



Jurnal Studi Gender dan Islam

SENSITIVITAS GENDER DAN POLA KOMUNIKASI MAHASISWA/I
UIN SUNAN KALIJAGA YOGYAKARTA
Alimatul Qibtiyah

RELIGIOUS FREEDOM FOR MINORITY MUSLIM GROUP BASED
ON GENDER IN INDONESIA
Rr. Siti Kurnia Widiastuti

ANALISIS GENDER TERHADAP PERAN PEREMPUAN PERAJIN BATIK
GUMELEM DALAM PELESTARIAN WARISAN BUDAYADAN PEMENUHAN
EKONOMI KELUARGA
Riris Ardhanariswari, Sofa Marwah

PENGARUH PEMAHAMAN DAN SENSITIVITAS GENDER TERHADAP *CIVIC
DISPOSITION* PADA PESERTA DIDIK MADRASAH ALIYAH
DI KABUPATEN BANTUL
Nurokhmah, Sunarso

PEREMPUAN MENGGUGAT (Kajian atas QS. al-Mujadilah [58]: 1-6)
Waryono

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RELIGIOUS FREEDOM FOR MINORITY MUSLIM GROUP BASED ON GENDER IN INDONESIA¹

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Abstrak

Artikel ini membahas tentang kebebasan beragama bagi kelompok minoritas Muslim berdasarkan gender di Indonesia. Kelompok minoritas sering mengalami permasalahan untuk dapat mengakses hak-haknya sebagai warga negara. Transgender merupakan salah satu kelompok minoritas berdasarkan gender yang sering mengalami permasalahan tersebut. Hak beragama merupakan salah satu hak sipil yang dimiliki oleh setiap warga negara. Namun, keberadaan transgender belum sepenuhnya diterima oleh seluruh lapisan masyarakat di Indonesia, khususnya masyarakat Muslim, maka mereka terhambat untuk dapat mengekspresikan keyakinan agama mereka. Faktanya, transgender itu ada dalam kehidupan sosial. Fenomena tersebut juga sudah ada ketika zaman pra-Islam ataupun zaman Nabi Muhammad SAW. Ayat-ayat Al Qur'an yang dijadikan inspirasi untuk mendefinisikan transgender adalah QS. Al Hajj: 5 dan QS. An-Nur: 31. Sedangkan dalam hadits juga ada penjelasan tentang transgender, pada kisah transgender dan istri-istri Nabi. Sehingga Fiqh, sebagai landasan hukum dalam Islam juga memberikan penjelasan tentang peribadatan yang terkait dengan transgender. Term yang disebutkan dalam Fiqh untuk istilah transgender adalah khuntha dan mukhannath. Akan tetapi dalam sebagian besar penjelasan mengenai transgender dari para Ulama Muslim, sering melupakan kondisi psikis yang dialami oleh transgender. Seseorang tidak bisa dengan mudah memahami kondisi yang dialami oleh transgender. Untuk memahami transgender, seseorang tidak cukup hanya melihat dari aspek fisik saja, tetapi perlu menelaah aspek psikologis dan biologis dari transgender tersebut.

Kata kunci: Kebebasan beragama, Transgender, Minoritas, Kelompok dan Hak yang Dimarginalkan

Abstract

This article explains the religious freedom for Muslim minority group based on the gender in Indonesia. The minority groups usually face some obstacle to access their rights as a citizen. Transgender as one of a minority group based on the gender and they usually face that problem. The religious rights include to the civil rights and all of the citizen should have it. However, the existence of transgender in the social community cannot be accepted yet by the Indonesia society, especially Muslim society. So, it causes the difficulties for them to express their belief. In fact, transgender exists in social life. This phenomenon has been existing since the pre-Islamic era or the era of the Prophet Muhammad. There several verses of Qur'an explain about transgender, such as QS. Al-Hajj: 5 and QS. An-Nur:

¹ This paper is based on Dissertation of Siti Kurnia Widiastuti at an International Consortium for Religious Studies (ICRS)/Inter-Religious Studies (IRS) Gadjah Mada University Yogyakarta Indonesia. It is supervised by Farsijana Adeney-Risakotta, Ph.D. and Siti Syamsiyatun, Ph.D.

31. Moreover, the explanation about transgender also exists in hadith, in the story of transgender and Prophet's wives. Therefore, Fiqh as a fundamental of Islamic law also explains how transgender does their pray. In Fiqh of Islam, transgender is called as *khuntha* and *mukhannath*. But in most of the explanations about transgender from Muslim scholars, they often forget about the psychological conditions of transgender. People cannot easily understand the condition of transgender. Therefore, to understand their condition, it is not enough by seeing them only from the physical aspect, but we need to understand their psychological and biological conditions.

Keywords: Religious Freedom, Transgender, Minority, Marginalized Group and Rights

Introduction

The minority could be related to the quantity or quality. Related to the quantity, it is a small number of the majority. On the other hands, related to the quality, it includes in expressing ideology and politics. Preece defines minorities as “those who are denied or prevented from enjoying the full rights of membership within a political community because their religion, race, language or ethnicity differs from that of the official public identity.”² She further stated that “the contemporary problem of minorities emerges as a lack of consent or entitlement to full participation in political life such as that the principle of self-determination is compromised in some way.”³

Some minorities have difficulties to access social and power relations in the community. Therefore, it is important to understand some minority problems. A various problem of life is received by a minority group. The problem does not only apply to a minority group based on religious affiliation but also affects others, for instance, the minority of gender, sexual orientation, and physical disability. One of the minority groups that are discriminated based on gender and sexual orientation is transgender people. This minority group tends to receive any discriminations and marginalization. As a result, this minority group is also called as a marginalized group in our society.

Marginal communities are “people who are at the periphery (margin)”⁴. These communities generally have a very weak position and hampered to gain access to economic resources, so that their life left behind with other people who have a better Human Resources (HR). Therefore, they are vulnerable to being marginalized, discriminated, exploited, or are subjected to violence. These marginalized groups are often marginalized in many aspects of life, such as gender, biological, religious, economic, ethnic, language, culture, and others⁵. According to Robert Chamber (1987), marginal communities composed of five elements, namely: 1. Poverty itself; 2. physical weakness; 3. Isolation or insulation levels; 4. Vulnerability; 5. Powerlessness⁶. The conditions faced by these marginalized groups should be strengthened to make them more powerful and independent. One of these is through the process of strengthening the community empowerment program, especially to the marginalized people.

Empowerment means “strengthening efforts to acquire”⁷. Prijono and Pranarka define empower-

⁴ Rr. Siti Kurnia Widiastuti, et al, *Pemberdayaan Masyarakat Marginal* (Yogyakarta: Pustaka Pelajar bekerjasama dengan LABSA, 2015), 1.

⁵ Rr. Siti Kurnia Widiastuti, et al, *Pemberdayaan Masyarakat Marginal*, 4.

⁶ Bagong Suyanto, *Pemberdayaan Komunitas Marginal di Perkotaan* cited from Moh Ali Azis et. al., *Dakwah Pemberdayaan Masyarakat* (Yogyakarta: PT LKiS Pelangi Aksara, 2005), 167.

⁷ Rr. Siti Kurnia Widiastuti, et al, *Pemberdayaan Masyarakat Marginal*, 12.

² Jennifer Jackson Preece, *Minority Rights: Between Diversity and Community* (Cambridge & Malden: Polity Press, 2005), 10.

³ Jennifer Jackson Preece, *Minority Rights*, 11.

ment in two ways, namely⁸: Developing, making independently, making self-help, and strengthen the bargaining position of lower layers of society against the suppressive forces in all areas and sectors of life. Protect, defend and side with the weak, to prevent unbalanced competition and the exploitation of the weak. Transgender as one of the marginalized groups in the society should be empowered in all aspects of their lives, especially in economic and religion.

Transgender could be a man who acts like a woman or woman who behaves like a man. In our society, the issue of male transgender is frequently more discussed. Therefore, this paper will focus on male Muslim transgender. Male transgendered in Indonesia is known as “*waria*”, which is derived from “*wanita-pria*” (female-male). Tom Boellstorff translates *waria* as “male transvestite”⁹. This writing will use “she” as a pronoun of male transgendered. It also will apply “her” as an indirect reference of male transgendered. This word option (she or her) is to appreciate the identity expected by transgender.

At the beginning of 2016, a massive rejection of sexual behaviors of lesbian, gay, bisexual, transgender, and transsexual (LGBT) becomes a contemporary hot issue in Indonesian society. The early appearance of males’ transgendered in Jakarta, Indonesia has been protected by the Mayoral leadership of Ali Sadikin in 1966.¹⁰ The appearance of transgender was linked to the greater social visibility. The first term of transgender is known as *wadam* (*wanita* (woman) and *Adam*).¹¹ Another etymology by the early 1970s was *haWA-aDAM* or *Eve-Adam*.¹² “By the mid-1970s some

Muslim groups were expressing displeasure that the name of a prophet was incorporated into a term for male transvestites.”¹³ In addition, Alamsyah who was the Minister of Religion at that time coined the term of “*waria*”.¹⁴

Before 2016, transgender existence has already been well known and has not got a ban from various parties. However, during their lives, transgendered people as minority citizens among the Indonesian society do not have the ease of living as “human being” in the community and to express their religious beliefs. A transgendered individual has many problems in establishing their identity. They also receive a lot of ridicule, rejection, violence, and discrimination in everyday life. So transgendered individual has enjoyed equal rights as other straight men and women in the community, including among Indonesian Muslim community.

Because of receiving a lot of discrimination and marginalization, male Muslim transgender individuals are currently in unfavorable conditions and weak. Qur’an condemned those who are reluctant to defend the weak¹⁵, as in the word of Allah SWT: “Why do you not fight in the way of Allah and (defending) people who are weak”¹⁶. Word *mustadh’afin* linguistically means “those who weakened”¹⁷. Some scholars understand the word *mustadh’afin* as those who rated powerless by the public, and some are understood as people who really are not empowered¹⁸. According to Quraish Shihab, the defense of the weak people in that paragraph affirms the need to defend the weak

⁸ Rr. Siti Kurnia Widiastuti, et al, *Pemberdayaan Masyarakat Marginal*, 13.

⁹ Tom Boellstorff, “Playing Back the Nation: Waria, Indonesian Transvestites,” *Cultural Anthropology*, Vol. 19 No. 2 (2004), 160.

¹⁰ Tom Boellstorff, “Playing Back the Nation,” 185.

¹¹ Tom Boellstorff, “Playing Back the Nation,” 185.

¹² Dua Dunia Yang Belum Sudah. (1973, 6 October). *Tempo*, p. 46. In Tom Boellstorff, *Playing Back the Nation*, 185.

¹³ Tom Boellstorff, “Playing Back the Nation,” 185.

¹⁴ Tom Boellstorff, “Playing Back the Nation,” 185.

¹⁵ Muhammad Amin, *Pemberdayaan Masyarakat dalam Perspektif Al Qur’an* cited from Rr. Siti Kurnia Widiastuti, et.al, *Pemberdayaan Masyarakat Marginal*, 58.

¹⁶ QS. An-Nisa’(4): 75.

¹⁷ Muhammad Amin, “Pemberdayaan Masyarakat dalam Perspektif Al Qur’an,” *Pemberdayaan Masyarakat Marginal. Bunga Rampai*, Vol. 1 No.1 (2015), 58.

¹⁸ Muhammad Amin, “Pemberdayaan Masyarakat dalam Perspektif Al Qur’an,” 58.

that live in the same location with us¹⁹. The defense in this context, according to the researcher, in the sense of not doing that marginalized, violence, or discriminated Transgender Muslim groups. Their condition must be empowered, assisted, so that they become Muslim Transgender economically empowered and capable of running the teachings of Islam well.

Assets owned by male *Muslim* Transgender individuals are widely. There are educated in a variety of disciplines. Some of them are a qualified cook; makeup; music; batik craft; singing; and so forth. However, education and skills are not optimally utilized for the welfare of the life of this group. Therefore, it is important to make effort to raise awareness, to motivate, and to assist the Muslim Transgender individual through empowering of marginalized Muslims by gender differences (male *Muslim* Transgender).

As marginalized communities, male Muslim Transgender individuals have experienced a wide range of problems in their lives. It includes several problems on biological development, economic life, social life, and religious life.

A male transgender is less accepted in society. Her existence has been recognized, however, her behavior is not being understood and not well received in her community. The rejection of the transgender individuals by the majority of Indonesian Muslims are caused by two mains arguments: 1) Sexual behavior disorder; it is perceived that male transgender would be interested in having sex with male. That is considered as homosexual (interest in the same sex). Homosexuality is a sexual disorder. Because of it, homosexuality is a sin and will be cursed by Allah SWT. 2) Psychologically unhealthy or ill. Many people believe that transgender tendencies can be treated by hypnotherapy to make them come back to their original sex (male); it is because there have

been some cases proved. Therefore, many of the Indonesian Muslim communities reject transgender and LGBT's sexual behavior in general. Most of the Muslim communities who refuse the presence of transgender have called the public attention to foster transgender and LGBT's existence in order to get back their 'normal' sexual behavior.

A 'normal' sexual behavior according to the interpretation of some Islamic scholars is just sex between male and female. Normally, a male will be attracted to female, and vice versa. Transgender does not consider behaving normally as if she is a male transgender; she was born as a male though mentally she was female. When she was physically a man, then the 'normal' she should be attracted to a woman. In fact, male transgender, even though she was born as a man but she did not feel as a man. She feels more comfortable to perform female gender roles. So that she will be attracted to the man. This society's belief is in the social world usually to be called as "essentialism".

There are two views of sexuality that become intense debates among sex researchers today, essentialism and social constructionism.²⁰ In this realm, there are disagreements between the follower of both essentialism and social constructionism about sexuality. The view mostly Muslim Indonesian society is as believed by adherent's essentialism, that sex only consists of two types of men and women, sexual orientation is only heterosexual and gender identity should be aligned with gender. While the view of social constructionism believes that gender, sex/gender, sexual orientation, and gender identity is socially constructed. Sexuality is constructed by societies into several sexual orientations, such as heterosexual, homosexual, and bisexual. There are also various gender identities, for instance, female, male, transgender, transsexual, and intersex.²¹

¹⁹ M. Quraish Shihab, *Tafsir al-Mishbah Jilid 2* (Jakarta: Lentera Hati, 2005), 485-486.

²⁰ John D. DeLamater & Janet Shihley Hyde, "Essentialism vs Social Constructionism in the Study of Human Sexuality," *The Journal of Sex Research*, Vol. 35 No. 1 (1998), 10.

²¹ Divisi Litbang dan Pendidikan Komnas Perempuan, "Dari

Essentialism point of view already exists in the majority of Indonesian society very strongly.

The Constitution 1945 guaranties rights of all citizens in Indonesia. This law regulates the rights of all Indonesian citizens, including minority group. Transgender is one of the minority groups who have right to practice their religious beliefs. Minorities are a small number of large communities called the majority. This group is always received unequal treatment by the dominant society. Therefore, they experience such marginalization, violence, and discrimination from others. As a minority of the large community, a transgender only receives limited access from various services. They are struggling to access their rights. A minority right which includes religious rights is required for every minority citizen. A religious right is the right to express people's spirituality, this includes the right to perform religious rites. A freedom in performing religious rituals for a transgendered individual means that transgendered individuals have the right to perform their religious teachings and flexibility in conducting worship in accordance to their religious beliefs, for example is doing a congregational prayer (Indonesian: *sholat jama'ah*) in the mosque freely. Performing a ritual of religion is a human right. The freedom to practice religion in many ways is God's mercy. In Islam, Muslims practices their religious beliefs through worship. In the view of Islam, worship is the relationship between a human being (God's servants) to God (the Creator).

The obligation of every Muslim is to worship God. Therefore, Qur'an, as an Islamic main source provides some rules on Islamic worship. Malik says that "the main object of the Qur'an is to make man conscious of his place in the universe as well as

of his relations with God. In addition, Islam wants to create a society based on a deep sense of moral responsibility and justice in order to preserve human dignity."²² In addition, Malik further states that "Muslim jurist have divided rights into two categories: God's rights and human's rights. The Muslim jurists regarded human rights as an integral part of faith."²³ Islamic jurisprudence also discusses the rights of parents, children, neighbors, wives, and civil.

Based on Qur'an's explanation, "Religion is a personal affair between the individual and God, so everyone is completely free in the choice of faith".²⁴ Practicing religion is freedom for every human being. Religious right for every human being is guaranteed by law. However, not all groups of individuals can freely practice their religion. A transgender person with different religious beliefs is one of the minorities who is struggling to express their religious beliefs. This study will explore more about how an Indonesian male Muslim transgendered in her struggle to gain her rights in practicing religious belief.

Ali Akbar Siyasi explains that "Human being has two components: firstly, is *badaniyat* (things bodily). In Persian is *'ilmal-hayat as zist-shinasi*. It is now commonly called biology. Secondly is *'ilm al-nafs or ravan-shinasi*. It is a combination of feeling, thoughts, actions, and reactions referred to as *nafsiyyat*, which are attributed to one's *ravan* (psyche).²⁵ Siyasi says that "*ravan* is equivalent to *ruh* (soul)."²⁶ Based on that explanation, the creation of a human being includes body and soul.

²² Maqbul Ilahi Malik, "The Concept of Human Rights in Islamic Jurisprudence," *Human Rights Quarterly*, Vol. 3 No. 3 (1981), 57.

²³ Maqbul Ilahi Malik, "The Concept of Human Rights in Islamic Jurisprudence," 57.

²⁴ Maqbul Ilahi Malik, "The Concept of Human Rights in Islamic Jurisprudence," 59.

²⁵ Afsaneh Najmabadi, "Verdicts of Science, Rulings of Faith: Transgender/Sexuality in Contemporary Iran," *The Body and the State: How the State Controls and Protects the Body, Part I Social Research*, Vol. 78 No. 2 (2011), 548.

²⁶ Afsaneh Najmabadi, "Verdicts of Science, Rulings of Faith," 548.

Suara Lesbian, Gay, Bisexual, dan Transgender (LGBT)-Jalan Lain Memahami Hak Minoritas," www.komnasperempuan.or.id/wp-content/uploads/2008/10/dari-suara-lgbt-jalan-lain-memahami-hak-minoritas, (May 1, 2016).

Body and soul are a gift from God. Thus, there should be no obstacle both for body and soul being acceptable worship to God. Both of them are important for a human being to have relations to society and God. In addition, related to the case of transgender, Karimi-nia translates “*psychosexological* concepts of transgender/sexuality back into gender/sex discordance between soul and body. It provides a way to address trans-sexuality as a *psychosexological* condition in Islamic terms.”²⁷ Najmabadi explains that “The concept of discordance between soul and body is more benign and less *pathologizing*—thus more appealing to many trans-persons—than that informed by the norm-centered *psychosexological* discourse of gender identity.”²⁸ Trans-person will bodily perform differently from her soul. It creates a problem for transgender person herself in expressing her religious ritual, such as Islamic praying. Islamic jurisprudence only provides a clear rule for a non-transgender person. The physical appearance is important to determine the Muslim’s role in the Islamic religion. It can be said that biology (body) is more important than psychology (soul) in order to determine the acceptance of Islamic worship.

People who are economically empowered, they may easily able to access their rights. They will get a good education. They will have a better life condition than others who have economic limitation. In the Islamic view, this situation may prevent from *kufur* (not believe in God/Allah SWT). However, in Islam, the situation of economically empower may cause any person to close or far away from God. Therefore, some people having economically empowered can also empower their religious beliefs.

²⁷ Afsaneh Najmabadi, “Verdicts of Science, Rulings of Faith,” 548.

²⁸ Afsaneh Najmabadi, “Verdicts of Science, Rulings of Faith,” 548.

Sex, Gender and Sexuality

Kugle qualifies three terms of sex, gender, and sexuality. Sex refers to “one’s anatomical genitalia, through which one is classified as male or female.”²⁹ Gender refers to “one’s expression of social behavior organized by gender norms, through which one is classified as masculine or feminine.”³⁰ Sexuality refers to

“one’s consciousness of sexual desire and expression of intimacy and pleasure, which includes not just one’s sexual orientation (whether one desires sexual contact with an opposite-sex or a same-sex partner) but also more subtle issues of degree of sexual desire (whether one experiences sexual desire at all, for instance), its intensity, and its focus.”³¹

Sexuality is also defined as “the sexual habits and desires of a person.”³² It also means as “capacity for sexual feeling.”³³ In addition, the working definition of sexuality which is written in the World Health Organization (WHO) website is:

“...a central aspect of being human throughout life encompasses sex, gender identities and roles, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexuality is experienced and expressed in thoughts, fantasies, desires, beliefs, attitudes, values, behaviors, practices, roles and relationships. While sexuality can include all of these dimensions, not all of them are always experienced or expressed. Sexuality is influenced by the interaction of biological, psychological, social, economic, political, cultural, legal, historical, religious and spiritual factors.”³⁴

²⁹ Scot Alan Kugle, *Homosexuality in Islam: Critical Reflection on Gay, Lesbian and Transgender Muslims* (Oxford: Oneworld, 2010), 237.

³⁰ Scot Alan Kugle, *Homosexuality in Islam*, 237.

³¹ Scot Alan Kugle, *Homosexuality in Islam*, 237.

³² Merriem-Webster Dictionary Online, “Sexuality,” www.merriam-webster.com/dictionary/sexuality, (May 19, 2016).

³³ Oxford Dictionaries Online, “Sexuality,” www.oxforddictionaries.com/definition/english/sexuality, (May 19, 2016).

³⁴ WHO International, “Sexual and reproductive health,” http://www.who.int/reproductivehealth/topics/sexual_health/sh_

Rosenbaum also mentions that “whether or not we are in a sexual relationship with another person, we can explore our fantasies, feel good in our bodies, appreciate sensual pleasures, learn what turns us on, give ourselves sexual pleasure through masturbation.”³⁵ Thus, everything that relates to human’s feeling, desire, fantasy, pleasure on sexual can be said as sexuality.

Sexuality can be discussed into two views. There are two arguments on sexuality, essentialism and social constructionism. The view of essentialism believes that “gender, sexual orientation, and sexual identity as things that are given and natural so cannot be changed”³⁶. This group holds that gender is only composed of two types of men and women; sexual orientation is only heterosexual; and gender identity should be aligned with gender (female-feminine; male-masculine). These cause groups that are outside the mainstream is considered as abnormal³⁷. While the perspective of social constructionism holds that:

“Not only gender, but also of sex / gender, sexual orientation and gender identity is socially constructed. As a social construction, sexuality is fluid and a continuum so that sex does not only consist of men and women but also intersex and transgender / transsexual, sexual orientation is not only heterosexual but also homosexual and bisexual³⁸.”

The view of essentialism influences the general view that is accepted by Indonesia society. This view received support from religious teachings and culture so that its effects, LGBT groups are considered not normal (abnormal). So, they often

receive discriminatory treatment or violence.

“Muslims understand sexual fulfillment within marriage for both partners to be the ideal state of affairs; sexual needs are understood and satisfied and allow the couple other forms of communication as well as other pursuits.”³⁹ Fatima Mernisi says “Islam does regard sexuality and sexual urges within marriage as having positive and vital functions, in contrast to “unlicensed” forms of sexuality, which are seen as negative and disruptive.”⁴⁰

“Pre- and extramarital sex—called zina—are forbidden, illegitimate, and punishable under shariah⁴¹. Women’s virginity is a major consideration for marriage, and early marriage is encouraged, since an unmarried girl after puberty may be vulnerable to violation. Bridges are assumed to be virgins when they marry and may be required to obtain a certificate of virginity from a physician in some countries. Muslim families do not expect or permit teenagers to engage in sexual activity.”⁴²

Zina (fornication) means “sexual intercourse of a man and a woman who are not married to each other from the front part of their bodies.”⁴³ *Zina* is regarded as *haram* and ugly act in both Islam and the previous heavenly religion. *Haram* is an Arabic term meaning “forbidden”. *Haram* is “anything that is prohibited by the faith.”⁴⁴ It is one of the greatest sins.

Mernisi explains that the majority interpretation of Islamic teaching only recognizes a

definitions/en/, (May 19, 2016).

³⁵ Lynn Rosenbaum, et. al, “Our Bodies, Ourselves for the New Century,” in *The Boston women’s health book collective* (New York: Touchstone, 1998), 229.

³⁶ Divisi Litbang dan Pendidikan Komnas Perempuan, “Dari Suara Lesbian, Gay, Bisexual, dan Transgender (LGBT)-Jalan Lain Memahami Hak Minoritas,” www.komnasperempuan.or.id/wp-content/uploads/2008/10/dari-suara-lgbt-jalan-lain-memahami-hak-minoritas, (May 1, 2016), 1.

³⁷ Divisi Litbang dan Pendidikan Komnas Perempuan, 1.

³⁸ Divisi Litbang dan Pendidikan Komnas Perempuan, 1.

³⁹ Sherifa Zuhur & Fatma Umut Bospinar-Ekici. *Sexuality. The Oxford Encyclopedia of the Islamic World*.

⁴⁰ Fatima Mernissi, *Beyond the Veil: Male-Female Dynamics in a Modern Muslim Society*, Rev. Ed. In Sherifa Zuhur & Fatma Umut Bospinar-Ekici, “Sexuality,” (The Oxford Encyclopedia of the Islamic World: 1985).

⁴¹ Syariah is an Islamic law.

⁴² Sherifa Zuhur & Fatma Umut Bospinar-Ekici. *Sexuality. The Oxford Encyclopedia of the Islamic World*.

⁴³ Hussein, “What is Fornication (Zina)?,” <https://questionsonislam.com/question/what-fornication-zina>, (June 30, 2016).

⁴⁴ Halal Certification Services, (2011). “What is haram?,” www.halalcs.org, (June 30, 2016).

sexual relationship between man and woman that have a legal relationship in the front of Islamic law. Legal relation here means that a man and a woman are tied into the relation of Islamic marriage as husband and wife. The majority of Islamic scholars interpret that other than this sexual relation is called *Zina*. Therefore, a sexual relationship between same-sex persons will be said as a big sin. Because majority Muslim believes that a transgender person is similar to homosexual, therefore her sexual relation is *Zina* and including a big sin behavior.

Islamic feminism believes equal rights for Islamic society, especially in the role of man and woman. Ali says that “Islamic feminists frame the contours of Islamic sexual ethics within an Islamic imaginary wherein the normative textual traditions of Islam continue to act as significant points of reference”.⁴⁵ The primary sources of an Islamic sexual ethics are based on the Qur’an, hadith, and *fiqh*, as well as the influential commentaries written by pre-modern Muslim (male) scholars. Because of the majority of Islamic scholars from a pre-modern period until now are male, therefore the interpretation of Islamic text can be assumed having some biases of interpretation. There is some Muslim male who have feminist perspectives. However male feminists are only little of the majority of Muslim males. As a result, many interpretations of Islamic teachings that are based on Qur’an, hadith, and *fiqh* are found some biases.

Concept of Transgender

Roen (2001) contends that “transgenderism also includes a both/neither conceptualization of gender identity outside the male/female binary, whereby transgenderism is seen as transgressing

the gender binary, not necessarily as physically transitioning from one gender to the other category”⁴⁶. Furthermore, Nagoshi and Brzuzy say that “the idea of the fluid transgender theory, embodied, and socially and self-constructed social identity can inform an understanding of intersectional identities oppressed.”⁴⁷ Nagoshi and Brzuzy further explain that:

“This approach to intersectional identities would be oppressed embodied consider the different experiences and different social oppressions that are associated with having multiple social identities as well as the narratives of lived experience through the which individuals understand and negotiate these identities⁴⁸.”

The concept of transgender sees that individuals transgendered are in an outside gender binary. They are moving from one gender to another gender identity. Therefore, they will find some different situation and experiences. From each of them would face a different problem of oppression.

Derrida’s term “hauntology” is the *waria* subject position haunts maleness”.⁴⁹ Derrida develops this concept in the context of thinking through how performativity - a concept that has played a strong role in gender theory - play out in the political context and the recognition: “The act that consists in swearing, taking an oath, therefore promising, deciding, taking a responsibility, in short, committing oneself in performativity fashion... [is] the limit that would permit one to identify the political”⁵⁰. Aihwa Ong (1999: 4) notes that:

“Trans denotes both moving through space or across lines, as well as changing the nature of something

⁴⁶ Julie L. Nagoshi & Stephan/ie Brzuzy, “Transgender Theory: Embodying Research and Practice,” *Journal of Women and Social Work* Vol. 25 No. 4 (2010), 435.

⁴⁷ Julie L. Nagoshi & Stephan/ie Brzuzy, “Transgender Theory,” 437.

⁴⁸ Julie L. Nagoshi & Stephan/ie Brzuzy, “Transgender Theory,” 437.

⁴⁹ Tom Boellstorff, “Playing Back the Nation,” 182.

⁵⁰ Tom Boellstorff, “Playing Back the Nation,” 50-51.

⁴⁵ Ali K, “Sexual Ethics and Islam: Feminist Reflections on Qur’an, Hadith, and Jurisprudence,” in Nina Hoel, “Engaging Islamic sexual ethics: Intimacy, pleasure and sacrality,” *Sexualities* Vol. 18(1/2) (2014), 84.

(as in transformation or transfiguration) or going beyond it (as in transcend), be it a bounded entity or process or a relationship between two or more phenomena.”⁵¹

Onggoes on to say that “the prefix trans also alludes to the transactional and transgressed aspects of behavior and imagination that are incited, enabled, and regulated by the logics of culture and political economy.”⁵² Riki Wilchins (1997, 1516) has observed that:

“Transgender did not begin its life as a name for those folks who identified as cross dressers nor as transsexuals primarily people who changed their gender but not their genitals. The term gradually mutated to include any gender queers who didn’t actually change their genitals: [such as] cross dressers, stone butches, and hermaphrodites; [and] people began using it to refer to transsexuals [some of whom do change their genitals] as well.”⁵³

In addition, Joanne Meyerowitz (2002, 10) also informs that:

“In the popular lingo used today, transgendered people [is] an umbrella term used for those with various forms and degrees of cross gender practices and identifications. Transgendered includes, among others, some people who identify as butch or masculine lesbians, as fairies, queens, or feminine gay men, and as heterosexual cross dressers as well as those who identify as transsexual. The categories are not hermetically sealed, and to a certain extent the boundaries are permeable.”⁵⁴

Transgender people look different from others. This situation makes them always receive abuse and harsh treatment from other groups, including living in their social interactions and

expressing their religious beliefs. A transgender individual is more quickly into non-dominant *cisgendered* than heterosexuals. *Cisgendered* is an umbrella term referring to people who conform to the gender binary by interpreting their gender identity as congruent with the sex they were assigned by society.⁵⁵ Thinking of each individual is to be *cisgendered*, therefore they will be seen to marginalize people in each of their performances as transgender. In addition, besides that it is higher *cisgendered*, the group also attempted to control the public in shaping the gender standards and excluding ones that do not fit to the gender views that remain.⁵⁶

Gender is traditionally assumed to be based on a binary, mandatory system that attributes social characteristics to sexed anatomy⁵⁷. Essentialism said that:

“Those who were born male are supposed to act masculine and be sexually attracted to women, whereas who were born female are supposed to act feminine and be sexually attracted to men. Society uses multiple methods of positive and negative reinforcement, including legal, religious, and cultural practices, to enforce adherence to these gender roles⁵⁸.”

Garfinkel (1967) noted that, “this gendered binary socialization is viewed as being “natural” and thus not questioned”.⁵⁹

There are positive and negative impacts of society in applying the essentialism to enforce transgender from period to period. One of the positive impacts is that Islamic law will provide more detail and clearer rules related to the problem

⁵¹ Michael G. Peletz, “Transgenderism and Gender Pluralism in Southeast Asia since Early Modern Times,” *The Wenner Gren Foundation for Anthropological Research*, Vol. 47 No.2 (2006), 3.

⁵² Michael G. Peletz, “Transgenderism and Gender Pluralism in Southeast Asia since Early Modern Times,” 3.

⁵³ Michael G. Peletz, “Transgenderism and Gender Pluralism in Southeast Asia since Early Modern Times,” 3-4.

⁵⁴ Michael G. Peletz, “Transgenderism and Gender Pluralism in Southeast Asia since Early Modern Times,” 4.

⁵⁵ J.E. Sumerau, et.al, “Contemporary Religion and the Cisgendering of Reality,” *Social Currents* 1-19. *The Southern Sociological Society* (2015), 2.

⁵⁶ UC Berkeley Gender Equity Resource Center, “Definition of Term,” http://geneq.berkeley.edu/lgbt_resources_definition_of_terms#invisible_minority, (August 25, 2014).

⁵⁷ Hausman in Nagoshi and Brzuzy, (2010), 433.

⁵⁸ Connell, R.W. (2002). “Gender: A Short Introduction”. In Julie L. Nagoshi and Stephan/ie Brzuzy. “Transgender Theory,” 433.

⁵⁹ Garfinkeld, H. (1967). “Studies in ethnomethodology.” In Julie L. Nagoshi and Stephan/ie Brzuzy. “Transgender Theory,” 433.

of male and female. On the other hands, there is a negative impact for implementing essentialism in the society that a certain individual does not have an available Islamic law, such as a transgendered individual.

Transgender in Islam

The *fiqh* discourse of transgender draws a certain distinction between two categories of persons who are namely the *khuntha* and the *mukhannath*. *Fiqh* means Islamic jurisprudence or the art of deriving religious rulings from their sources⁶⁰. It has obtained the following meaning: a precise, deep understanding, and ability to derive religious rulings from their sources.

The *khuntha* is a male person who resembles a female in speech, movement, and appearance due to an inherent condition that is beyond his ability to control, and therefore, no sin, shame or blame attached to it⁶¹. The *mukhannath* is a person who conceals his masculinity and much of his feminine behavior is deemed to be of his own making⁶².

A *Mukhannath* term is mentioned in the *hadith*. The *hadith* has acquired in Islamic literature the very specific meaning of reports about what the Prophet said, did, approved, and disapproved of, explicitly or implicitly. Indeed, *hadith* is considered as the main source of the “Sunna” or customary behavior of the Prophet⁶³. Hadith is categorized in many categories that range from the *sahih* (correct/authentic) and *hasan* (agreeable) to the *dha’if* (weak) and *maudu* (forged).⁶⁴

The word *mukhannath* described in the hadith narrated by Aisha, when there is a *mukhannath* ever walked into the room of the wives of the Prophet Muhammad. About *mukhannath*, The Prophet Muhammad said: “Do not you see this *mukhannath* understand what is here. So, do not put her into your homes “. After that, the wives of the Prophet hinder *mukhannath* if concerned about to enter the house. Referring to this hadith, al-Nawawi in *Sharh Saheeh Muslim* makes two categories of *mukhannath* that are *mukhannath min khalqin* (given) and *bi al-takalluf* (constructed). According to Al-Nawawi, first group is blameless and not sin. Therefore, normal people are prohibited to mingle with them. As for the second group, they will be punished based on their sin. They are also damned.

Ibn Hajar classifies *mukhannath* into two parts, *min ashli khilqah* (created from the fetus) and *bilqashdi* (the man who deliberately polishing itself and behave like women). According to him, the first class is not cursed (*ghair mal’un*), but should still be pursued so that the transvestites can turn themselves into real man. The views Al-Nawawi and Ibn Hajar about *mukhannath* was inspired by the words of Allah at Al-Hajj (the Pilgrimage) verse 5:

“O mankind! If you have a doubt about the Resurrection, (consider) that We created you out of dust, then out of sperm, then out of a leech-like clot, then out of a morsel of flesh, **partly formed and partly unformed**, in order that We may manifest (our power) to you; and We cause whom We will to rest in the wombs for an appointed term. Then do We bring you out as babes, then (foster you) that you may reach your age of full strength; and some of you are called to die, and same are sent back to the feeblest old age, so that they know nothing after having known (much), and (further), you see the earth barren and lifeless, but when We pour down rain on it, it is stirred (to life). It swells, and it puts forth every kind of beautiful growth (in pairs).⁶⁵”

⁶⁰ Al-Islam.org, “The Literal and Figurative Definition of Jurisprudence,” <http://www.al-islam.org/the-basics-of-islamic-jurisprudence-hassan-al-ridai/literal-and-figurative-definition-jurisprudence>, (May 15, 2016).

⁶¹ Mohammad Hashim Kamali, “Transgenders and justice in Islam,” <http://www.nst.com.my/nst/articles/16kamalia/Article/#ixzz1UggvvhmD>, (November 2015).

⁶² Mohammad Hashim Kamali, “Transgenders and justice in Islam,” 2.

⁶³ Louay Fatoohi, “Qur’anic studies,” <http://www.quranicstudies.com/prophet-muhammad/the-meaning-of-hadith/>, (May 15, 2016).

⁶⁴ Louay Fatoohi, “Qur’anic studies.”

⁶⁵ Abdullah Yusuf Ali, trans., The Meaning of the Glorious

This verse 5 of Al-Hajj explains that the creation of man is perfect (*mukhallaqah*) and there is imperfect (*ghairmukhallaqah*). The understanding of most commentators (*mufasssir*) about *ghairmukhallaqah* is bodily imperfections, either miscarriage or disability. From the word *ghairmukhallaqah*, in the Qur'an there is an explanation that there are some men who are not sexually passionate and do not want to live with a woman. The terms in the Qur'an called *uli al-irbatghair min al Rijal*. So, if referring to these explanations, the transvestites are *ghairmukhallaqah* (fetus with brain or soul abnormalities) that *ghairuli al-irbat* (no sexual desire at all to women).

Another term of transgender in Islam is *khuntha*. Islamic jurisprudence provides various rules of law in worship associated with *khuntha*. Kamali says about *khuntha*:

"Juristic discourse concerning the *khuntha* is almost entirely focused on their rights in respect of privacy, clothing, burial ceremonies, inheritance rights and others. This is a language not of denial but affirmation that such persons do exist among us and that society should allow space for them to lead a life of dignity."⁶⁷

Al Dimasyqi says that *khuntha* means soft and phosphorescence. It also defines as a person who has genital ambiguity. In further mentions, Al Dimasyqi divides *khuntha* into two parts, *khunthamusykil* and *khunthaghairumusykil*.⁶⁷ The first term means someone who has difficulty to determine between sexes because he or she has both sets of genitals or none. Medical terms call it ambiguous genital or sex ambiguity (intersex). Another term means that someone who indicates a tendency of the type his manhood or womanhood

is not difficult to be distinguished. The substantial problem with this concept lies in how the law applied. The perspectives of jurists only deal with the physical side and it should also look at the psychological aspect.

Muslim transgendered faces several problems, one of them is the Islamic jurisprudence (*Fiqh*) only provides rules for *akhunthamusykil*. According to Islamic law, it allows for a man who has sex obscurity to take a genital surgery. This genital surgery is *tashih* or *takmil* (repair or improvement). This individual can make a genital operation to make clearer the genital ambiguity. In addition, an Executive Council of the Indonesian Ulema Council in Deliberation National II in 1980, decides Fatwas⁶⁸: Changing sex male becomes female or otherwise *haraam*, as opposed to *al-Qur'an* Surah an-Nisa, verse 19 and also contrary to the spirit personality. A verse of the *Qur'an* in question is: "... If you take a dislike to them it may be that you dislike a thing, and Allah brings about through it a great deal of good", People who changed sex legal position; their sex type is the same the previous sex before it is to be changed AND A *khuntha* (pansy) that his manhood is clearly allowed enhanced his manhood, vice versa and the law becomes positive (male).

"A fatwa is an Islamic religious ruling, a scholarly opinion on a matter of Islamic law. Then, recognized religious authority in Islam issues about its fatwa."⁶⁹ Based on those MUI fatwas, a genital operation only allowed for a *khunthamusykil* that has a sex ambiguity. So genital surgery is a solution offered by some Islamic scholars. Accordingly, when sex has been explained as male or female, the applicable law is in accordance with the sex after surgery.

Qur'an (Istanbul: Asir Media, 2003), 222.

⁶⁶ Mohammad Hashim Kamali, "Transgenders and justice," <http://www.nst.com.my/nst/articles/16kamalia/Article/#ixzz1Uggvhd1>, (May 15, 2016).

⁶⁷ Hamim Ilyas. "Orientasi Sexual dalam Kajian Islam". In Irwan Abdullah, et al, *Islam dan Konstruksi Seksualitas* (Yogyakarta: Pustaka Pelajar Offset, 2002), 4.

⁶⁸ MUI, "Operasi Perubahan atau Penyempurnaan Kelamin," <http://mui.or.id/wp-content/uploads/2014/11/06.-Operasi-Perubahan-atau-Penyempurnaan-Kelamin.pdf>, (May 1, 2016).

⁶⁹ Huda, "What is 'fatwa'?", <http://islam.about.com/od/law/g/fatwa.htm>, (May 15, 2016).

One of the principles of Islamic law is *mashlahah mursalah*. It means that the laws of the particular problems set in such a way. That is because a benefit requires that law is determined on the basis of the issue. The majority of Islamic scholars say that any laws enacted by *nash* or *ijma'* are based on wisdom in the form of benefit and prevent crime.⁷⁰ *Maslahah mursalah* is “everything that brings the benefit of which has been enshrined in *maqashid al-syari'ah* but not supported by any argument”.⁷¹ *Maqashid al-syari'ah* is a part of *ushul fiqh*.⁷² It is a linguistic approach and approach of interest law.⁷³ *Ushul Fiqh* is “the science that deals with the basics of Islamic law”.⁷⁴

Surgery to repair or improvements may be made on the basis of sex because the rule jurisprudence states that dangers are to be omitted. According to Imam Ash-Syathibi avoid and eliminate the danger of including a benefit advocated Islamic law. The hadith of the Prophet Muhammad SAW said that: “Take medication, O servants of Allah! God does not hold unless the hold anyway diseases cure, except for one disease, namely disease oldness. “So, the beginning of sex operation in Islam cannot be traced, but it is done based on the *ijtihad* (the interpretive struggle) of the scholars with reference to the hadith. In reference to this tradition, scholars have argued that a person who has unclear sex is not normal. She or he is considered ill. So, a treatment should be done to clarify her sex operation. According to some Islamic scholars, before surgery, the person needs medical health checks related to her or his hormonal.

⁷⁰ Ali hasbullah, *Ushul at-Tasyri' al-Islami* (Mesir: dar al-ma'arif, 1976), 135. Cited from Abd Rahman Dahlan, *Ushul Fiqh* (Jakarta: Amzah, 2014), 206.

⁷¹ Konsultasi Islam, “Mashalih mursalah,” <http://www.konsultaislam.com/2010/02/mashalih-mursalah.html>, (May 15, 2016)

⁷² M. Ridwan, “Kajian Maqashid Syari'ah dalam Penetapan Hukum,” www.urais.jatengkemenag.link, (June 30, 2016)

⁷³ Abd. Rahman Dahlan, *Ushul Fiqh* (Jakarta: Amzah, 2014), vii.

⁷⁴ Abd. Rahman Dahlan, *Ushul Fiqh*, 3.

Another problem faced by Muslim Transgender is a view of heteronormativity in the Indonesian society majority. A heteronormative point of view influences a way of thinking of the Islamic jurists' majority. The Indonesian government and its religious regulation do not recognize a transgender individual. Therefore, they do not provide a law system to protect this group.

Transgender which is one of the LGBT group classified by the Ministry of Social Affairs as with social welfare problems. Regulation of the Ministry of Social Affairs of the Republic of Indonesia Number 8 of 2012 concerns about the data collection and data management social welfare problems and potential and social welfare resources, stated that one of the social welfare problems is marginalized groups, i.e. groups of impaired social functioning due to discrimination and marginalization it receives, so that limitations caused her or his vulnerable to social problems. The criteria include: a) disruption social functioning; b) discrimination; c) marginalization; d. Deviant sexual behavior. A regulation issued by the Ministry of Social Affairs, on the one hand, wants to give protection to LGBT groups, but on the other hand as a means to categorize groups of LGBT groups which have deviant sexual behavior.

Minority Theory

A minority is defined as ‘a smaller number or part, especially within a political party or structure’⁷⁵. Preece defines minorities as “those who are denied or prevented from enjoying the full rights of membership within a political community because their religion, race, language or ethnicity differs from that of the official public identity.”⁷⁶ She further states that “the contemporary problem

⁷⁵ Oxford English Dictionary. (1989). In Jennifer Jackson Preece, *Minority Rights: between diversity and community* (Cambridge: Polity Press, 2005), 10.

⁷⁶ Jennifer Jackson Preece, *Minority Rights*, 10.

of minorities emerges as a lack of consent or entitlement to full participation in political life such as that the principle of self-determination is compromised in some way.”⁷⁷

A minority is defined as ‘a smaller number or part, especially within a political party or structure’⁷⁸. As mentioned by Nancy Hartsock, she referred to the work of Albert Memmi in *The Colonizer and the Colonized* to understand the minority situation. Hartsock said, “Those of us who have been marginalized enter the discussion from a position analogous to that which the colonized held in relation to the colonizer”.⁷⁹ Memmi in Hartsock explained that both colonizer and colonized can demolish each other in the different mode. The negative value of the colonizer’s portrait is always likely to them. They are assumed to be lazy, evil, back, and not fully human. Memmi in Hartsock also concluded:

“First the other is always seen as not, as a lack, a void, a deficient in the valued qualities of the society whatever those qualities may be. Second, the humanity of the other becomes ‘opaque’. The colonized must indeed be very strange, if he remains so mysterious and opaque after years of living with the colonizer. Third, the others are not seen as fellow individual members of the human community but rather as part of a chaotic, disorganized, and anonymous collectivity. In colloquial terms, they all look alike.”⁸⁰

A male transgendered is the act of Merlyn Sopjan created the example of political participation, she runs for the legislature of the Party of Unity and Justice Indonesia in Malang in 2003. In addition, Merlyn also once nominated himself as a candidate for mayor of Malang. One of the achievements of Merlyn is being a Queen Transvestite Indonesia in 1995. She is also a

chairman of the Association of Transvestites Malang. She has also been awarded a Doctor Honoris Causa from Northern California American Global University because of an HIV / AIDS social activist. Nevertheless, her political participation had not been successful. However, the involvement of transgender individuals in Indonesian politics until now has not been fully accepted. In addition, mass organizations such as the Indonesian Women’s Coalition provide a place for lesbians, bisexual women and transgender men to organize themselves. As written by the *Republika* newspaper⁸¹:

“Indonesian Women’s Congress in December 1998 formally includes representatives of lesbians, bisexual women, and transgender men (LBT). Congress of Indonesian Women’s Coalition for Justice and Democracy confirmed that they were formally included in the XV Sector, which consists of the LBT.”

The important point of minority theory is in searching for a sufficient epistemology to build the social and the power relations in the society. Hartsock provides critical steps:

“First, using what we know about our lives as a basis for critique of the dominant culture. Second is creating alternatives. When the various ‘minority’ experiences have been described, and when the significance of these experiences as a ground for critique of the dominant institutions and ideologies of society is better recognized, we will have at least the tools with which to begin to construct an account of the world sensitive to realities of race and gender, as well as class.”⁸²

Minorities are struggling to exist in a society. They could not have their full rights as a member of the community. Expressing religion in a public space, such as doing collective worship for

⁷⁷ Jennifer Jackson Preece, *Minority Rights*, 11.

⁷⁸ Jennifer Jackson Preece, *Minority Rights*: 10.

⁷⁹ Nancy Hartsock, *Rethinking Modernism: Minority vs Majority Theories* (Minnesota: University of Minnesota Press, 1987), 191.

⁸⁰ Nancy Hartsock, *Rethinking Modernism*, 192.

⁸¹ M. Akbar, “Menelisik Perjalanan LGBT di Indonesia,” <http://www.republika.co.id/berita/jurnalisme-warga/wacana/16/01/28/o1n41d336-menelisik-perjalanan-lgbt-di-indonesia-part3>, (May 12, 2016).

⁸² Nancy Hartsock, *Rethinking Modernism*, 206.

Muslim transgender, is a kind of difficult for them. Believe in a certain religion is a right for every human in the world. United Nation has declared rights for human in any societies. However, there are many people still having trouble to practice their religions. Therefore, the rights of human are not applied well in our society.

Minority Rights

Minorities are struggling to exist in a society. They could not have their full rights as a member of the community. Expressing religion in a public space, such as doing collective worship for Muslim transgender, is a kind of difficult for them. Believe in a certain religion is a right for every human in the world. United Nation has declared rights for human in any societies. However, there are many people still having trouble to practice their religions. Therefore, the rights of humanity are not applied well in our society.”⁸³.

Human rights are defined as “the rights that everyone should have in a society.”⁸⁴ Rights mean “one may legally or morally claim which gives rise to normative circumstances of being entitled to a privilege or immunity or authority to act in a certain way”⁸⁵. Vincent stated that a right consists of five elements:

“A rights holder (the subject of the right) has a claim to some substance (the object of a right), which he or she might assert, or demand, or enjoy, or enforce (exercising a right), against some individual or group (the bearer of the correlative duty), citing in support of his or her claim some particular ground (the justification of right).”⁸⁶

⁸³ Joel E. Oestreich, *Liberal Theory and Minority Group Rights* (Baltimore: The John Hopkins University Press Human Rights Quarterly, 1999), 109.

⁸⁴ Macmillan Dictionary Online, “Human Rights,” <http://www.macmillandictionary.com/dictionary/british/human-rights>, (Januari 2014).

⁸⁵ Oxford English Dictionary. (1989). In Jennifer Jackson Preece. (2005) *Minority Rights*, 15.

⁸⁶ Vincent. (1986). In Jennifer Jackson Preece. (2005) *Minority Rights*, p.15.

Universal Declaration of Human Rights stated that,

“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”⁸⁷

Based on the above UDHR’s statement, everyone should mean every individual who is living in this universe. Therefore no one can destroy everybody’s rights as a human. Minority people are also having this right to be treated fairly as a human being.

World attention to minority groups had already begun before the middle ages, before the modern system of government. The earliest attention is religion, not ethnicity. In 1250, St. Louis guarantees himself as a defender of Maronite Christians in the Holy Land, a pledge occasionally improved by French Monarchs.⁸⁸ In addition, in 1815 in the Congress of Vienna the terms of the treaty got the structure of ethnic protection, for example, the Polish agreement acknowledged the rights of Poles to keep their own culture and institution.⁸⁹ Article 27 of the International Covenant on Civil and Political Rights (ICCPR) is one of the most important references for minority rights. Article 27 reads:

“In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”⁹⁰

⁸⁷ Article 18 of Universal Declaration of Human Rights.

⁸⁸ Joel E. Oestreich, *Liberal Theory and Minority Group Rights*, 110.

⁸⁹ Joel E. Oestreich, *Liberal Theory and Minority Group Rights*, 111.

⁹⁰ International Covenant on Civil and Political Rights in Joel E. Oestreich, *Liberal Theory and Minority Group Rights*, 114.

This article places a positive function to sustain minority cultures as a cultural group. "Group rights" is internationally known as the rights on behalf of indigenous community. Indigenous people have a similar problem with another minority group. Some problems of Indigenous group as mentioned by Oestreich are, "They are special virtue of having been somewhere first (and thus the victims of un-rectified colonization). They are particularly vulnerable to exploitation, due to relieve poverty, lack of sophistication, or their reliance on particular land and resources for a sense of identity."⁹¹

Medina charter called the first charter written in the history of Islam. In modern terms, the Medina Charter can be compared with the constitution. Muhammad Hamidulah, an Indian origin, refers to it as the first written constitution in the world. It was earlier than Magna charter. This charter was made by mutual consent between Prophet Muhammad with representatives of the people of Medina after his migration from Mecca to Yathrib (Medina), in 622 BC. This Medina Charter contents of the social contract of Medina society. Prophet Muhammad provided an example of the equal treatment of non-Muslim minorities at that time. The contents of the Medina Charter are still relevant to the modern context for it contains universal human values.⁹²

The Rights for Religion for Minority in Indonesia

Indonesia had been colonized by colonial countries for hundreds of years, such as the Netherlands, Portuguese, England, and Japan. Indonesia proclaimed its independence on Augustus 17, 1945. After being an independent country, Indonesia has its own rights to organize

itself. The first president of Indonesia is Sukarno that known as an Indonesian proclaimer and his vice president is Muhammad Hatta. The basic foundation of the Indonesian government is the Constitution of 1945 (It stated in Article 28 E (1) of the Constitution of the Republic of Indonesia in 1945). The Constitution of 1945 regulates the rights of Indonesian citizens, including freedom of religion for all citizens. In the beginning, Indonesia only recognized five religions, namely Islam, Protestantism, Catholicism, Buddhism, and Hinduism. However, during the fourth President of Indonesia administration, namely Abdurrahman Wahid, there is one more religion recognized by the Indonesian government, namely Confucianism. Thus, there are six religions recognized by Indonesian government.

The religious affiliation of every citizen of Indonesia should appear in the identity (ID) card. Therefore, an ID card is one of the important things for Indonesian people to get access from the government. Sometimes, the minority group in Indonesia, such as transgendered individual, does not have this card, as a result, they are difficult to receive facilities from the Indonesian government. A transgender person, Maryani, she faces an obstacle to go for Islamic pilgrimage (hajj) to Mecca because of her identity's problem (passport).

In the Law on Population Administration has tapped the House in plenary session, the provisions of emptying the religion column for faiths outside the six official religions, listed in Article 64, paragraph 2.

"Elements of the religious population data referred to in paragraph 1 for the people whose religion is not recognized as a religion based on the provisions of the legislation or the faiths, not stuffed but still served and recorded in the database population," according to paragraph 2 of Article 64.

⁹¹ Joel E. Oestreich, *Liberal Theory and Minority Group Rights*, 124.

⁹² Mary Silvita, "Islam dan Kaum Minoritas non-Muslim dalam Piagam Madinah". *Refleksi*, Vol. 13 No. 3 (2012), 332-333.

The majority of the Indonesian population is Muslim. Religion plays an important role in the life of Indonesian citizens. However, the religious rights application for its citizens is not well implemented. The Cairo Declaration on Human Rights also proclaimed that “Everyone shall have the right to live in security for himself, his religion, his dependents, his honor, and his property.”⁹³ In addition, the constitution of the Republic of Indonesia in 1945 also affirms that “Each person freely practices religion and worship according to his or her religion.”⁹⁴ These articles declare about the importance of religious rights for every person without exception in Indonesia. Religion is defined as “recognition on the part of a man of some higher unseen power as having control of his destiny, and as being entitled to obedience, reverence, and worship.”⁹⁵

Religion has two dimensions,⁹⁶ 1) a personal and privacy of the individual, 2) a public and resulting from the practical effect. Religious belief described as

“An internal state of mind, the exercise of that belief is to a large extent a social practice sustained by shared doctrines, myths, rituals, sentiments and institutions. Rites of religious worship tend to be collective rather than individual and are generally performed for the benefit of a community of believers.”⁹⁷

In traditional Islam, religion is “essentially a way of knowledge...Islam leads to essential knowledge which integrates (a Muslim’s) whole being”.⁹⁸ Syed Ali Raza, a contemporary Islamic Scholar from Malaysia, says that:

“Islam is a din—religion. To word din bears a concept wider and more comprehensive than the world ‘religion’. It means believing in the fundamentals as well as living according to the Islamic laws. This concept of religion is beautifully conveyed in the terms used by Islamic scholars to describe the fundamental beliefs and the practical laws of Islam. The ‘beliefs’ are described as ‘Al-ed-din-the branches of religion’. Belief without practice is incomplete Islam and practice without belief may be useful in this world but not of much use in the hereafter.”⁹⁹

A perfect Muslim is when he or she believes in Allah (God) and implement the teachings of Islam in the best possible way. Islam is based on five pillars. Prophet Muhammad SAW is reported to have said: “Islam is built upon five [pillars]: the testimony that there is no god but Allah and that Muhammad is the Messenger of Allah; establishing regular prayer (*salat*); paying the *zakah*; *Hajj* (pilgrimage) and fasting Ramadan.”¹⁰⁰ The Hadith explains that prayer is one of the pillars of Islam. Islamic prayer is called *salat*. *Salat* is “a prescribed liturgy performed five times a day (preferably in a mosque) and oriented toward Mecca.”¹⁰¹ Islamic concept believes that a practicing congregational prayer is better than the individual. Prophet Muhammad said: “Prayer in congregation is more rewarded than praying alone by twenty-seven degrees.”¹⁰²

Muslim will receive many benefits of doing congregational prayer, for instance: to build unity and equality in the diverse community and to enhance a brother and sisterhood of the Islamic society. The rules of Islam prioritize a Muslim

⁹³ Article 18 (a) Cairo Declaration on Human Rights.

⁹⁴ Article 28 E (1) of the Constitution of the Republic of Indonesia in 1945.

⁹⁵ Oxford English Dictionary on Jennifer Jackson Preece, *Minority Rights*, 18.

⁹⁶ Jennifer Jackson Preece, *Minority Rights*, 18.

⁹⁷ Jennifer Jackson Preece, *Minority Rights*, 18.

⁹⁸ Seyyed Vali Reza Nasr, *Mawdudi and the making of Islamic revivalism* (New York & Oxford: Oxford University Press, 1996), 66.

⁹⁹ Syed Ali Raza. (n.d.). *Law of God*, p. 7. Retrieved from https://books.google.co.id/books?id=ldajilMr-6YC&pg=PT23&source=gbs_selected_pages&cad=3#v=onepage&q&f=false

¹⁰⁰ Agreed upon; narrated by al-Bukhari.

¹⁰¹ Thesaurus Dictionary Online. (2016). *Salaah*. Retrieved from www.thefreedictionary.com/salaah.

¹⁰² Sahih al-Bukhari, hadis no. 609; Selain oleh al-Bukhari, hadis ini juga diriwayatkan oleh: Muslim, hadis no. 1038-1039; al-Tirmizi, hadis no. 199; al-Nasa’i, hadis no. 828; Ibn Majah, hadis no. 781; Ahmad, hadis no. 4441, 5080, 5518, 5651 dan 6166; Malik, hadis no. 264.

male to pray in the mosque. A Muslim who obeys the rules of the religion, he would implement the rules properly. In order to comply with the rules of the religion, male transgender individuals will pray in the mosque. Yet a transgender will have difficulty in reaching such virtue. Transgender person will be looked as a strange when joining a collective worship in public space. Some people will not allow them to join in a majority group. They think that transgender person has a confuse gender. As a man, he does not feel fit with his gender. He feels comfortable to be a woman. Therefore, transgender person cannot easily to be received in a group of neither man nor woman.

As a religious people, Muslim Transgender finds difficulty to practice her religion, especially in the public sphere. Based on the constitution for human rights, everyone has a right to express his or her religion. It should apply to everybody including the transgender group. However, this community cannot unreservedly observe it. As described by SRH, an Indonesian Muslim transgender that at the beginning of her stage to recognize her gender identity, she frequently obtained dilemma in practicing a spiritual rite in a communal area¹⁰³.

Non-discrimination, non-violence, and equal protection of the law are critical for the well-being of all people in ASEAN countries including lesbian, gay bisexual, and transgender people.¹⁰⁴ The principal of heteronormative that constructs in the mind of the society marginalizes this community to get any access for their rights. They are difficult to find jobs, education, social and religious recognition.

Conclusion

Male Muslim transgender as a group of minorities in Islamic society usually will find some difficulties in expressing religion. They always receive some discriminations, violations, rejections, and marginalization. Therefore, they usually find difficulties in their lives. Their difficult lives are not only affecting their economic and social life, but also their religious lives. By empowering the economics of male Muslim transgender individuals, it can increase their spiritual lives. Although they get some difficulties in expressing religion in the public sphere, their life existences will be supported by their economic stabilities. Therefore, it is important to increase the economic life of Muslim transgender to be a more religious person in society. A transgender individual is a human being. As a human, she has a right to express her religion. Therefore, Indonesian society should provide transgender group a free place to practice their religion.

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¹⁰³ Shuniya Ruhama Habiballah, *Jangan Lepas Jilbabku: Catatan Harian Seorang Waria*. Yogyakarta: Galang Press, 2005).

¹⁰⁴ Ging Cristobal, "On the Exclusion of Sexual Orientation Gender Identity (SOGI) Non-discrimination in the ASEAN Human Rights Declaration," <http://www.iglhr.org/press-room/press-releases/exclusion-sexual-orientation-gender-identity-sogi>, (June 15, 2014).

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STANDAR PENULISAN ARTIKEL MUSAWA

NO	BAGIAN	STANDAR PENULISAN
1.	Judul	<ol style="list-style-type: none"> 1) Ditulis dengan huruf kapital. 2) Dicitak tebal (bold).
2.	Penulis	<ol style="list-style-type: none"> 1) Nama penulis dicetak tebal (bold), tidak dengan huruf besar. 2) Dilengkapi dengan identitas penulis (nama instansi dan email penulis) Contoh : Inayah Rohmaniyah UIN Sunan Kalijaga Yogyakarta rochmaniyah@yahoo.com
3.	Heading	<p>Penulisan Sub Judul ataupun sub-sub judul tidak menggunakan abjad ataupun angka. Contoh:</p> <p>Pendahuluan Sejarah Pondok Pesantren... Lokasi Geografis (dst).</p>
4.	Abstrak	<ol style="list-style-type: none"> 1) Bagian Abstrak tidak masuk dalam sistematika A, B, C, dst. 2) Tulisan Abstrak (Indonesia) atau Abstract (Inggris) atau ملخص (Arab) dicetak tebal (bold), tidak dengan huruf besar. 3) Panjang abstrak (satu bahasa) tidak boleh lebih dari 1 halaman jurnal (maksimal 250 kata)
5.	Body Teks	<ol style="list-style-type: none"> 1) Teks diketik 1,5 spasi, 5.000 – 10.000 kata, dengan ukuran kertas A4. 2) Kutipan langsung yang lebih dari 3 baris diketik 1 spasi. 3) Istilah asing (selain bahasa artikel) dicetak miring (<i>italic</i>). 4) Penulisan transliterasi sesuai dengan pedoman transliterasi jurnal Musāwa.
6.	Footnote	<ol style="list-style-type: none"> 1) Penulisan: Pengarang, <i>Judul</i> (Kota: Penerbit, tahun), hlm. Contoh: Ira M. Lapidus, <i>Sejarah Sosial Ummat Islam</i>, terj. Ghufroon A. Mas'udi (Jakarta: PT. Raja Grafindo Persada, 1988), 750. 2) Semua judul buku, dan nama media massa dicetak miring (<i>italic</i>). 3) Judul artikel ditulis dengan tanda kutip ("judul artikel") dan tidak miring. 4) Tidak menggunakan <i>Ibid</i>, <i>Op. Cit</i> dan <i>Loc. Cit</i>. 5) Pengulangan referensi (<i>footnote</i>) ditulis dengan cara: Satu kata dari nama penulis, 1-3 kata judul, nomor halaman. Contoh: Lapidus, <i>Sejarah sosial</i>, 170. 6) Setelah nomor halaman diberi tanda titik. 7) Diketik 1 spasi.

7.	Bibliografi	<ol style="list-style-type: none"> 1) Setiap artikel harus ada bibliografi dan diletakkan secara terpisah dari halaman body-teks. 2) Kata DAFTAR PUSTAKA (Indonesia), REFERENCES (Inggris), atau مصادر (Arab) ditulis dengan huruf besar dan cetak tebal (bold). 3) Contoh penulisan: Lapidus, Ira M., <i>Sejarah Sosial Ummat Islam</i>, terj. Ghufron A.M., Jakarta: PT. Raja Grafindo Persada, 1988. 4) Diurutkan sesuai dengan urutan alfabet.
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PEDOMAN TRANSLITERASI

Transliterasi Arab-Latin yang digunakan dalam tulisan berbahasa Inggris pada Jurnal *Musāwa* ini adalah literasi model L.C. (*Library of Congress*). Untuk tulisan berbahasa Indonesia, memakai model L.C. dengan beberapa modifikasi.

A. Transliterasi Model L.C.

ح = ḥ	ج = j	ث = th	ت = t	ب = b	ا = -
س = s	ز = z	ر = r	ذ = dh	د = d	خ = kh
ع = ‘	ظ = ḡ	ط = ṭ	ض = ḍ	ص = ṣ	ش = sh
م = m	ل = l	ك = k	ق = q	ف = f	غ = gh
	ي = y	ء = ‘	ه = h	و = w	ن = n

Pendek a = i = u =

Panjang ā = ū = ī =

Diftong ay = aw =

Panjang dengan *tashdid* : iyy = ; uww =

Ta’marbūtah ditransliterasikan dengan “h” seperti *ahliyyah* = أهلية atau tanpa “h”, seperti *kulliyya* = كلية ; dengan “t” dalam sebuah frasa (*contract phrase*), misalnya *surat al-Ma’idah* sebagaimana bacaannya dan dicetak miring. Contoh, *dhālika-lkitābu la rayba fih* bukan *dhālika al-kitāb la rayb fih*, *yā ayyuhannās* bukan *yā ayyuha al-nās*, dan seterusnya.

B. Modifikasi (Untuk tulisan Berbahasa Indonesia)

1. Nama orang ditulis biasa dan diindonesiakan tanpa transliterasi. Contoh: As-Syafi’i bukan al-Syāfi’i, dicetak biasa, bukan *italic*.
2. Nama kota sama dengan no. 1. Contoh, Madinah bukan Madīnah; Miṣra menjadi Mesir, Qāhirah menjadi Kairo, Baghdād menjadi Baghdad, dan lain-lain.
3. Istilah asing yang belum masuk ke dalam Bahasa Indonesia, ditulis seperti aslinya dan dicetak miring (*italic*), bukan garis bawah (*underline*). Contoh: ...*al-qawā’id al-fiqhiyyah*; *Isyrāqiyyah*; *‘urwah al-wusqā*, dan lain sebagainya. Sedangkan istilah asing yang sudah populer dan masuk ke dalam Bahasa Indonesia, ditulis biasa, tanpa transliterasi. Contoh: Al-Qur’an bukan Al-Qur’ān; Al-Hadis bukan al-Hadīth; Iluminatif bukan illuminatif, perenial bukan perennial, dll.
4. Judul buku ditulis seperti aslinya dan dicetak miring. Huruf pertama pada awal kata dari judul buku tersebut menggunakan huruf kapital, kecuali *al-* yang ada di tengah. Contoh: *Ihyā ‘Ulūm al-Dīn*.

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