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The Implementation of MUI's Fatwa on the Position of Transgender Individuals, Gender Reassignment Surgery and Genital Refinement

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Abstract

This research describes the implementation of the fatwa issued by the Indonesian Council of Ulama (MUI) regarding the position of transgender individuals, gender reassignment surgery, and genital perfection in Pangkep regency, South Sulawesi, Indonesia. The research employs a qualitative methodology through interviews and a literature review. The research results show the implementation of the MUI fatwa on the position of transgender individuals is hindered by several factors. Firstly, the recognition of human rights as regulated in the law emphasizes that basic human rights and freedoms are inherent rights that should be protected, respected, and upheld for the improvement of human dignity, welfare, happiness, intelligence, and justice. Secondly, the MUI fatwa is not legally binding in the concept of the Indonesian state. Thirdly, the fatwa cannot be fully implemented in areas where transgender individuals are recognized. The researchers concluded that the implementation of genital perfection provides legal status for transgender individuals with dual genders or genital anomalies.

Keywords: Fatwa; Transgender; Implementation; Gender Reassignment Surgery; Genital Perfection



الملخص

تتحدث هذه الدراسة عن تنفيذ الفتوى التي أصدرها مجلس علماء إندونيسيا (MUI) بشأن موقف الأفراد المتحولين جنسياً، وجراحة إعادة تعيين الجنس، والكمال الجنسي في منطقة بانكيب بجنوب سولاويسي. وتعتمد الدراسة منهجيةً نوعيةً من خلال المقابلات ومراجعة المكتبية. وتشير النتائج إلى أن تنفيذ فتوى MUI بشأن موقف الأفراد المتحولين جنسياً يتعرض لعدة عوامل عائقة، فأولاً، فإن اعتراف حقوق الإنسان التي تنظمها القانون تشدد على أن حقوق الإنسان الأساسية والحريات هي حقوق متأصلة يجب حمايتها واحترامها وتعزيزها لتحسين الكرامة والرفاهية والسعادة والذكاء والعدالة الإنسانية. ثانياً، فإن فتوى MUI ليست ملزمة قانوناً في مفهوم الدولة الإندونيسية. وثالثاً، فإن الفتوى لا يمكن تنفيذها بالكامل في المناطق التي تم الاعتراف فيها بالأفراد المتحولين جنسياً. ويتصل تنفيذ الفتوى المتعلقة بجراحة إعادة تعيين الجنس والكمال الجنسي بالإرث والزواج والنسب والعبادة. حيث يحق للأفراد المتحولين جنسياً الذين يخضعون لجراحة إعادة تعيين الجنس الحصول على حقوق الإرث وفقاً لجنسهم قبل الجراحة، في حين يحق لأولئك الذين يخضعون للكمال الجنسي الحصول على حقوق الإرث وفقاً لجنسهم بعد الجراحة. الأفراد الذين يخضعون لجراحة تحويل الجنس والتبديل الجنسي لا يسمح لهم بالزواج من الجنس الآخر، ويعتبر زواجهم معادلاً لزواج المثليين. الأفراد الذين يخضعون لتحسين الأعضاء التناسلية يمكنهم الزواج من أي شخص ينتمي إلى الجنس الذي ينتمي إليه بعد العملية. أما أطفال الأفراد الذين يخضعون لتحسين الأعضاء التناسلية، فيتبعون نسب أبهم. ينبغي للأفراد الذين يخضعون لجراحة تحويل الجنس العبادة وفقاً لجنسهم قبل الجراحة، في حين يجب على الأفراد الذين يخضعون لتحسين الأعضاء التناسلية العبادة وفقاً لجنسهم بعد الجراحة. وفي الختام، يوفر تنفيذ تحسين الأعضاء التناسلية الوضع القانوني للأفراد ذوي الجنس المزدوج أو التشوهات الجنسية.

مفتاح البحث: فتوى; MUI المتحولون جنسيًا; جراحة إعادة تعيين الجنس;
الكمال الجنسي; حقوق الإنسان

Abstrak

Penelitian ini menjelaskan tentang implementasi fatwa MUI tentang kedudukan *Waria*, operasi perubahan dan penyempurnaan kelamin di kabupaten Pangkep Sulawesi Selatan, Indonesia. Penelitian ini menggunakan metode kualitatif melalui wawancara dan kajian pustaka. Hasil penelitian menunjukkan bahwa implementasi fatwa MUI mengenai kedudukan individu transgender terkendala oleh beberapa faktor. Pertama, ada pengakuan hak asasi manusia yang diatur dalam Undang-Undang yang menegaskan bahwa hak asasi manusia dan kebebasan dasar adalah hak kodrati yang melekat pada manusia dan harus dilindungi, dihormati, dan ditegakkan demi peningkatan martabat kemanusiaan, kesejahteraan, kebahagiaan, kecerdasan, dan keadilan. Kedua, fatwa MUI tidak mengikat secara hukum dalam konsep negara Indonesia. Ketiga, fatwa tersebut tidak dapat sepenuhnya diterapkan di daerah di mana individu transgender diakui. Peneliti menyimpulkan bahwa implementasi operasi perbaikan kelamin memberikan status hukum bagi individu transgender dengan jenis kelamin ganda atau kelainan organ kelamin.

Kata Kunci: Fatwa; Implementasi; Transgender; Perbaikan Kelamin; Operasi Kelamin

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A. Introduction

Essentially, humans were created by God with two distinct genders: male and female. It is beyond the capacity of any being, no matter their level of knowledge, to alter a person's gender from male to female or vice versa. This is not within their realm of responsibility. The ability to perform such a feat lies solely in the hands of God.¹

In reality, there are cases of intersex, where individuals may physically appear as male or female but have a consistent desire to behave in ways that are atypical for their biological gender. These individuals are referred to as transsexual or transgender, with examples including individuals who identify as the opposite gender from their

¹ Al-Ikhlas Syamsuir Yusuf, Sayid bin Ahmad Abu, *Kumpulan Fatwa Kesehatan Wanita*, ed. by Team Editor Gazzamedia, Cet. 1 (Semarang: Gazzamedia, 2009).

biological sex.² It has been argued that while some religious perspectives forbid the orientation, society insists on caviling at anyone committing it.³ Some individuals may also have congenital abnormalities, such as having both male and female genitalia, which may make it difficult to determine their actual gender. This condition is also referred to as transgender.⁴

Transsexualism or transgenderism is a condition where individuals feel a sense of dissatisfaction due to the lack of alignment between their physical appearance and gender identity, or dissatisfaction with their genitalia. This condition can be expressed through various means, including appearance, makeup, and behavior, and may even result in sex reassignment surgery. The DSM–III (Criteria for Gender Dysphoria) refers to this condition as gender dysphoria syndrome, and it is further classified into subtypes such as transsexual, homosexual, and heterosexual.⁵

Advancements in technology and medical science have enabled individuals to undergo gender reassignment surgery, also known as sex reassignment surgery or genital reconstruction surgery. This procedure alters a person's sexual structure, including their appearance and function, from male to female or vice versa. Transgender individuals undergo this surgery as a treatment for gender dysphoria, a condition that causes dissatisfaction with their biological gender, to transition to their preferred gender.

The issue of gender reassignment and genital perfection surgeries is closely related to the changing of Allah SWT's creation and has legal consequences in Islamic law. As a result, the Indonesian Council of Ulama (MUI) has shown concern and issued a special fatwa on October 11, 1997, specifically addressing the position of *Waria* and gender reassignment and genital perfection surgeries.

B. Research Method

The research method employed in this study is qualitative. Qualitative research is used to explore natural phenomena where the researcher serves as the primary instrument. Additionally, data are triangulated, analysis is inductive, and results focus on understanding meaning rather than generalization. Data collection in

² (Purwawidyana, 1989 via Netti, 2022)

³ Warda Silwana Hikmah, Hasnan Bachtiar, and Kukuh Dwi Kurniawan, 'Bisexual Orientation, Divorce, and Islamic Law in Indonesia: Legal Standing and Arguments', *Ahkam: Jurnal Ilmu Syariah*, 22.1 (2022), 137–60 <<https://doi.org/10.15408/ajis.v22i1.25791>>.

⁴ Abu Dzarrin Al-Hamidy, 'Tinjauan Hukum Internasional HAM Dan Hukum Islam Terhadap LGBT Perspektif Human Dignity Mashood A. Baderin', *ISLAMICA: Jurnal Studi Keislaman*, 10.1 (2016) <<https://doi.org/10.15642/islamica.2015.10.1.198-221>>.

⁵ Setiawan Budi Utomo, *Fiqih Aktual: Jawaban Tuntas Masalah Kontemporer*, ed. by Abu Hanifah (Gema Insani Press, 2003).

qualitative research typically involves observation and interviews, with the researcher playing a crucial role in the collection process.

For this study, data were collected through interviews, observation, document analysis, and library research. Two categories of data were used for analysis: printed materials (bibliography) and human resources (respondents). The respondents for the interviews were purposefully selected using purposive sampling. The study interviewed some public figures with relevant knowledge of the research topic.

The research took place in Pangkajene and Kepulauan (Pangkep) Regency, South Sulawesi, Indonesia which was chosen due to its relevance to the research topic on "The Implementation of the Indonesian Ulama Council's Fatwa on the Position of *Waria*, Gender Reassignment and Improvement Surgery". Pangkep Regency was selected because it is home to the *Bissu* community, which is recognized by the local government and community as a cultural icon both nationally and internationally.

C. Theoretical Framework

1. The Concept of *Waria* in the Perspective of Islam

The definition of *Waria* in Islam is subject to varying interpretations among the Islamic Scholar. According to Islamic jurisprudence, *Waria* is classified into two categories: gender identity (*Khuntsa*) and behavioral identity (*Mukhanast*). Gender identity is conferred by society based on one's biological sex, whereas behavioral identity is determined by one's conduct and behavior in society.

According to the ulama, there are two types of *Al-Mukhonats*. The first type is those who are naturally created in that state and do not feel the need to behave, dress, speak, or move like women. This is their natural disposition, and they are not subject to any criticism or punishment. The second type is those who try to behave and present themselves like women, despite their natural disposition being different. This is considered reprehensible, and there is a valid hadith that mentions a curse against them.⁶

In Islam, only two genders are recognized: male and female. Islamic jurisprudence (*fiqh*) also acknowledges the existence of *khuntsa* as a form of abnormality or deviation. *Khuntsa* is classified into two types: *khuntsa musykil* and *ghairu musykil*. *Khuntsa musykil* is a type of *khuntsa* where determining its gender is challenging due to its physical characteristics not indicating a specific gender. On the other hand, *khuntsa ghairu musykil* is a type of *khuntsa* where determining its gender is not difficult because it is based on dominant physical characteristics such as male

⁶ Imam An-Nawawi, 'Syarah Shahih Muslim', *Angewandte Chemie International Edition*, 6(11), 951–952., 1967.

and female genitalia, facial hair, sperm, and seminal vesicles. For the latter type, it is clear whether the individual is male or not.

Among the scholars of Islamic jurisprudence, *Waria* is referred to as *khuntsa*, which means a person who has different or no clear gender identities.⁷ If the *khuntsa* shows more indications of leaning towards one gender or the other, they are called *khunsa ghairu musykil*. For example, if in addition to having both male and female genitalia, the *khuntsa* urinates through their penis and has facial hair or other male-specific characteristics, they are categorized as "male". Conversely, if the *khuntsa* urinates through their vagina and has breasts or other female-specific characteristics, they are categorized as "female".⁸

Based on the explanation above, the researchers concluded that "*Waria*", which is an abbreviation for "wanita-pria" or "banci", "bencong", or "wadam" (derived from "hawa" and "adam"), has similarities in terminology with what is referred to in Arabic as "Al-Mukhonats". Al-Mukhonats refers to individuals who were created by Allah SWT as males without any inherent abnormalities at birth. However, as they grow older, their soul gradually changes and influences their behavior, speech, and appearance, making them appear as though they are women. In other words, their female soul is trapped within their male physical body. On the other hand, "intersex" or "ambiguous genitalia" in medical terms, which is referred to as "Khuntsa" in Arabic, is a rare condition where the appearance of the genitalia of a newborn baby is unclear, whether they are male or female. This is influenced by developmental disorders of the sexual organs. Therefore, there is a substantive difference between "*Waria*" or "Al-Mukhonats" and "intersex" or "ambiguous genitalia" in Arabic, which is "Khuntsa". "*Waria*" is a disturbed soul rather than disturbed sexual organs, whereas "intersex" or "ambiguous genitalia" in Arabic, which is "Khuntsa", is a sexual organ disorder since birth, making it difficult to determine whether they are male or female.

Discussion on *Khuntsâ*, according to *fuqaha* (Islamic jurists) has no relation to individuals who engage in deviant behavior. This is because the fact of *Khuntsâ* is related to the natural disposition, fate, and nature predetermined by Allah SWT for someone. Therefore, regarding the issue of *Khuntsâ*, there is no discussion about its prohibition, curse, or punishment. This is truly a matter of nature, fate, and predetermined nature by Allah SWT for someone. It is something that cannot be chosen by an individual. On the other hand, there is no difference of opinion among *fiqh* scholars about the prohibition status of *Mukhannats*. This is based on the hadiths

⁷ المواريث في الشريعة الإسلامية, حسنين محمد مخلوف.

⁸ Hasan Ali, *Masail Fiqhiyah, Haji Masagung*, 3rd edn (Jakarta: Haji Masagung, 1992).

of the Prophet Muhammad (peace be upon him) that clearly curse the practice of Mukhannats.⁹

In this context, there is no room for *ijtihad* (independent reasoning) or justification of such deviant behavior. What Islam does to them is to prohibit deviant behavior, punish the perpetrators with *ta'zir* (discretionary punishment), and form and cure them from such deviation, not to tolerate, let alone justify it. As for transgender individuals who have undergone gender reassignment surgery to become male, they are categorized as practicing homosexuality, because their male nature cannot be changed by a doctor, even if they have female genitalia. Therefore, the punishment imposed is the same as that for homosexuals and lesbians.¹⁰

In homosexual and lesbian sexual relationships, each individual remains in their original gender, with one person playing the role of husband and the other as wife. However, in a relationship where one has undergone gender reassignment surgery, it appears outwardly (to the naked eye) that one is female and the other is male, but they originate from the same gender. This is why scholars prohibit it, as it is fundamentally a sexual relationship between individuals of the same gender. The Quran opposes such acts because they are considered shameful (*al-fâhisyah*) and must be avoided.¹¹

2. Gender Reassignment Surgery in Islam

There are three different categories of gender reassignment surgeries within the medical profession. The first category is corrective or perfection surgeries, which are conducted on individuals who have been born with genital abnormalities such as a non-penetrating penis or vagina. The second category involves the removal of one of the dual genitalia and is performed on individuals who are born with two types of genitalia (penis and vagina). The third category pertains to gender reassignment surgeries that are carried out on individuals who have been born with normal genitalia.¹²

Genital repair or refinement surgery is permissible as they fall under the category of medical treatment. As human beings are inherently perfect, if any part of their body is found to be abnormal or dysfunctional, such as a non-perforated vagina or a non-perforated penis that prevents urination, it is permissible for them to undergo

⁹ Acep Jurjani, 'Transgender dalam Perspektif Hukum Pidana Islam', 2016, 1–166.

¹⁰ Jurjani.

¹¹ Jurjani.

¹² Fatimah Halim, 'Waria Dan Operasi Kelamin', *Ar-Risalah*, 11.1 (2011), 299–308.

genital repair surgery to enable that particular organ to function properly, similar to the others.¹³

Dual Sex Surgery, This surgery involves the removal of one of the dual genitals in individuals who are born with both male and female genitalia. Such individuals are medically referred to as having "ambiguous genitalia," meaning uncertain genitalia. They do not suffer from "transsexuality," but rather tend towards "intersexuality," which is a disorder in which the individual has genetic, anatomical, or physiological features that are uncertain between male and female. Symptoms vary widely, and the outward appearance may be that of a normal male or female, but the genitalia remain uncertain as to whether the individual is male or female. Individuals with this condition are truly physically ill, which then affects their psychological condition. Therefore, surgery on individuals with dual genitalia is permissible, provided that their status is clear as either male or female through the means described above and is supported by statements from expert and trustworthy doctors.¹⁴

The Hadith indicates that in Islam, a man or woman with a normal gender is prohibited from altering their gender (gender reassignment surgery) because it constitutes changing Allah's creation without justifiable cause. Similarly, a man or woman who is born with a normal gender but, due to their environment, develops a disorder such as a tendency towards cross-dressing and behaving opposite to their biological sex (transvestism), is also prohibited from changing their gender even if they suffer from a gender disorder. This is because, in essence, their gender and sexual organs are normal, but their psyche is not. Therefore, mental health efforts must be pursued through religious and psychological approaches.

3. MUI's Fatwa about Genital Surgery in Islam

The fatwa issued by collective *ijtihad* is enforced by the practice of *shūrā* among the competent muftis, experts, and academics.¹⁵ Fatwa is a response from the community of Muslim scholars to issues or social phenomena faced by society.¹⁶ The clarity of fatwa law is crucial for the predominantly Muslim population in this country. Regarding the position of the transgender community, the Indonesian Ulama Council (MUI) issued a fatwa on 9 Jumadil Akhir 1418 H, which corresponds to October 11, 1997. Additionally, regarding Gender Reassignment/Improvement Surgery, MUI issued a fatwa on 12 Rajab 1400 H, which corresponds to June 1, 1980.

¹³ Ahmad Zain An Najah, *Halal Dan Haram Dalam Pengobatan* (Jakarta: Puskafi, 2011).

¹⁴ Najah.

¹⁵ Abdul Manan Ismail and Ahmad Syukran Baharuddin, 'Moderation in Fatwas and Ijtihad: An Analysis of Fatwas Issued by the MKI Malaysia Concerning the Covid-19 Pandemic', *Ahkam: Jurnal Ilmu Syariah*, 22.1 (2022), 111–36 <<https://doi.org/10.15408/ajis.v22i1.22299>>.

¹⁶ Amir Syarifuddin, 'Ushul Fiqhi, Jilid II', (Prenada Media, 2017).

a. MUI fatwa on *Waria* (9 Jumadil Akhir 1418 H/11 October 1997)

In the MUI fatwa on *Waria*, the participants in the session provided a definition that distinguishes between *Waria* and *Khunsa*. *Waria* is a man who intentionally behaves like a woman. Therefore, *Waria* is not *Khunsa* as referred to in Islamic law, while *Khunsa* is a person who has both male and female genitalia or does not have any genitalia at all.¹⁷

The consideration of MUI as mentioned in the legal basis of its fatwa is based on a Hadith of the Prophet Muhammad SAW, which states that it is forbidden and prohibited by religion for a man to behave and appear as a woman (intentionally), and vice versa.¹⁸

Thus, regarding *Waria*, MUI asserts in its fatwa as follows:¹⁹

- 1) That *Waria* are men and cannot be regarded as a separate gender (sex) group.
- 2) All deviant behavior of *Waria* is forbidden (haram) and efforts should be made to restore them to their original state.

MUI's recommendation to the Indonesian Government in this regard is for the Ministry of Health and the Ministry of Social Affairs to provide guidance to *Waria* individuals to become "normal" people, with the inclusion of psychologists. Additionally, the Ministry of Home Affairs and related agencies should dissolve *Waria* organizations.²⁰

b. MUI's Fatwa on Gender Reassignment Surgery (12 Rajab 1400 H/1 June 1980)

The MUI fatwa on Gender Change Surgery (12 Rajab 1400 H/1 June 1980) was established during the second national assembly in 1980, which decided that:

- 1) Changing one's gender from male to female or vice versa is considered haram (forbidden), as it is contrary to the Qur'an's Surah An-Nisa' verse 19 and against the soul of Syara'. The relevant Quranic verse states, "Perhaps you dislike a thing and it is good for you; and perhaps you love a thing and it is bad for you. And Allah Knows, while you know not." (QS. An-Nisa'[4]: 10).
- 2) The legal status of a person whose gender has been changed is the same as their original gender before undergoing the surgery.
- 3) A *khunsa* (hermaphrodite) with clearer male characteristics may undergo gender confirmation surgery to become fully male. Similarly, a *khunsa* with clearer

¹⁷ MUI, 'Kedudukan Waria', *Himpunan Fatwa MUI*, 1997, 356–58.

¹⁸ MUI.

¹⁹ MUI.

²⁰ MUI.

female characteristics may undergo surgery to become fully female, and the ruling becomes positive (male).²¹

D. Results and Discussion

1. Bissu in Pangkep Regency South Sulawesi

The Population of Pangkep Regency is mostly composed of the Bugis ethnic group. Bugis culture is one of the local cultures in Indonesia and it is predominant in South Sulawesi,²² which possesses many unique traits not found in other ethnic groups. Since the ancient times, the Buginese people have migrated through the oceans (maritime). Buginese sailors struggle to conquer the ferocious waves in the sea for the sake of carrying out trades and fishing. As we know that one of their main livelihoods is fishing in the sea besides farming.²³ One of the unique traditions of the Bugis people is the pre-Islamic tradition that continues to exist until today, which is the existence of *Bissu*.²⁴ The special characteristic of *Bissu* is its gender specification, which does not fall under the category of male or female. In the Bugis language, *Bissu* means holy person, which originates from the word "bessi" or holy. It is said that *Bissu* is holy because they do not menstruate, have breasts, or bleed.²⁵

According to the testimony of Puang Matoang *Bissu* Sigeri²⁶, *Bissu* in the Bugis language is referred to as "urane majjiwa makkunrai, tengurane toi temmakkunrai toi (translate: the male with a female soul cannot be referred to as either male or female)" or also called "calabai"²⁷, who work as artists in Bugis traditional ritual activities. In Bugis tradition, *Bissu* is considered as a

²¹ Majelis Ulama Indonesia, 'Fatwa Operasi Perubahan/Penyempurnaan Kelamin', *Himpunan Fatwa MUI*, 1980, 561.

²² Zulkhaeriyah Zulkhaeriyah, 'The Discursive Interaction Between Representative Man and Woman in Mappettu Ada Marriage Proposal in Buginese Society (a Semiotic Approach)', *Jurnal Adabiyah*, 18.1 (2018), 17–30 <<https://doi.org/10.24252/jad.v17i118i1a2>>.

²³ Nahdhiyah Nahdhiyah and Syahrini Junaid, 'A STUDY OF AL-QUR'AN TOWARDS ENVIRONMENTAL ISSUES OF BUGINESE ELONG-ELONG (ECOCRITICAL APPROACH)', *Jurnal Adabiyah*, 21.1 (2021), 234 <<https://doi.org/10.24252/jad.v21i1a11>>.

²⁴ Muhammad Yusuf Syafrul, 'Peran Etnis Bissu Dalam Masyarakat Bugis Di Segeri Kabupaten Pangkep'.

²⁵ Muh. Said, 'Peran Bissu Pada Masyarakat Bugis', *Seminar Nasional*, 2016, 71.

²⁶ The Puang Matoang is the highest position of Bissu

²⁷ In Bugis language, "calabai" refers to a male person who plays the role of a female. However, not all calabai can be appointed as Bissu. Calabai who are appointed as Bissu must meet 13 criteria and undergo customary processions to be appointed as Bissu.

“Pendeta=priest”²⁸ who also holds the highest position as the king's advisor and spokesperson to the community. In addition to their role as the king's advisor, *Bissu* is also believed to be able to heal various illnesses known as "Sanro" or traditional healer in Bugis terminology.²⁹

Furthermore, Puang Matoang explained that *Bissu* is the most important part of the glory of the kingdoms in South Sulawesi, because *Bissu* is a person who is considered sacred and able to communicate with deities through traditional ceremonies. In addition, *Bissu* also serves as a guardian of oral literature in the La Galigo epic. *Bissu* spread to three major kingdoms, namely the Hone kingdom, the Luwu kingdom, and the Gowa kingdom, where the role of *Bissu* is to organize all matters related to traditional ceremonies.

According to the belief of the Bugis people, *Bissu* has been present since the birth of the Bugis ethnic group. In the I La Galigo epic, it is mentioned that the existence of *Bissu* is related to the legendary story of Batara Guru, who was the originator of the Bugis people, descending from the "upper world" (botinglangi) to the earth or lower world (bori'liung) to meet his wife, We Nyili Timo. When Batara Guru descended to earth, he was accompanied by a *Bissu* named Lae-lae. This *Bissu* helped Batara Guru to organize life on earth. With the help of *Bissu*, rules, norms, and ethics of society were created on earth. In addition, language, cultural works, and traditions were also created as a result of community activities.³⁰

In Bugis cultural structure, the role of *Bissu* is considered extraordinary because in daily life it is regarded as the only communication operator between humans and deities through traditional ritual ceremonies using the language of the gods or heaven (Basa Torilangi), therefore *Bissu* also plays a crucial role as the keeper of the oral tradition of ancient Bugis literature Sure' La Galigo. *Bissu* also plays a role in organizing all traditional ceremonies, such as pregnancy, birth, marriage, death, release of vows, offerings, protection from harm, and so on.³¹

The existence of *Bissu* is considered phenomenal considering their controversial presence in modern Bugis society, which is predominantly Islamic. Due to their ambivalent existence, *Bissu* are deemed to be not accepting the sunnatullah, as they are physically male but present themselves as female (transvestites).³² Moreover,

²⁸ "Pendeta" is a term used to refer to a person considered to be holy and able to communicate with deities through traditional ceremonies. In addition, *Bissu* is also the guardian of oral literature in the La Galigo tradition.

²⁹ Interview with Puang Matoang *Bissu* of Pangkejene and Kepulauan, held in Sigeri subdistrict on April 28, 2022.

³⁰ Muhammad Yusuf Syafrul.

³¹ Muhammad Yusuf Syafrul.

³² Muh. Said.

they are considered deviant from religion due to their tendency to believe that arajang and mustika arajang have mystical powers from ancestors (animism). However, according to *Bissu* themselves, they are actually worshipping God through their ritual practices, despite their beliefs being different from mainstream Islamic teachings.

2. Implementation of MUI Fatwa regarding the position of transgender people

Generally, The term “*Waria*” are males who have normal and complete male genitalia but have a feminine appearance or behavior. Thus, *Waria* are different from *khunsa*, because *Waria* experience psychological disorders that cause them to have a female appearance, while *khunsa* have physical abnormalities in their genitalia, whether male or female. The existence of *Waria* raises various social and legal problems that require special attention from all parties, including the government, religious leaders, community leaders, and the public. Especially in terms of social issues, if *Waria* are left unchecked, the problems that may arise include same-sex sexual activity, which can lead to sexually transmitted infections, including HIV/AIDS, the corruption of young generations who associate with *Waria*, which can affect their mental health and lead them to become *Waria* themselves.

In the Fatwa issued by MUI, the definition of *Waria* distinguishes it from *Khunsa*. *Waria* is a male person who intentionally behaves like a woman, and therefore is not considered *Khunsa* as defined in Islamic law. *Khunsa*, on the other hand, is a person who has both male and female genitalia or does not have any genitalia at all.

The implementation of the MUI fatwa regarding the status of *Waria* has not been fully realized as expected. This proves that the Indonesian Muslim community in general still disregards the MUI fatwa. The existence of *Waria* or the *Bissu* group in Pangkep is acknowledged by the Chairman of MUI Pangkep, H. Abubakar Sapa. He expressed concern that if *Waria* are left unaddressed, it could lead to a disaster in society. According to him, *Waria* should not be shunned, but instead, they should be embraced and preached to so that they may return to their nature as men. He stated that his efforts to preach to *Waria* have been successful, and with the permission of Allah SWT, some of the *Waria* he preached to have returned to being normal men and have even married. Regarding the *Bissu* in Pangkep, he stated that it is challenging to eliminate them as they have become part of the local customs and are also recognized by the local government.³³

H. Abubakar Sapa further stated that the non-implementation of the MUI fatwa in Pangkep is influenced by several factors, including:

- a. Poor socialization of the MUI fatwa to the general public and specifically to the *Waria* community.

³³ Interview with the Chairman of MUI Pangkep, Mr. H. Abubakar Sapa, on April 27, 2022.

- b. *Bissu*, who are also *Waria*, is an icon of the Pangkep community's customs that has gained national and international recognition.

Hapak Muhammad Arif Arfa, a preacher, presented an interesting fact that there are *Waria* who have entered into same-sex marriage in Kabupaten Pangkep, and both the community and MUI are aware of the issue, but no preventive measures have been taken by the society, government, or MUI.³⁴

Regarding *Waria* and same-sex marriage in Kabupaten Pangkep, the Head of the Ministry of Religious Affairs in Pangkep, H. Muhammad Nur Halik, acknowledged that he only recently learned about the same-sex marriage. He admitted that there are *Waria* communities in the region, but their numbers are relatively small. Furthermore, he stated that the Ministry of Religious Affairs in Kabupaten Pangkep has not yet made any efforts to provide guidance for *Waria* as there have been no complaints or concerns raised by the community that would require their intervention.³⁵

The issue of *Waria* in current society has become a common and natural thing. Deviant behavior of *Waria* that goes against their nature as men can certainly affect their surrounding environment. According to Mr. Saleh Ridwan, an academician and religious figure in Pangkep, the ineffectiveness of MUI's fatwa is caused by two factors. Firstly, the lack of awareness among the community regarding religious teachings, Islam prohibits men who behave or resemble women and women who behave or resemble men. Even the Prophet Muhammad in his hadith cursed such behavior. Secondly, the position of MUI's fatwa in Indonesia's legal regulations. The position of MUI's fatwa is very weak because it only provides advice to the Muslim community in Indonesia. Thirdly, *Bissu* in Pangkep has become a part of the local customs and traditions recognized by the community and the local government as a cultural heritage that must be preserved.³⁶

³⁴ Interview with Mr. Muh. Arif Arfah, Lc on April 27, 2022.

³⁵ Interview with Mr. H. Muhammad Nur Halik, Head of the Ministry of Religious Affairs of Pangkep Regency, on April 28, 2022 revealed that he had only recently become aware of same-sex marriages involving *waria* in Pangkep. He acknowledged the presence of *waria* communities in the area, but stated that their numbers were relatively small. Furthermore, he stated that the Ministry of Religious Affairs of Pangkep had not yet taken any measures to provide guidance or support to the *waria* community, due to a lack of complaints or concerns raised by the public regarding *waria* that would warrant such action.

³⁶ Interview with Dr. Saleh Ridwan M.Ag, an academic and religious leader in Pangkep Regency, conducted on May 20, 2022.

3. Implementation of MUI Fatwa on Gender Reassignment and Enhancement Surgery

The reality in human life is that there are people who are born with the condition of having both male and female reproductive organs or known as khunsa, which undoubtedly experience legal uncertainty because the law only recognizes two genders, male and female. Therefore, with the implementation of gender reassignment surgery, their gender identity becomes clear, which in turn will facilitate them in carrying out legal actions.

In Pangkep, according to Mr. H. Abubakar Sapa, the Chairman of MUI Pangkep, there was a *Waria* who was born with both male and female genitalia or khunsa. This *Waria* never underwent gender confirmation surgery or genital surgery. It was acknowledged that the individual did not undergo genital surgery due to reluctance and embarrassment about their condition, as well as financial constraints and a lack of understanding about their intersex condition.

Fatwa MUI No. 03 of 2010 on the Change and Refinement of Genital Organs established that intentionally changing genital organs is forbidden, namely changing the genital organs from male to female or vice versa. The legal basis used by MUI in establishing the prohibition of gender reassignment surgery is derived from the Qur'an, Hadith, Istishab, and fiqh principles. The evidence that prohibits gender reassignment surgery for people who are born with normal genitalia is based on the understanding that the creation of men and women by Allah is perfect and must not be changed.

4. Factors Influencing the Implementation of MUI Fatwa on the Status of *Waria* and Gender Reassignment Surgery in Pangkep Regency

Considering the reality that exists in Pangkep, it is certainly influenced by various factors that make it interesting for the researchers to study the supporting factors that cause the implementation of the MUI fatwa regarding the position of *Waria*, gender reassignment surgery, and genital reconstruction in Pangkep regency not to run as expected.

a. The position of MUI Fatwa

The Position of MUI Fatwa on *Waria*, Gender Change, and Genitalia Perfection has been declared for a long time, but unfortunately it has not been implemented effectively as it should be. MUI as a religious organization should be concerned with social phenomena that occur in the midst of society, including the behavior of *Waria*, whose numbers are increasing day by day. The ineffectiveness of this MUI fatwa is due to the position of MUI fatwa that does not have legal binding power in the hierarchy of legislation as regulated in Law Number 12 of 2011 concerning the Formation of Legislation, as amended by Law Number 15 of 2019 concerning Changes to Law Number 12 of 2011 concerning the Formation of Legislation.

The Law Number 12 of 2011 regarding the formation of legislation states that the hierarchy of legislation in the national legal system includes: the Constitution of the Republic of Indonesia Year 1945, Emergency Law/ Government Regulation in Lieu of Law, Government Regulation, Presidential Regulation, Regional Regulation. Regional regulations include: Provincial Regulation, District/City Regulation, and Village Regulation or equivalent. Meanwhile, there are five formal sources of law that apply in Indonesia, including: legislation, custom, jurisprudence (court decisions), treaties, and doctrine.³⁷

Therefore, the fatwa does not have a comprehensive binding effect on the entire Indonesian society. Thus, there will be no coercion in the context of implementing the MUI fatwa for the entire Indonesian community. Even if a person requests a fatwa, there is no obligation for them to follow or carry out the fatwa. It can be said that the enforcement of the fatwa applies specifically to the Muslim community in Indonesia since the legal basis used by the MUI in making the fatwa is sourced from the Quran and the Sunnah of the Prophet. "As is known, the majority of the Indonesian population is Muslim." The orientation of the national legal goals of this country is to protect the lives of all Indonesian citizens without exception. In this regard, the validity of the law still adheres to the diversity of race, religion, ethnicity, and culture that Indonesia possesses. Therefore, the state does not accommodate MUI fatwas into the positive law that applies in Indonesia.

In addition to the non-binding nature of the fatwa, the ineffective implementation of the MUI fatwa on the position of *Waria*, gender reassignment surgery, and genital perfection in Pangkep regency is also attributed to the sensitivity of the ulama, ustadz, or muballig in disseminating this fatwa. This was conveyed in an interview by the Chairman of MUI Pangkep, who acknowledged that not all ulama or ustadz in Pangkep have the same vision and mission to preach to *Waria*, and some even judge *Waria* as cursed or the same as the people of Luth. The reluctance of the ulama to preach to *Waria* will only lead to the growth and flourish of such behavior.

b. The Government Factor

Regarding the ineffectiveness of the MUI fatwa on the position of *Waria* (transgender individuals), gender reassignment surgery and perfection in Pangkep regency, the researchers see one of the factors as the government itself. The researchers argue that the support by the local government for the *Bissu*, who are considered an icon of local culture and given a position in traditional ceremonies and rituals, is a form of legitimizing their existence as a part of the culture that goes against Islamic values.

³⁷ M. Erfan Riadi, 'Kedudukan Fatwa Ditinjau Dari Hukum Islam Dan Hukum Positif (Analisis Yuridis Normatif)', *Ulumuddin: Journal of Islamic Legal Studies*, VI.IV (2010), 468–77 <<https://ejournal.umm.ac.id/index.php/ulum/article/view/1305>>.

According to Mr. H. Drs. Ahmad M.Si, a community leader in the Pangkep, in Bugis mythology, gender is divided into 5 categories: first, male (arowane), second, female (mankunrai), third, male resembling female (calabai), fourth, female resembling male (calalai), and fifth, *Bissu*. Furthermore, Ahmad stated that for calabai and calalai, they need to be directed, while *Bissu* belongs to the cultural realm that has noble values of a region. According to him, regarding the development of the local government, they have collaborated with MUI to develop the transgender community, and the local government has never officially recognized the transgender organization. For example, if there is a festival held by the transgender community, the local government never gives permission, but it is different for *Bissu*. If there is a traditional ceremony or ritual, they are the driving force behind the activity or ritual.

Based on the results of the interview, the researchers see a differentiation in meaning between Calabai or *Waria* and *Bissu*. However, if we refer to the Quranic text, Allah only created male and female, and there are no other genders. Therefore, the researchers see that the allowance of *Bissu* activities by the local government, which the researchers classified as *Waria*, as part of culture or customs, has caused this group to grow and develop until now.

c. Society Factor

In Pangkep regency, whose inhabitants are predominantly religious Muslims, the existence of *Bissu* is acknowledged and many of them work as wedding makeup artists or indo hotting who do bridal makeup for non-mahram women. The presence of *Waria* or *Bissu* is no longer considered as taboo, but has transformed into something ordinary. This acceptance by the community is an indirect recognition of the existence or existence of the *Waria* community. Although there has been a fatwa from MUI regarding the prohibition of *Waria* behavior, if society considers *Waria* to be ordinary and even as people who have certain positions and skills, it will be difficult to return the *Waria* to their natural state as human beings. This is in line with the opinion of Drs. H. Saleh Ridwan, M.Ag, a religious figure and Islamic scholar from Pangkep, who said that the community's awareness of peace is one of the factors that has made this MUI fatwa ineffective as expected.

E. Conclusion

1. According to the fatwa (religious ruling) of the Indonesian Ulama Council (MUI), *Waria* are males who behave like females and have a different khunsa (gender), which means people who have both male and female genitalia or no genitalia at all. In addition, MUI states that gender reassignment surgery for *Waria* is considered haram (forbidden) in Islam, while genital enhancement surgery for khunsa is allowed in Islam.
2. The implementation of the MUI fatwa on the status of *Waria* is constrained because, first, there is recognition of human rights as regulated in Law Number 39

of 1999, where the state upholds human rights and basic human freedoms as natural rights inherent in and inseparable from human beings, which must be protected, respected, and upheld for the advancement of human dignity, welfare, happiness, intelligence, and justice. Second, the MUI fatwa is not a binding and enforceable law in the concept of Indonesian statehood. Third, the MUI fatwa cannot be fully applied because it conflicts with customs in certain areas, such as *Waria/Bissu* (transgender people) who are recognized to exist. The implementation of the MUI fatwa on gender reassignment and genital enhancement surgery has implications for inheritance, marriage, lineage (*nasab*), and worship:

- a. *Waria* who undergo gender reassignment surgery are still entitled to inherit according to their gender before the surgery, either as a male or a female. *Khunsa* who undergo genital enhancement surgery are entitled to inherit according to their gender after the surgery, either as a male or a female.
- b. *Waria* who undergo gender reassignment surgery cannot marry someone of the opposite sex according to their gender after the surgery, and if they do get married, their marriage is considered to be the same as same-sex marriage (*homo*). *Khunsa* who undergo genital enhancement surgery can marry someone of the opposite gender according to their gender after the surgery, either as a male or a female.
- c. If a *khunsa* who undergoes genital enhancement surgery has offspring, the lineage of their child follows the father. The father is entitled to be the guardian in the marriage of their children. *Waria* who undergo gender reassignment surgery generally have difficulty having children.
- d. *Waria* who undergo gender reassignment surgery must adjust their worship according to their gender before the surgery. *Waria* (*transvestites*) who undergo genital enhancement surgery must adjust their worship according to their gender after the surgery, either as a male or a female. Therefore, in its implementation, genital enhancement surgery provides a clear legal status for *banci* (*khunsa*) who have dual gender or genital abnormalities.

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حسنين محمد مخلوف, *المواريث في الشريعة الإسلامية*

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Example in footnotes:

¹Mircea Eliade (ed.), *The Encyclopedia of Religion*, vol. 8 (New York: Simon and Schuster, 1995), h. 18.

²Norman Daniel, *Islam and the West* (Oxford: One World Publications, 1991), h. 190.

³Syeikh Ja’far Subhānī, *Mafāhim Al-Qur’ān* (Beirut: Mu’assasah Al-Tarīkh Al-’Arabī, 2010), Juz 5, h. 231.

⁴Syeikh Ja'far Subhānī, *Maḥāhim Al-Qur'ān*, h. 8-9.

Example in bibliography:

Subhānī, Syeikh Ja'far. *Maḥāhim Al-Qur'ān*. Beirut: Mu'assasah Al-Tarīkh Al-'Arabī, 2010.

Eliade, Mircea (ed.). *The Encyclopedia of Religion*, vol. 8. New York: Simon and Schuster, 1995.

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Detail informations of the footnotes:

1. Holy book

Al-Qur'ān, Al-Baqarah/2: 185.

Perjanjian Baru, Mrk. 2: 18.

2. Qur'anic translation

¹Departemen Agama RI, *al-Qur'an dan Terjemahannya* (Jakarta: Darus Sunnah, 2005), h. 55.

3. Book

¹Muḥammad 'Ajjaj al-Khaṭīb, *Uṣl al-Ḥadīth: 'Ulumuh wa Muṣṭalahuh* (Beirut: Dār al-Fikr, 1989), h. 57.

4. Translation Books

¹Toshihiko Izutsu, *Relasi Tuhan dan Manusia: Pendekatan Semantik terhadap al-Qur'an*, terj. Agus Fahri Husein dkk (Yogyakarta: Tiara Wacana, 2003), h. 14.

5. Voluminous book

¹Muḥammad al-Ṭāhīr b. 'Ashur, *al-Taḥrīr wa al-Tanwīr*, Vol. 25 (Tunisia: Dār al-Suḥūn, 2009), h. 76.

¹Muḥammad b. Ismā'īl al-Bukharī, *al-Jam' al-Ṣaḥīḥ*, Vol. 2 (Beirut: Dar al-Kutub al-'Ilmiyah, 1999), h. 77.

6. Article in book

¹Sahiron Syamsuddin, "Metode Intratekstualitas Muhammad Shahrur dalam Penafsiran al-Qur'an" dalam Abdul Mustaqim dan Sahiron Syamsuddin (eds.), *Studi al-Qur'an Kontemporer: Wacana Baru Berbagai Metodologi Tafsir* (Yogyakarta: Tiara Wacana, 2002), h. 139.

7. Article in encyclopaedia

¹M. Th. Houtsma, "Kufr" dalam A. J. Wensinck, at al. (ed.), *First Encyclopaedia of Islam*, Vol. 6 (Leiden: E.J. Brill, 1987), h. 244.

8. Article in journal

¹Muhammad Adlin Sila, "The Festivity of *Maulid Nabi* in Cikoang, South Sulawesi: Between Remembering and Exaggerating the Spirit of Prophet", *Studia Islamika* 8, no. 3 (2001): h. 9.

9. Article in mass media

¹Masdar F. Mas'udi, "Hubungan Agama dan Negara", *Kompas*, 7 Agustus 2002.

10. Article in Internet

¹Muhammad Shaḥrūr, “Reading the Religious Teks: a New Approach” dalam <http://www.shahrou.org/25> Februari 2010/diakses 5 Juni 2010.

11. Thesis or dissertation

¹Syahrudin Usman, “*Kinerja Guru Pendidikan Agama Islam pada SMAN dan SMKN Kota Makassar*”, *Disertasi* (Makassar: PPs UIN Alauddin, 2010), h. 200.

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