

Discrimination in Blood Donation Policy for Homosexuals in France

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Abstract. French Government issued a ban on homosexuals in France from eligibility to donate blood in 1983 due to the HIV epidemic that had happened in France during that time. After that, public policies related to blood donations for homosexuals continue to develop. In the latest development, people in France can donate their blood regardless of their sexual orientations started from March 16, 2022. This study examines the role of homosexual community in France in affecting the elimination of discrimination in blood donation activities experienced by homosexuals in France. By using qualitative methods, public policy concept by Larry N. Gerston (2014), and public health and human rights theory by Chris Beyrer (2014), it is found that the blood donation policy of the French Government was based on the current circumstances and not a reflection of the acceptance of the existence of the homosexual community in France.

Keywords: Homosexuals in France, Blood donation in France, François Hollande, and Emmanuel Macron.

1 Introduction

Every year, millions of patients in the world require blood or blood plasma transfusions to improve their life quality and life sustainability. Blood and its components (blood, red blood cells, thrombocyte, and plasma for transfusions) are classified as essential medicine as their usage has to satisfy the priority health care needs [23]. Rossi [16] stated that blood donation in France is tightly related to the historical dependency towards voluntary blood donation as an effort to provide blood supply and provide stable blood plasma products. Since 1998, an institution called *Établissement Français du Sang (EFS)* was founded to replace the *Agence Française du Sang (AFS)* which was previously established in 1992 [16]. *Établissement Français du Sang (EFS)* is an institution founded by the French Government to provide services relating to blood transfusions to the public in France. By paying attention to the

relevance of public health, *EFS* is in charge of collecting all blood and blood plasma supply in France in a centralized manner, managing blood products before they are distributed to the community, sorting out the biological condition of blood donors, distributing blood products nationally, and ensuring the quality of public blood transfusion services in France [16].

Everyone has the right to decide their sexual orientation without being pressured or forced by any parties. France is one of the countries that value individual freedom greatly, including the sexual orientation of their citizens. The phenomenon of homosexual and heterosexual communities living alongside each other peacefully by upholding tolerance can be found for long periods of time. Married life as a homosexual couple is acknowledged as one form of married life in France, with an official policy from the government through the legalization of the *mariage pour tous* policy, or the policy of same-sex marriage [15]. According to Leblond [10], in reality, the homosexual community in France have had to fight for having equal rights with the heterosexual community in terms of eligibility to become a blood donor since the 1980s. The homosexual community in France had been banned from becoming donors in blood donation activities in France since 1982 [10]. This policy was legalized with the push of the HIV epidemic that occurred in France at the time. This exclusion policy towards the homosexual community has been long debated, whether the policy was created based on scientific and medical reasons that are important for the safety of blood transfusions, or whether the exclusion was an act of discrimination because altruist acts, such as donating blood, could not be perceived from the sexual orientation of potential blood donors.

Since the end of the 20th century, discrimination issues towards the homosexual community as blood donors have been brought up multiple times in French and European courts. From the early 2000s, the European Court of Human Rights has heard of the issue, but only in 2015 was this case finally reviewed in the European Court of Justice [10]. In 2016, the homosexual community in France were allowed to participate in blood donations for the first time since 1982. This policy was legalized during the reign of former president of France, François Hollande, with the issuing of the decree published by the Minister of Social Affairs and Health [20], regarding the blood donor selection criteria.

Studies on homosexuality and blood donations have been conducted several times in the past. First, Casandra and Miranda [4] unveiled the assault and discrimination towards homosexual citizens in France which continued to occur after the legalization of the same-sex marriage law in France, namely the *mariage pour tous*. This policy was issued during the reign of Hollande. The research method used was a combination of the qualitative and literature methods, and analysis of critical discourses. *Mariage pour tous* law gives hope to the homosexual community in France for a married life that is protected and acknowledged by the government [4]. However, it was not immediately accompanied by kind and warm responses from the French public. Protests and objections towards the homosexual community, which were considered deviant, continued to take place and be carried out by homophobic groups in France.

Second, according to Wilson *et al.* [24], the ban towards homosexual citizens as donors in blood donation activities is a situation that happened in many countries since the 1980s. This ban was first sparked by the HIV/AIDS epidemic that occurred in many countries at the time. Wilson *et al.* [24] used a qualitative method with a public policy theory and combined scientific evidence with ethical and moral issues, as well as challenges faced along with the

development of science and technology. In the end, the development of science and technology brought an impact to the amendment of the policy towards homosexual citizens as donors in blood donation activities.

To fill in the gap from the previous researches, this study will discuss the role of the homosexual community towards the amendment of blood donation policies for the homosexual community in France during the reign of François Hollande and Emmanuel Macron. Moreover, the aim of this study is to identify the role of the homosexual community towards the amendment of blood donation policies for the homosexual community in France and elaborate on its impact towards the blood donation policy for homosexual citizens in France during the reign on François Hollande and Emmanuel Macron. This study is essential to be done to prove the role of the homosexual community in eradicating discrimination in the blood donation policy, as an altruist act, towards the homosexual community in France.

2 Methodology

This research uses the qualitative method by Hammarberg *et al.*, [9] together with other theories. According to Hammarberg *et al.*, [9], qualitative research answers questions on experience, meaning, and perspective, most often seen from the point of view of the writer. Data can be taken by analyzing text and documents, such as government policies, media articles, or speech texts. By using a qualitative method, the attitude and opinion of the homosexual community towards the sexual discrimination experienced after the blood donor ban can be examined [12]. Next, this research will use the public policy theory by Gerston [7]. Gerston [7] stated that public policy is an effort made by the government or state authority aiming to solve public issues. The process of determining a public policy consists of five steps, namely (1) the identification of a public policy issue; (2) the development of public agenda; (3) the formulating of a public policy commitment relating to the existing issue; (4) the implementation of public policy; (5) the evaluation of the previously legalized policy. In constructing a public policy, the challenge faced by the policy makers in understanding the construction concept of a policy is the process that needs to be considered. Due to this, the relationship between the public and various policy-making institutions become more complex and are interconnected to each other in the construction of public policies, there needs to be a comprehensive judgment on what is being done by the government in the construction process of a public policy, how the public implements policies that have been legalized, and reasons the policy makers choose certain policy alternatives over others. The focus on the process of public policy construction becomes more important with the emergence of modern society, technology innovations, and international relations that keep growing. This theory will be used to analyze the context and background of the legalization of blood donation policies towards the homosexual community in France during the reign of Hollande and Macron, as well as proof that the government and the public are two agencies that are interconnected in the construction of a policy.

Furthermore, this study will also use the public health and human rights theory by Chris Beyrer [3], human rights violation is the core cause of health policies that are harmful to world citizens. Public health and human rights provide a critical judgment based on evidence that can be used to investigate the role of revocation of rights in the field of public health from repressive laws that causing social conflict, gender-based violence, human trafficking, and violations in a conflict.

The corpus of this study is the blood donation policies in relation to the homosexual community and was legalized during the reign of François Hollande and Emmanuel Macron as well as several scientific articles. Said policies, namely the Law of Modernization of Health System in France called *La Loi n° 2016-41 du 26 janvier 2016 de Modernisation de Notre Système de Santé*, The Decree published by the Minister of Social Affairs and Health [20] on the selection criteria of blood donors, The Decree published by the Minister of Social Affairs and Health on the selection criteria of blood donors [18], and The Decree published by the Minister of Solidarity and Health [17], which can be publicly accessed on the *Légifrance.fr* website. Additionally, the corpus used is a scientific research by Leblond [10]. This research contains the background of the ban towards the homosexual community in France to become blood donors since the year 1982, to the assessment of said ban as a sexual discrimination act in the European Court of Justice in 2015. The reason behind the assessment of the case in the European Court of Justice is further explained in the scientific research by Exter [6]. Public policies and articles that have been selected will be analyzed in a comprehensive manner to understand how the homosexual community faces discrimination and human rights violations in blood donation activities in France.

3 Results and Discussions

The Blood Donation Policy and the Homosexual Community in France

1.1. Discrimination of the Blood Donation Policy towards the Homosexual Community

In 1982, a policy where the homosexual community in France were banned from becoming donors in blood donation activities in France emerged. This was due to the HIV epidemic that took place in France at the time. The homosexual community in France have experienced numerous discrimination acts in the society since the rise of this HIV epidemic. As time progresses, the homosexual community in France continues to make efforts to raise public awareness to fight discrimination against the homosexual community in France in relation to blood donation policies, two of those being through the campaign and mass communication medium. In 2011, one member of *Homodonneur*, a community that fights for reintegration of homosexual blood donors into the transfusion circuit had done a campaign by walking from EFS Office at 15 Allées Jean-Jaurès, Toulouse to National Institute of Blood Transfusion at 6 rue Alexandre Cabanel, Paris, in order to spread the call to donate blood, even though at that time homosexuals were forbidden to donate blood. Through this campaign, it is hoped that public attention regarding the discrimination issue that occurred to homosexuals in France regarding blood donation would continue to grow. An open letter [8] has been sent by one of the LGBT communities in France in 2013, *Inter-LGBT*, to the Minister of Social Affairs and Health, Marisol Touraine, elaborating on how the ban towards homosexual citizens to become donors in blood donation activities is discriminative and could not be explained clearly from a scientific point of view, because everyone who is sexually active has a risk of passing on sexually transmitting diseases regardless of their sexual orientation. This letter was published through various mass medias on the 13th of September 2013, with the aim to make this discrimination issue a public agenda. The raising of the discrimination issue of blood donation policies towards the homosexual community in France as a public agenda is considered important to boost public attention and to push the government to act on the issue being raised. *Inter-LGBT* demanded the promise given by Prime Minister Olivier Véran, who on the 14th of June 2012 stated that sexual orientation could not become a criterion for blood donors in France. In his speech [22], he promised that blood donor access can be possessed by everyone soon.

1.2. The Case of Blood Donation towards the Homosexual Community

Since the end of the 20th century, the issue of discrimination against the homosexual community in France in relation to blood donation policies has been raised several times in the French and European Court. From the early 2000s, the European Court of Human Rights has heard of this issue, however only in 2015 was it finally reviewed in the European Court of Justice [6]. This was triggered by the event where a French homosexual citizen, with the initial L, reported his case of rejection as a donor when intending to donate his blood in Metz to the French Court. France's policy to ban homosexual citizens in the country from donating blood since the year 1983 was the reason behind that rejection. This case was then assessed by the European Court of Justice, by the request of the French Court on April 29th, 2015. France's policy on blood donation strictly differentiated the categories of citizens in blood donation activities based on their sexual orientation contradicts basic human rights, such as equal treatment to all citizens and the antidiscrimination principle recognized by the European Union law [6]. However, in the end the European Court of Justice took a quite ambivalent stance, where the European Court of Justice handed the case back to the French Court to re-examine.

The reporting of this case to the European Court of Justice was not done for no reason. Scientific studies have shown that allowing the homosexual community to become blood donors do not increase the risk of the spread of HIV. According to Wilson *et al.* [24], several recent studies have shown that the allowing of the homosexual community to participate in blood donation activities do not show a rise in risk of HIV transmission through blood transfusion. Because of this, the participation of the homosexual community in becoming blood donors should not be a problem from a medical point of view. The reason in which the homosexual community were not able to become blood donors since 1983 due to the HIV endemic in France is no longer relevant with these newest research. By the presence of advanced scientific research which states that the risk of HIV transmission in blood donation activities is the same regardless of one's sexual orientation, the abolition of the blood donation ban towards the homosexual community in France should have been done linearly if the previous policy was deemed irrelevant to the development of technology and innovation.

1.3.. Abolition of the Blood Donation Ban towards the French Homosexual Community

A year after the rejection case towards the French homosexual community as donors in blood donation activities was discussed in the European Court of Justice, the exclusion policy towards the homosexual community from becoming blood donors was officially abolished on 2016 through the legalization of the Law of Modernization of Health System in France that is called *La Loi n° 2016-41 du 26 janvier 2016 de Modernisation de Notre Système de Santé* under the rule of François Hollande. This amendment of blood donor criteria [11] has allowed the homosexual community in France to donate their blood under the condition that they have not had sexual intercourse within the last twelve months. This policy amendment gave hope to the homosexual community to eradicate discriminative policies towards the homosexual community in France. The efforts made by the homosexual community in France to abolish the ban on the homosexual community as blood donors that have been implemented since 1982, as well as to earn equality with the heterosexual community, starting from the open letter submission in various mediums to the reporting of the blood donation for the homosexual community in France case to the European Court of Justice, finally received a response from the French government which was revealed on the speech by Marisol Touraine as the Minister of Social Affairs and Health of France at the time.

Marisol Touraine, Minister of Social Affairs and Health at that time [21], stated that each citizen of the country has a right to donate their blood, regardless of their sexual orientation. Additionally, she revealed that the government also guaranteed that the blood products received by all patients are of highest quality and safety standards. Marisol Touraine is a French politician and is part of the socialist party. In 2012, she was appointed as the French Minister of Social Affairs and Health. Touraine started demonstrating his stance of supporting equality for the homosexual community in 2015. This was proven by her speech in her meeting with the homosexual community in France. Touraine [21] relayed that the abolition of the blood donation ban towards the homosexual community will soon be legalized as a fight against all forms of discrimination, especially sexual discrimination in France. Touraine's speech as the French Minister of Social Affairs and Health showed the government's support as well as their effort to eradicate discrimination towards the homosexual community. This was the action needed by the homosexual community in France to receive equal treatment.

The involvement of the homosexual community in France to abolish the ban towards the homosexual community from becoming blood donors, starting from the open letter submission in multiple mediums to the reporting of the blood donation for the homosexual community in France case to the European Court of Justice, as well as the response shown by Marisol Touraine as the French Minister of Social Affairs and Health at the time, finally lead to the legalization of the abolition of the ban towards the homosexual community in France for becoming blood donors, which was marked by the legalization of the Law of Modernization of Health System in France along with The Decree published by the Minister of Social Affairs and Health on the 5th of April 2016 on the selection criteria for blood donors. This abolition of the ban towards the homosexual community in France from becoming blood donors happened as a result of the synergy between the French citizens and the French Government in various levels. This is evidence that the relation between many parties in a complex relationship is very much needed for the change of a public policy. Surely, this policy amendment was supported by the emergence of modern thinking as well as technology innovations. The abolition of the ban towards the homosexual community in France from becoming blood donors was able to take place because medically, sexually transmitted diseases could be transmitted by someone regardless of their sexual orientation [24]. Although the homosexual community are now able to donate their blood as a result of the legalization of the policy to abolish the ban towards the homosexual community from becoming blood donors, it doesn't mean that the discrimination towards the homosexual community as blood donors has been entirely eradicated by the French government. The homosexual community in France could only become blood donors after twelve months since their last sexual intercourse, wherein this rule is only implemented to the homosexual community and not to the heterosexual community.

2. Human Rights Violations in Blood Donation Activities in France

At first, the policy that abolished the ban on the homosexual community from becoming blood donors under the condition that they have not had sexual intercourse within the past twelve months was considered a quite positive policy as an effort to eradicate discrimination towards the homosexual community in France. However as time passes, it was considered necessary to alter this difference in policies, because there is still inequality between the blood donation requirements for the homosexual and heterosexual community in France. The difference in policies between the heterosexual and homosexual communities in which the homosexual community is required to wait twelve months since their last sexual intercourse in order to

become a blood donor, while the heterosexual community doesn't need to, is an act of human right violation [3]. According to Beyrer [3], the universality of human rights and the right for everyone to choose who they love, should still be a core part of international law and discourse. Because of this, the exclusivity of a certain sexual orientation in a humanitarian activity such as blood donation, should be prohibited to respect each individual's rights, regardless of their sexual orientation.

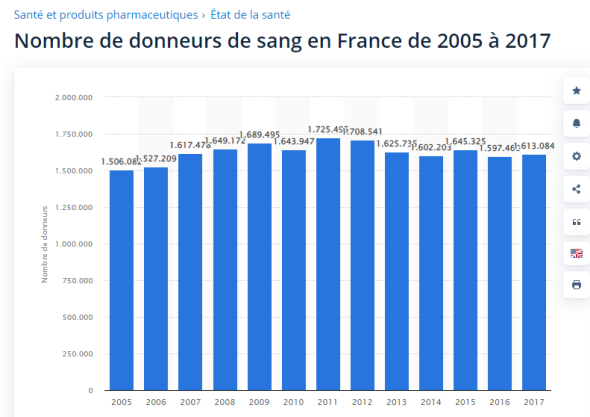


Fig 1. Number of blood donors in France from 2005 to 2017.

From the data collected by Statista.fr, there had been a raise in the blood donation number in France from 2016 to 2017. This can be an indication that the abolition of the ban towards the French homosexual community from becoming donors in blood donation activities have caused a positive impact towards blood supply and blood availability in France, despite the condition in which the homosexual community still needs to wait twelve months after their last sexual intercourse in order to donate blood. Furthermore, an amendment of policy in regard to the selection criteria for blood donors was published again on the 17th of December 2019 under the rule of Emmanuel Macron. This new policy [18] states that the homosexual community in France can donate blood commencing from four months after they had had their last sexual intercourse, as stated in Part 1 of the Decree published by the Minister of Solidarity and Health on the 17th of December 2019, on the selection criteria of blood donors. This policy was effectively implemented as of February 1st, 2020.

The context of interest of the French Government can be seen from the policies published by the French Government in relation to the homosexual community as stated above, namely, to continue to increase blood availability in France and fulfill blood transfusion needs in France. The policy was a positive step in eradicating discrimination towards the homosexual community in France, especially sexual discrimination. However, on the other hand, the French Government is also benefitting from this policy. The government policy that ruled that the homosexual community in France could donate their blood since 2016 seems to be effective to increase blood supply in France in 2017. Veran [22] stated that France has noted a stable growth in blood product demand from the end of 2012 to the beginning of 2013, this

increase ranged between 2% to 3% each year since the year 2000. With the increasing demand for blood in France, this new policy could be an effective strategy to satisfy the demand for blood in France so that a lack of blood product supply can be avoided. In the end, the legalization of policy for the homosexual community to become blood donors by reducing the waiting period after their last sexual intercourse was based on the interest of the French government, which is the existing demand for blood, not as an act of equalization towards the homosexual community or to honor the rights of the homosexual community.

2.1 Blood Donation in the Era of the Covid-19 Pandemic

According to Barros *et al.* [2], the Covid-19 pandemic has caused a lack of blood supply in Europe, including in France. This is due to the drastically decreasing blood donation rate during the pandemic. The public's anxiety and fear of getting infected by Covid-19 has become a barrier for the public to perform blood donations. This barrier in blood donation activities has a significant impact on the supply and demand for blood during the pandemic.

As a response to the blood scarcity situation in France, the *Établissement Français du Sang (EFS)*, an institution founded by the French government to provide services to the public relating to blood transfusions in France, created an emergency campaign titled *Urgence don de Sang. Nous avons besoin de tout le monde!* [5]. This campaign was carried out to push the French public to become blood donors, because the blood supply that the *EFS* possessed was under the safety limit. For the first time, the *EFS* released an emergency campaign because the amount of blood bags available in France in February 2022 was 70.000 out of the minimum of 100.000 blood bags needed [5]. The willingness of blood donors is very important to fulfill the blood demand of patients every day. Difficulties experienced during the Covid-19 pandemic have become the cause of the blood crisis in France, such as the lower and more limited mobilization of donors as well as difficulties in recruiting medical staff. The *EFS* invoked this blood donation mobilization campaign in order to fulfill the minimum blood supply and be able to handle all blood transfusion needs.

Still in the Covid-19 pandemic era, the government finally made an amendment to the policy in relation to the selection criteria of blood donors, which was published on the 11th of January 2022. This new policy [17] included the decision that the homosexual community in France can donate their blood without a minimum waiting time after their last sexual intercourse as stated in Part 1 of the Decree published by the Minister of Solidarity and Health on the 11th of January 2022. This decree is an amendment of the previously published decree regarding the selection criteria of blood donors which was published on the 17th of December 2019. This new policy was implemented as of March 16th, 2022. The French government imposed a transition period of two months since the decree was published until the policy was effectively implemented, with the reason that the related instances could conduct adjustments to the new policy, such as adjustments to the blood donation questionnaires that need to be updated due to the amended policy. Apart from opening the access to blood donation for homosexual citizens, the government also announced a new policy wherein citizens who are currently receiving treatment for HIV infection transmission can not donate their blood and must wait four months after the last dose of drug consumed to fulfill the qualification of becoming a blood donor.

If associated with the direction and goal of the legalization of policy towards the homosexual community in France wherein they are able to directly donate blood without a minimum waiting time after their last sexual intercourse, which was legalized under the rule of

Emmanuel Macron, this new policy has the implicit intention to help fulfill the blood demand in France that has been in crisis since the Covid-19 pandemic. Looking into it further, the homosexual community was able to raise the blood donation rate in France in the year 2017, and this was something that the French government under the reign of Emanuel Macron wanted to repeat to solve the blood crisis that occurred. This new policy is an effort made by the French Government or state authorities with the aim to resolve the ongoing problem. This is in line with the fact that public policies are efforts made by the government or state authorities to resolve public issues [7]. After the campaign conducted by the *EFS* to increase blood supply in France was considered ineffective, the French Government conducted another effort aimed at the homosexual community in France. Because of this, an ongoing issue or problem can play an important role in the constructing of a policy.

4 Conclusion

The French Government legalized a new policy regarding the selection criteria of blood donors in 2022. In this policy, the homosexual community in France are able to become blood donors without a waiting time from their last sexual intercourse, like the heterosexual community.

In the end, the reason for the amendment of the blood donation policy towards the homosexual community is more dominated by the need for blood supply in France, although the efforts made by the homosexual community in France to eradicate discrimination towards the homosexual community in regard to blood donation have been done for a long period of time. This is proven by the amendment of the blood donor policy towards the homosexual community in 2019 and 2022 which were backed up by the increasing blood demand in France and the lack of blood supply in France during the Covid-19 pandemic. Although the homosexual community in France played an important role in the legalization of the abolition of the ban towards the homosexual community from becoming blood donors in 2016, the fact that the French Government only granted the same requirements for the homosexual and heterosexual communities when a blood supply crisis took place in France has clarified the presence of homophobia within the French government, because the homosexual community in France have fought for their rights as blood donors since the early 21st century by making the blood donation discrimination issue towards the homosexual community a public agenda.

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