thought structure of colonial societies (Spivak, 2023). When international law imposes norms without a process of equal participation, local communities lose agency in forming their own ethical and juridical foundations. Thus, in order to decolonize the law, it is important to criticize the assumption that universalism is neutral and superior.

Fanon's decolonial approach emphasizes that liberation will not occur without the restoration of the epistemic dignity of the colonized subject (Mignolo, 2009). In other words, third world societies should be given the right to redefine legal norms based on their own experiences and values, including on sensitive issues such as same-sex marriage. Rejection of the Western legal model is not necessarily a form of discrimination, but it can also be a form of epistemic resistance.

Within the framework of global law, Fanon challenges the understanding that legal transformation means the adoption of Western values. He emphasized the importance of revolution in the way of thinking and the structure of legal knowledge (Grosfoguel, 2013). Thus, third world countries should be given space to create legal configurations that respect human rights while preserving the local values that live in society.

Fanon's approach is also relevant in assessing power imbalances in international institutions that set human rights standards. He criticizes how the project of "global emancipation" often masks the reproduction of colonial hegemony in new forms, including in the formation of legal norms related to gender and sexuality (Gabrys, 2017). Therefore, the involvement of third-world countries in the formulation of international legal norms must be carried out equally and free from political pressure.

Thus, Fanon's idea of decolonization of law does not mean a rejection of the principle of universal justice, but rather a critique of the way in which such values are formulated and distributed. In the context of the legality of same-sex marriage, Fanon's approach invites us to question the power structures that shape global law, as well as to encourage justice that is truly rooted in epistemic freedom and true participation (Fanon, 2022).

Global Political Will and the Legality of Same-Sex Marriage: Postcolonial and Decolonial Perspectives

The concept of *global political will* in the issue of legalizing same-sex marriage has become a means of value diplomacy that targets Third World countries to adapt their legal systems to international human rights norms. In this arena, international institutions such as the United Nations, the European Union, and various donor organizations use global legal instruments such as *the Universal Declaration of Human Rights (UDHR)* to encourage the inclusion of sexual rights in the domestic legal systems of developing countries (Aggleton *et al.*, 2023).

However, acceptance of the principles of the UDHR has not always been linear, especially in postcolonial countries that are suspicious of the narrative of the universality of human rights. The postcolonial perspective assesses that the global political will in this case is often neocolonial, imposing Western values that are positioned as "more advanced" over Third World societies that are perceived as "backward" (Mutua, 2001).

Talal Asad in *Formations of the Secular* criticizes the assumption of value neutrality contained in the project of liberal secularism. He highlights that the idea of universality is often produced through epistemic violence against traditional forms of law and ethics outside Europe, including those based on religion (Asad, 2003). In this context, the compulsion to recognize same-sex marriage within national legal frameworks often collides with non-secular local value structures.

Similarly, Frantz Fanon in *The Wretched of the Earth* views the project of global modernity as a continuation of colonialism in a new form. Fanon empha-

sizes that symbolic violence against postcolonial societies is not always present physically, but through legal institutions and language that shape ways of thinking and feeling (Fanon, Sartre and Farrington, 1963). The legalization of same-sex marriage through global political pressure can be read as part of this project.

Acceptance of same-sex marriage in many developing countries is still political and strategic. For example, some countries adopt tolerant policies not solely out of domestic will, but to qualify for foreign aid or to show a progressive image internationally (Sanders, 2002). This shows that there is an inequality in the production of global legal legitimacy.

The decolonial approach encourages us to re-explore local ethical sources in response to contemporary issues such as sexual rights. In this case, the project of legal decolonization does not necessarily reject the principle of human rights, but rejects the epistemic dominance inherent in the singular construction of rights themselves (Mignolo, 2007). This means that respect for the diversity of legal epistemology must be part of the discourse on the legality of same-sex marriage.

Global political will in its current form does not seem to be sufficiently dialogical. Third World countries are more often the object of intervention than the subjects that actively shape the discourse. In fact, the active involvement of local communities in building the conception of rights and laws is actually important for the legitimacy of inclusive and sustainable policies (Merry, 2003).

The discourse on the legalization of same-sex marriage should not be judged solely by whether it is legally accepted or not, but by the way in which it is negotiated in a pluralistic society. In postcolonial and decolonial logic, success is not in the replication of the Western system, but in the ability to build a legal system that is relevant, fair, and rooted in local reality (Escobar, 2011).

Therefore, the involvement of Talal Asad and Frantz Fanon in analyzing the hegemonization of global values shows that legality is not only a product of positive law, but an epistemic battlefield. In the context of Third World countries, the institutionalization of same-sex marriage must be studied not only in a legal-formal framework, but also in the narrative of resistance to the dominance of global values that wraps itself in claims of universality (Spivak, 2023).

CONCLUSION

The global *political will* related to the legalization of same-sex marriage cannot be separated from the historical dynamics of colonialism and postcolonialism. The ratification of the UDHR by Third World countries is not only a normative instrument, but also part of the power contest between the center and the periphery in the global legal system. The position of Third World countries as recipients of universal legal norms from the West creates epistemic tensions. In a postcolonial perspective, this reflects a hegemonic process that places Western values as a parameter of universality, while reducing the diversity of local ethics as a form of backwardness. The global political will that emerges through international institutions such as the United Nations and the declaration of hu-

man rights (UDHR) has created a universal norm that seems to be neutral, even though it is often rooted in Western secular-liberal values. In this context, Talal Asad shows that secularism as the basis of many human rights principles is not a value-free value, but rather the result of a certain political history that is then hegemonically disseminated to non-Western countries. Fanon added that colonialism not only colonized territories, but also subdued people's ways of thinking through cultural and legal domination, creating the epistemic violence that continued postcolonialism. The legalization of same-sex marriage that occurs on the basis of international pressure without critical dialogue with the local context often reflects a continuation of the unequal power relations between the donor and recipient countries. Therefore, a decolonial approach is important to build epistemic decentralization to recognize and value local values as the basis for legitimate and contextual law-making. Third World countries need to build legal policies that are not reactive to global pressures, but are participatory, reflective, and rooted in the experiences and needs of their own societies.

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