

## **ISLAM AND TRANSGENDER** (A Study of Hadith about Transgender)

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### **Abstract**

*One of the issues that have been considered in the public sphere today is the issue of the transgender phenomenon. Transgender is related to the problem of gender identity. It refers to the condition in which the perpetrators identify their identity and gender differently from their sex biologically. It's caused by dissatisfaction and incompatibility between their body and soul. The term transgender might not be so familiar in Indonesia. However, to indicate that phenomenon, some of the people called them "waria", "priawan" or "tomboy". Generally, their existences were still hard to be accepted because Indonesian people considered this phenomenon as a deviation and it contradicts the moral value and religion in Indonesian society. In the teachings of Islam, the transgender phenomenon has been existed in the early days of the development of Islam, and it has been forbidden strictly. The Islamic view about this issue could be found in the prophet's hadith explicitly. Hence, to understand this phenomenon, we need to study the hadith. The purpose is as a basis for addressing the transgender phenomenon that was prevalent in Indonesia. The understanding implementation of this hadith, in general, is not easy, because Indonesia is not a country that makes Islam as a formal state system. It has its perspective relate to the transgender phenomenon. Therefore, we have to contextualize this hadith understanding according to the Indonesian context, especially in dealing with transgender perpetrators.*

**Keywords:** Transgender, Hadith, Contextualize

### **A. Introduction**

One of the current issues that still holds public attention today in the mass media—both in print media or in electronics—is the issue of lesbian, gay, bisexual, and transgender (LGBT) groups. Generally in Indonesia, the LGBT group as a minority was considered as the people with abnormal sexual orientation, because it contradicts the morals and traditions that exist in society. This makes their existence still hard to be accepted. Even though they were classified as a minority, efforts to gain recognition and fulfillment of their rights went on and on. It was intensified after some countries in Europe and America already gave recognition legally and fulfillment of rights of them, for example by legalizing same-sex marriage (Miskari, 2017, p. 45). Then, the population of LGBT in Indonesia was reported to be the fifth-largest in the world, after China, India, Europe, and America (Qomarauzzaman, 2017, p. 87).

The lesbian term was taken from the island called Lesbos that lied in the middle of the Egis Ocean in the ancient Greek era and populated by two homosexual women, Princess Shappo and Athis (Y. S. Lestari, 2018, p. 108). Hence, the women who attracted to each other were identified with Lesbos or lesbian. They are women that lead them sexual orientation to the

other women. Gay refers to the men that lead them sexual orientation to the other men. Both lesbian and gay, they are classified into the homosexual group. The bisexual—as known as pansexual—refers to the people who have a sexual romantic attraction to all gender identity, both to men and women. This third kind of sexual orientation is classified into the heterosexual and also homosexual. As for transgender is different from the last three classifications, because transgender is not about sexual orientation. However, the group of transgender can identify themselves as heterosexual, homosexual, heterosexual-homosexual or even asexual. (Qomaruzzaman, 2017, pp. 88–89)

The transgender more related to the gender identity problem that someone had. They are the people who identified their identity and gender differently from their sex biologically (Jasruddin & Daud, 2015, p. 20). In this case, people who biologically born as a male identified themselves as a female. It's caused by their dissatisfaction and incompatibility between their body and soul. Generally, in Indonesia, some of the people called them *waria* (*wanita-pria*), *banci* or *bencong*. Whereas people who biologically born as a female and identified themselves as a male, they were generally called as *priawan* (*pria-wanita*) or tomboy. Their expression of dissatisfaction is expressed in their appearance, style, and conduct. Even, the most extreme expression is doing the transsexual or sex reassignment surgery.

Even in ancient history, this transgender group has an integral part in a certain culture in Indonesia (Masnun, 2011, p. 124), their existence still caused some controversies. The people respond to them also varied, some refused and some left. The acceptance—or even supporting—of them, usually based on human rights views. Whereas rejection of them based on the assumption that what they are doing is a form of deviation from human nature. This kind of view emanates from the general public thought construction on gender. We can find a more forceful rejection, if this transgender issue is confronted with the domain of religion, for example, Islam.

Islam, assertively, affirmed that humankind was created into two kinds that each one, biologically, only relates to one gender identity, male or female. Nevertheless, the deviation from the global formula does not preclude the potential that could be happened. For example, in the case of ambiguous genitals. In the Islamic jurisprudence (*fiqh*) terminology, this case namely *khunṣā*. In a case like this, it can be accepted because it is an absolute decree of God. This is different from the transgender phenomenon that is known as *mukhannaṣ*—it refers to men that resemble women—and *mutarajjilāt*—it refers to women that resemble men. *Mukhannaṣ* is considered as illness an abnormality caused by depression. The depression affect their mind and encourage them to keep behaving even to identify themselves as women (Gibtiah, 2014, p. 354). It is also the same with *mutarajjilāt*. This behavior is considered as deviation from human nature and God's provision and therefore strictly forbidden in Islam.

The Islamic view on the transgender problem can be found in the sacred text of Islam, it is al-Quran, though not specifically described. A more specific explanation about this problem can be found in redaction of hadith prophet Muhammad (peace be upon him), as a second authoritative source after al-Quran. In this regard, the author tried to explain the Islamic view on the transgender. The discussion was important, as a cornerstone to see and approach the transgender phenomenon prevalent in Indonesia, a country that is known as a country with the largest Muslim population in the world.

## B. METHOD

This article was written using the library research that was the research referred to some documents as the references. In this case, the author referred to the books of hadith and *'ulūm al-hadīs*, such as some books of *al-Kutub al-Tis'ah*, *rijāl al-hadīs*, *syarḥ*, some books and documents related to the transgender topic. The author used the Hermeneutics approach to find the meaning of hadith. In the hermeneutics to the hadith—as Nurun Najwah said—the author was demanded to treat hadith as an old product that can be dialogue communicatively and romantically with its new audiences throughout the history of Muslims. This approach led to a meeting of the old and the new horizon produce a new and functional understanding of human beings (Najwah, 2018, p. 100). As for the operational steps to do hermeneutical studies to the hadith according to Nurun Najwah—and also used by her—are classified into two parts, i.e. study of hadith authenticity and operating hermeneutics. *First*, the study of hadith authenticity includes assembling the hadith according to the topic and investigating the authenticity of *sanad* and *matan* with considering the earlier study of the experts. *Second*, operating hermeneutics includes understanding to grammatical aspect, understanding to historical context, correlating with other data, finding the basic idea of the text, connecting to the current context (contextualizing) (Najwah, 2007, pp. 150–151). The author tried to apply these steps in this article in understanding hadith about transgender.

## C. RESULT AND DISCUSSION

### 1. An Overview of Transgender

In the cultural perspective—also in religion—there are only two kinds of sex that accepted in society objectively, these are male and female. It is very reasonable because sex relates to the physical condition and the human genitals. So, in the gender construction of society, generally, there is a classification between men and women for their roles, styles, and conducts. It can be seen in the socialization of traditional gender identity that look a man as a masculine figure identical to mightiness, valor, etc. At the same time, women are looked as feminine figure identical to softness, beauty, emotional, etc. (Jasruddin & Daud, 2015, p. 20). In consequence, when a man—both male and female—does not express himself or herself according to the construction of the cultural understanding in society, they are considered to have abnormalities. These kinds of judgments are often directed at the transgender group. The word transgender means “*Denoting or relating to a person whose sense of personal identity does not correspondent with their birth sex*” (‘Transgender | Definition of Transgender by Lexico’, n.d.). The transgender group think that gender attribute pinned to them is inaccurate because it does not represent their identity. Therefore, they, of course, refuse the construction of public understanding that defines gender identity is only based on sex as a human congenital.

The historical information explained when the transgender phenomenon first appeared is not known certainly. However, their existence can be tracked in certain cultures in the world. Masnun (Masnun, 2011, p. 124) explained that the transgender phenomenon has already existed in Greek and Roman times. Next, in the middle ages, there was a transgender phenomenon in the nobility and elite group, for example, King of France Henry III, the ambassador of France for Siam Abbe de Choisy who likes to dress like a woman. Besides, there are transgender groups in a certain country or nation and each one is known by different terms. Even, one of them was considered a special existence. They were *Muxe* from Mexico, *Kathoey* from Thailand, *Fa'afafine* from Samoans, *Bissu*, *Calalai*, and *Calabai* from Bugis, Indonesia.

*Muxe* in the culture of Mexico are men who like to dress up as women. They are even believed to be a special and separated gender classification, inherited by their ancestor.

*Kathoey*—also called *Ladyboy*—are people biologically born as a man but choose to look like a women. Even for that, they had plastic surgery and sex assignment surgery. In this country, *Kathoey* have been accepted by the public generally, but not legally recognized as a legitimate classification of gender. The next is the transgender group from Samoans. This nation ancient are recognized as a nation that accommodates three gender systems. In addition to men and women, *Fa'afafine* is also known. It refers to men who highlights personalities like a women. In Indonesia, especially in the Bugis—one of Indonesia's clans—there is a transgender group that is known as terms of *Bissu*, *Calalai*, and *Calabai*. In the system of traditional gender classification in ancient Bugis, there are five gender classifications, they are men, women, *Bissu*, *Calalai* or women who resemble men, and *Calabai* or men who resemble women. The *Bissu* in traditional faith of Bugis in the past, it is considered as a neutral gender classification and special, because it is believed to be the link between man and god. They are the men who highlight personalities like a woman but have no interest in temporal things, including sexual attraction. (Unik, n.d.)

Transgender has several categories. Yeni Sri Lestari explained that there are three categories of transgender, complete with their behaviors and characteristic, they are *transgender*, *crossdresser/transvestite* and *transsexual*. *First*, transgender refers to people who choose to dress up and look like men or women (his or her opposite sex). The characteristic of this category is they felt that their gender identity is not compatible, but had not sex reassignment surgery. *Second*, crossdressers or transvestites are people who are satisfied when they are dressed in the opposite sex, but they do this just as a form of their gender expression, not as a gender identity. *Third*, transsexuals are people who dress up and behave like their opposite sex, even to the point of sex reassignment surgery. The last category that we have mentioned is considered as the most extreme measures in the transgender phenomenon.

This transgender phenomenon is caused by many factors. Generally, this phenomenon can be affected by environmental and congenital factors. In environmental factors, this phenomenon is due to a wrong family upbringing, like letting boys develop in girl behavior and vice versa. It is also due to a trauma experienced in puberty. In congenital factors refer to biological factors, such as hormones and genes. This case is due to hormonal imbalance. In the medical perspective, fundamentally, the normal chromosome of male is XY, whereas the normal female is XX. Some men are sometimes found to have XXY chromosomes. In this condition, he has one X as the extra chromosome. Therefore, this prompted him to behave like women. The abnormality that is due to these congenital factors can be solved by balancing the hormonal condition to draw it closer to their sex biologically (I. Lestari & Sefitri, 2016, p. 39). Thus, people that have no hormonal and gene abnormalities (normal) but identified themselves different from their gender identity, which was a psychiatric problem.

## 2. Hadith About Transgender

As we mentioned in the introduction, that specific explanation about transgender is not found in the al-Qur'an as a primary source in Islam. However, if this problem is sought in the hadith, we will find a more specific explanation on it. In this case, there are certain hadith we can find in the books of hadith, that especially explain the transgender phenomenon. One of hadiths about it is hadith presented by Imam al-Bukhārī in his work:

حَدَّثَنَا مُحَمَّدُ بْنُ بَشَّارٍ حَدَّثَنَا غُنْدَرٌ حَدَّثَنَا شُعْبَةُ عَنْ قَتَادَةَ عَنْ عِكْرِمَةَ عَنِ ابْنِ عَبَّاسٍ -  
 رَضِيَ اللَّهُ عَنْهُمَا - قَالَ لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُتَشَبِّهِينَ مِنَ الرِّجَالِ  
 بِالنِّسَاءِ، وَالْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ

Meaning:

Ibn 'Abbās r.a. said: Rasūlullāh (peace be upon him) cursed men who resemble women and women who resemble men. (Al-Bukhārī, 2002, p. 1485)

The hadith was presented by the *rijāl al-hadīṣ* until to Ibn 'Abbās. The concatenation of *sanad* in this hadith was started from Muhammad bin Basysyār, *Gundar*, Syu'bah, Qatādah, 'Ikrimah took this hadith from his master, Ibn 'Abbās. The *rāwī* in this hadith can be defined as the trusted *rāwī* if we pay attention to the testimonies of hadith experts to them. Muhammad bin Basysyār was also known as *Bundār*, his nickname (Al-'Asqalānī, 1993a, p. 81). *Bundār* means people who have a very powerful memory. Ibn Khuzaimah, even, spoke highly of him as an *Imām* (expert) in science (theology) and hadith in his era. Muhammad bin Basysyār took this hadith from his master, *Gundar* that has a real name Muhammad bin Ja'far al-Hazlī. He was a hadith expert and also known as Ahmad bin Hanbāl's master. 'Abd al-Mālik bin Manṣūr said that *Gundar* was the most honest man, many people tried to find his mistakes, but no one can do that (Al-'Asqalānī, 1993a, pp. 96–97). He, next, took this hadith from his friend, Syu'bah bin Hajjāj. This hadith expert was recognized as a *dābiṭ* more than Ṣufyān al-Ṣaurī (Al-'Asqalānī, 1993b, pp. 338–339). He took the hadith from Qatādah, that has a real name Qatādah bin Di'āmah al-Sadūsī (Al-'Asqalānī, 1993a, p. 351). Qatādah took this hadith from 'Ikrimah Maulā Ibn 'Abbās that received it directly from his master, Ibn 'Abbās r.a. From this explanation and the testimonies of the experts about *rāwī* in this hadith, besides, this hadith is also from the al-Bukhārī's work—an expert in hadith who applied very high and tight standards in writing hadith—so we can decide that, qualitatively, this hadith can be referred to.

From the hadith, we can take a keyword for further understanding. In this case, we—the author—choose the word *المُتَشَبِّهِينَ*. The word *المُتَشَبِّهِينَ* is *ism fā'il* in form of *jama'* *muḥakkak* (the form of *mu'annaṣ* is *المُتَشَبِّهَاتِ*), its form became *nasab* because of its position as *maf'ūl bih* from the word *لَعَنَ*, *المُتَشَبِّهِ* is derived from the word *تَشَبَّهَ* which patterned *تَفَعَّلَ*. The origin of the word *تَشَبَّهَ* is *شَبَّهَ* means “resemblant”. Generally, if the word use the pattern of *تَفَعَّلَ*, that means active verb. Therefore, the word *شَبَّهَ* that means resemblant, changes to “resemble” when using the pattern of *تَشَبَّهَ*. In *Mu'jam Maqāyīs*, Ibn Fāris said that if the word consist of letters *ش*, *ب*, and *هـ*, means basically “resemble something and resemble it from the color and character aspect (Ibn Fāris, 1979, p. 243). According to the explanation, so we understand that the word *المُتَشَبِّهِينَ* means men resemble women from the appearance and character aspect, and vice versa. So, this

phenomenon of resembling of the opposite sex that can be used as a basic argument to say that this hadith is the postulate of transgender in Islam.

Why this hadith was said (*asbāb al-wurūd*), we have not yet found information that specifically show it. In other words, as far as the author's search goes, the micro context why this hadith said has not been found. But we clearly can say that the transgender phenomenon had already existed at the Rasulullah's era. It caused this is, of course, the Rasulullah's responses to the transgender phenomenon. His clearer responses to this problem can be found in the other hadith with the different *matan* (redaction) and *sanad*—from earlier hadith. In it's the other redaction, Rasulullah assertively commands to his *ṣahābah* to get them—transgender perpetrators—out of the house—maybe it can be understood as expulsion—and Rasulullah and 'Umar bin Khaṭṭāb did it. This hadith was also represented by Imam al-Bukhārī, though the concatenation of *sanad*, they are Mu'āz bin Fudālah, Hisyām, Yaḥyā. 'Ikrimah until to Ibn 'Abbās r.a. as we can see:

عَنِ ابْنِ عَبَّاسٍ قَالَ لَعَنَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الْمُخْتَلِثِينَ مِنَ الرِّجَالِ، وَالْمُتَرَجِّلَاتِ مِنَ النِّسَاءِ وَقَالَ أَخْرَجُوهُمْ مِنْ بُيُوتِكُمْ. قَالَ فَأَخْرَجَ النَّبِيُّ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - فُلَانًا، وَأَخْرَجَ عُمَرُ فُلَانَةَ

Meaning:

Ibn 'Abbās said that the prophet cursed a man who resemble women and women who resemble men. The prophet said: "Get them out of your house". Ibn 'Abbās said: The prophet got a man out and 'Umar got a woman out. (Al-Bukhārī, 2002, p. 1486)

Ibn Hajar explained that there is more complete information about a person that was got out by Rasulullah. This information as Ṭabrānī and Tammām al-Rāzī represented that the person is Anjasyah, a darky slave that usually dress up women. As for the person that was got out by 'Umar it was not mentioned in any hadith (Al-'Asqalānī, 2004, p. 377).

This hadith about resembling the opposite sex was commented by the experts. Al-Ṭabarī—as al-'Asqalānī mentioned—explained that the meaning of this hadith is men are forbidden to resemble women, especially in their clothing and jewellery, that applies to women, too. It is according to the hadith that represented by Imam Abū Dāwūd:

عَنْ أَبِي هُرَيْرَةَ قَالَ لَعَنَ رَسُولُ اللَّهِ - صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ - الرَّجُلَ يَلْبَسُ لِبْسَةَ الْمَرْأَةِ وَالْمَرْأَةَ تَلْبَسُ لِبْسَةَ الرَّجُلِ

Meaning:

Abū Hurairah said that Rasulullah (peace be upon him) cursed men who dress up women's clothing and women who dress up men's clothing. (Abū Dāwūd, 2009a, p. 195)

This limitation to "the special clothing and jewellery", according to al-'Asqalānī, because in many communities, both men and women, have something in common from their clothing aspect. Al-'Asqalānī added that it was also applied in the gait and speech. The malediction

or reproach on it was devoted to them who deliberately doing this resembling. This is different from those who had such traits from the beginning. But in this case, they too would be cursed, if they did not try to change their traits. (Al-'Asqalānī, 2004, p. 375)

The different perspective in this problem was explained by the other experts, one of them is al-Nawawī. He precisely assumed that people who had such traits as women from the beginning—both in the gait and speech—or vice versa, do not belong to cursed people. This statement was understood by al-'Asqalānī applied only to the people who cannot change their masculinity or femininity in the gait and speech, despite doing various ways to treat and change it (Al-'Asqalānī, 2004, p. 375). Thus, people are referred to this case that said by al-Nawawī as not cursed. It is also important to explain, that the prophet's malediction was not only referred to the transgender perpetrators but also their intercessor that one who helped them to do resembling. In the *Musnad*, Imam Ahmad represented:

عَنْ ابْنِ عَبَّاسٍ، أَنَّ رَسُولَ اللَّهِ ﷺ لَعَنَ الْوَاصِلَةَ وَالْمَوْصُولَةَ وَالْمُتَشَبِّهِينَ مِنَ الرِّجَالِ بِالنِّسَاءِ  
وَالْمُتَشَبِّهَاتِ مِنَ النِّسَاءِ بِالرِّجَالِ

Meaning:

From Ibn 'Abbās r.a. that Rasulullah (peace be upon him) cursed to people who mediating (help) men to resemble women and women to resemble men (Ḥanbal, n.d., p. 123).

The prophet's malediction to the transgender group has a *hikmah* or lesson. Ibn 'Abbās said that *hikmah* of malediction to the people who resemble their opposite sex is their existence contradict God's provision (Al-'Asqalānī, 2004, p. 376). Allah created humankind with a perfect form and determined their gender identities based on their sex—male or female—and it is congenital biologically. Allah said in the al-Quran Al-Hujurat [49]: 13,

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا إِنَّ أَكْرَمَكُمْ عِنْدَ  
اللَّهِ أَتْقَىٰكُمْ إِنَّ اللَّهَ عَلِيمٌ خَبِيرٌ

Meaning:

O mankind, indeed we have created you from male and female and made you peoples and tribes that may you know one another. Indeed, the most noble of you in the sight of Allah is the most righteous of you. Indeed, Allah is Knowing and Acquainted. (Yayasan Penyelenggara Penterjemah/ Pentafsir Al-Qur'an, 2004, p. 517)

Hence, people that deliberately resemble their opposite sex—in clothing that especially showing the identity of the opposite sex, gait, and speech—including people who helped them too, they were considered deliberately rebel and change God's provision that had been given. In this case, the prophet also has cursed women who add some false hair (hair extension) because it was considered changing God's creation (المُعَيَّرَاتِ مَا خَلَقَ اللَّهُ). This malediction was performed to prevent such behaviour from continuing in society, therefore they were avoided from the sin.

The transgender behaviour was considered a sinful act, and its punishment was already set in Islam. In this case, there are two kinds of punishments for transgender perpetrators. First, if the perpetrators have sexual relations, their punishment is the same as adultery (Qomaruzzaman, 2017, p. 97). Second, if they just resemble their opposite sex in clothing, behaviour, gait, and speech, their punishment is expulsion from their place (their society)—as we have already seen from explanation of hadith represented by Imam Abū Dāwūd from Abū Hurairah in earlier—and they are exiled to the other place. It was explained in the hadith that was represented by Imam Abū Dāwūd:

عَنْ أَبِي هُرَيْرَةَ أَنَّ النَّبِيَّ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- أُتِيَ بِمُحَنَّثٍ قَدْ حَضَبَ يَدَيْهِ وَرَجَلَيْهِ بِالْحِنَّاءِ فَقَالَ النَّبِيُّ -صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ- « مَا بَأَلْ هَذَا ». فَقِيلَ يَا رَسُولَ اللَّهِ يَتَشَبَّهُ بِالنِّسَاءِ. فَأُمِرَ بِهِ فَنُفِيَ إِلَى النَّقِيعِ فَقَالُوا يَا رَسُولَ اللَّهِ أَلَا نَقْتُلُهُ فَقَالَ « إِنِّي نُهِيتُ عَنْ قَتْلِ الْمُصَلِّينَ ». قَالَ أَبُو أُسَامَةَ وَالنَّقِيعُ نَاحِيَةٌ عَنِ الْمَدِينَةِ وَلاَ يَسُ بِالْبَقِيعِ.

Meaning:

From Abū Hurairah he said: One day the transgender perpetrator who coloured his fingernail and toenail with *henna*. So, the prophet asked them: “What is wrong with this guy?” They answered: “O Rasulullah, this guy resembled women”. So he commanded to punish this guy, and this guy was exiled to the place called Naqī'. They asked Rasulullah: “O Rasulullah, why do not just kill him?” He answered: “I was forbidden to kill one who prayed”. Abū Usāmah said “Naqī' is a place in the suburb of Madinah and it is not Baqī' (Abū Dāwūd, 2009b, pp. 288–289).

This hadith explained about the exile punishment to the transgender perpetrators from their relation, family, and people who have affected them. Besides, this exile is also meant to prevent them from influencing others. Al-'Asqalānī said that the rules of exiling people who bring the distraction to others is done until they give up their bad trait and repent.

From the earlier explanation, we can find some important points. These important points relate to the limitation of resembling (*tasyabbuh*) that is done by people to the opposite sex. According to the expert's opinion on hadith about transgender, people are judged resembling their opposite sex when they deliberately resemble their appearance in clothing and jewellery that especially they—the opposite sex—have, and their behaviour—including their gait and speech. Accordingly, Islam assertively refused, even cursed it with the argument that it was refused God's provision. The punishments of this are exile the perpetrators from their society until they give up their bad traits and repent. The serious punishment will be given to them when they do not only resemble, but doing the deviant sex activities.

### 3. The Transgender Phenomenon in Indonesia

The transgender phenomenon in Indonesia is a phenomenon that comes first then the other three groups (lesbian, gay, and bisexual). Their existence has been already existed and linked to the Indonesian culture in the past. The population of transgender in Indonesia is still unknown. The data from the Indonesian Ministry of Health recorded that the population of transgender was rising significantly between 2002 to 2009. It rising was constant between 2009 to 2012 but with an insignificant number. This population is uncertain, but if we refer to

the data of risked population affected by HIV, the population of *waria* is estimated to be 597.000 people. (Pusat Penelitian Kesehatan Universitas Indonesia, 2015, p. 2)

In Indonesia, as we can see, the transgender phenomenon is not only a phenomenon resembling the opposite sex both in appearance and behavior aspects, but it has also come into an extreme level, by doing sex assignment surgery. It's perpetrators not only from the general public (ordinary people) but also from the public figure. The examples of this phenomenon are Alfi an entertainer and Eko Erwin Sugiharto as known as Lenny Sugiharto (Muthmainnah, 2018, p. 63). However, the resembling that was done by them, not at the extreme level, the transsexual.

The other example is from the multitalented artist, singer, and famous presenter called Dorce Gamalama. Dorce has a real name Dedi Yuliyardi Ashadi, born on July 21, 1963, in Solok, West Sumatra, as a male. He has been being a singer since in high school with the music group Bambang Brothers. This made him started to look good by dressing up as women. He has been being known as Dorce Ashadi then Dodi Ashadi, his real name. Increasingly, he felt that he was trapped in a male body. Then, he did sexual assignment surgery to be a woman. The next example is Agus Wardoyo as known as Nadia Ilmira Arkadea. Agus was born as a male and he behaved like a boy until Primary School (*Sekolah Dasar*). When he was in High School, he changed like a girl in his behavior. Even, he grew up in that behavior. This was inspired him to do sex reassignment surgery (Muthmainnah, 2018, pp. 61–62). A more recent case in transgender is done by ex-artist called Renaldi who changed his name as Denada Rahman or Dena Rahman. These cases are the transgender form that have existed at an extreme level. What did they do, of course, raised the pros and cons because it was considered unsuitable and contradicted norms, traditions, and religion that was followed and believed by people in society.

The transgender sympathizers/ supporters—also lesbian, gay, and bisexual—always used the Human Rights as a main argument getting a recognition. According to the Teaching of Human Rights that was published by the United Nation, Human Rights are rights inherent to all human beings, in which without it human beings could not live as human beings (Ubaidillah & Rozak, 2013, p. 32). One of the efforts that fought by the sympathizers is protection from all forms of violence and discrimination. There are some forms of violence and discriminations usually experienced by these groups: (1) Social discrimination, like stigma of them, reproach, excision, an unequal opportunity in education, and physical and psychological violence; (2) Low discrimination, like there is a policy and regulation state that violate the LGBT rights and different treatment in law; (3) Politic discrimination, like the different opportunity in practical politics and there is no political representative from LGBT groups; (4) Economic discrimination, like right violation to them at formal sector; (5) Cultural discrimination, that is removal attempt to cultural norms that is friendly to LGBT groups (Papilaya, 2016, p. 32).

In this case, transgender is efforts to identify and seek personal identities. It is considered as a private sphere not to be intervened by anyone—including the state—even close ones. In this identifying process, the human dignity or self-regard are inherent. The dignity or self-regard is the most essential from human beings. International convention and The Amendment of Constitution 1945 (UUD 1945), also Human Rights Constitution (UU HAM) explained that human dignity is individual freedom and must be protected without discrimination. Hence, the government of the state must comply with the Universal Declaration of Human Rights and all of the international agreements on human rights. (Papilaya, 2016, pp. 31–32)

Indonesia is a state that upholds human dignity. This can be found in the formulas of Human Rights Constitutions. In UU No. 39 Th. 1999 defined that Human Rights are rights inherent to all human beings as the creations of The Almighty God and his gift that must be honoured, upheld, and protected by law, state, and every man for the honour protection of human dignity (Ubaidillah & Rozak, 2013, p. 148). Besides, the historical records show that Indonesia also took part to ratify some international agreements about Human Rights. Nonetheless, it does not mean that on its application, Indonesia will subservient to the Universal Declaration of Human Rights. It is caused by Indonesia has own perspective on Human Rights. It does not separate from discussion about the universality and particularity of Human Rights.

The discussion on universality and particularity of Human Rights is represented by followers of two opposite theories raised in Human Rights. They are the follower of Human Rights universality and cultural relativity theory. According to the first theory, the differences of historical experiences and value system does not make Human Rights is understood and applied differently. All of the values—including Human Rights values—are universal and cannot be modified to adjust it with the different culture and history of the country. It contradicts the second theory that explained the values of moral and culture are particular. The followers of this theory regarded that there are not universal rights, all of them depended to social condition that existed in it. Therefore, in the Human Rights context, if the values contradict with the local values, then Human Rights need to be contextualized. This explanation can be seen by the following example, that were the cohabitation or the state living together and having a sexual relationship without being married (as known as *Kumpul Kebo* in Indonesia) or kissing in public sphere. In a certain country, this is a form of human freedom, but in the other country, it may contradict with moralities that exist in society. Furthermore, the follower of this theory precisely judged that the universality of Human Rights is a form of Western cultural imperialism. Human Rights universalizing through the Universal Declaration of Human Rights overall was considered as a despoliation of freedom (Ubaidillah & Rozak, 2013, pp. 161–163). So, in the Human Rights case in Indonesia, the theory of cultural relativity is considered more suitable than the theory of Human Rights universality, because Indonesia does not separate from unique value and culture.

Although Indonesia is not a country that applies a religion as the state system formally, but religion becomes a source of moral in national life. It is visible in Pancasila as a philosophical fundament of state that reveals divinity value as the first point in it. It shows that Indonesian people are religious people. Therefore, everything that contradicts values in Pancasila—especially divinity values—and constitution, it needs to be reviewed. So, in this case, the Universal Declaration of Human Rights in which historically born from different social and cultural conditions than in Indonesia, of course not immediately acceptable and applicable, but it needs further study and deeply. It is following Patrialis Akbar's statements—a former constitution judge in Mahkamah Agung (Supreme Court). He said that indeed, the Human Rights perspectives in Indonesia are kind of different from the Universal Declaration of Human Rights. There are equal parts, but there are also unique parts and different to the other countries. First, the freedom of Human Rights in our country have a limitation, that is disallowance to violate the other people's rights. Second, freedom is limited by moralities. Then, it is also limited by religious value. This religious values are not owned by the Universal Declaration of Human Rights. (Miskari, 2017, p. 48)

In the religious perspective, the transgender—also transsexual—that is fought with the Human Rights argument contradicts divinity values. We can see this in the teachings of Islam, as religion with majority followers in Indonesia—as we mentioned in early

discussion—assertively forbade transgender even less transsexual. This disallowance is because transgender or transsexual are behaviours that brake God's provision on human nature. For the transsexual case, it is a new phenomenon arises in the modern era. So, the explanation about it will not be found in the books of classical experts. To response that problem, the jurisprudence experts (*fuqahā*) explained that sexual surgery is allowed—even encouraged—as long as it is done for restoration (*taṣḥīḥ*) or perfection (*takmīl*) (Gibtiah, 2014, p. 357). This is also in accordance with the *fatwa* of Majelis Ulama Indonesia (MUI) No. 03 Th. 2010 *Tentang Perubahan dan Penyempurnaan Alat Kelamin* (About Change and Perfection of Genitals). As for change the genitals from male to female or vice versa is considered by Majelis Ulama Indonesia (Indonesian Ulama Council) as the illegitimate act (*haram*).

In the perspective of positive law, there are only two kinds of gender recognized in Indonesia, they are men or women. Indonesian law does not recognize the third gender (transgender). It can be seen in constitution No. 1 Th. 1974 about marriage that only recognizes men and women. Therefore, if efforts that are fought by sympathizers of transgender in the name of Human Rights for legalization of third gender, then this is contrary to current law. But, if the aims of this effort are just to protect the transgender group from all form's violence and discrimination, then, of course, it is legal to do, because the state must guarantee and protect individual rights its citizen getting the protection and they avoided from any violation of their dignity. As stated in chapter 5 verse 1 Constitution No. 39 Th. 1999 about Human Rights that everyone is recognized as an individual who has the right to claim and get equal treatment and protection according to their dignity before the law (Sodikin, 2018, p. 42).

For the transsexual case, there is no constitution in the positive law in Indonesia that regulate this problem specifically. Nevertheless, the empirical phenomena of transsexual cases have been found in Indonesia, for example, the case of Agus Widiyanto as known as Nadia Ilmira Arkadea in 2009. This would not happen without the judge's decision that granted his wishes at the time. The arguments that were made by judge as references are (1) UUD 1945, Chapter 27 and 28; (2) Chapter 21 and 29 UU No. 39 Th. 1999 about Human Rights; (3) Chapter 2 and Chapter 77 UU No. 23 Th. 2006 about Population Administration; (4) Some state legalizations from the low court for the earlier and the same cases; and (5) some medical considerations of applicant (Abdullah, 2013, pp. 228–229). Some of those things are made as the arguments to legalize the transsexual or sex reassignment surgery. It is, of course, contrary to the cultural and religious values in Indonesia generally. Therefore, as a response to the case, Majelis Ulama Indonesia (Indonesian Ulama Council) decided the *fatwa* about illegitimate affirmation of that surgery in July 2010.

#### 4. Reacting to The Transgender Phenomenon

Islam is a religion that contains moral doctrines that becomes guidance for its followers. All of human conduct are acceptable as long as it does not contradict Islamic teachings. In the case of transgender, Islam with its arguments from al-Quran, especially hadith, assertively forbade any conducts that aimed to resemble the opposite sex, both in appearance and behaviours—in this case in clothing, gait, and speech—much less transsexual or do sex reassignment surgery. It is considered a clear violation of religion because they aimed to violate human nature and God's provision. So, from the perspective of Islam, the punishment given to the perpetrators is exiling them from their family and society, this is especially to anyone just do resembling. As for those who have not only done resembling but also have deviant sexual activities, the punishment for them is the same as adultery. It is done to prevent and avoid negative impacts from its perpetrators.

Then, how about the transgender cases that are prevalent in Indonesia? Although Indonesia is a country with the largest Islamic followers in the world quantitatively, it does not mean the execution of its law refers to Islamic teachings. It is caused Indonesia is not a country that makes Islam as a formal state system. Islam and the other religions that were recognized in Indonesia, these are merely the moral sources for people. Indonesia has own state fundament and constitutions that become reference in the execution of its law. Thus, the problem of transgender will be faced differently.

In Indonesia, the specific regulation in the constitution about transgender has not existed. Its perpetrators are not considered criminals. As long as their efforts are aimed their rights fulfilment as the citizen and it does not contradict the constitution, then they are still protected as individual who has a freedom of expression. So, in this case, the state must guarantee them protected from any violence and discrimination because human is equal before the law. However, if they are proven violating the law and disrupting the public, even putting others in danger, the state also must take preventive measures.

Although the transgender perpetrator's position as part of citizen in Indonesia (WNI) relatively is not considered as a problem, but in the cultural and religious perspective that exists in society, transgender is regarded as a deviation. And then, the question that emerges is "How we should react to this phenomenon, especially to its perpetrators?" If we pay attention to the hadith about transgender that was discussed in this article, then we can say that the expulsion or exile is the right preventive measures because it aims to avoid the negative impacts from them. However, in the context of Indonesia, it is considered inexact because the decisive measures to the transgender group in Islam was based on the certainty that they had violated Islamic law, so they have to get the expulsion or exile punishment. Therefore, we need to review and reinterpret this hadith according to the context of Indonesia.

In the context of Indonesia, the transgender perpetrators are not regarded as criminal. This is a different point with the transgender perpetrators in Islam. They are just the ones who, psychologically, felt incompatibility with sexual identity that they have. These psychiatric "disorders" affected their thought and behaviour in resembling their opposite sex. Accordingly, the proper reaction to them is protecting their rights according to principles of Human Rights, that treats them like any other that has equal rights, embrace, not discriminate and do violence in any form to them. The state is demanded to guarantee the service for the transgender perpetrators in psychological coaching to restore the consciousness of their gender identity. The education about sexuality is also important to be taught to children and teenagers. This is done to avoid any possibility of sexual deviant in children's growth. This is also related to supervision on them, for example, related to the show representing the transgender gimmick, to not be duplicated by children and teenagers. Although the way to face the transgender perpetrator is different from way in Islam that applied the exile punishment, but the goal is the same, that is avoiding the possibility of negative impacts of the perpetrators and their behaviours.

#### **D. CONCLUSION**

Islam through the prophet's hadith that was studied in this article explained that resembling or *tasyabbuh* the opposite sex (transgender) was assertively forbidden in Islam. The experts who understood this hadith gave the limitation of resembling, that is resembling in appearance, related to the special clothing that was used by the opposite sex, and behaviour, related to gait and speech. Thus, its perpetrators in Islam are given the

punishment, that is expulsion or exile. In the context of Indonesia, the exile punishment to the transgender perpetrators is regarded inexact. It is because the transgender phenomenon has not regulated in the constitution. So, the perpetrators are not considered as criminal, as long as they do not do any harm that violates the constitution. Therefore, the proper reaction to them is still to treat them well like any other citizen, but also give them psychological coaching. Besides, the education about sexuality is also important to be taught to children and teenagers. This is done to avoid any possibility of sexual deviant.

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