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PROHIBITION OF TRANSGENDER MARRIAGE ACCORDING TO BUYA HAMKA (IN THE BOOK OF TAFSIR AL-AZHAR)

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Abstract: The study examines the prohibition on transgender marriage according to Buya Hamka in the Al-Azhar commentary book. Transgender is a symptom of a person's dissatisfaction because they feel there is no match between their physical form and genitals and their mental state or because they are dissatisfied with their genitals. The final results of this research can be concluded, namely: The prohibition of transgender according to Hamka is based on an-Nisa verse 119, Ar-Rum verse 30 and al-Baqarah: 216, *hadith, ijma', and fatwa,* that transgender behavior is actions and behaviors that Satan is deceiving and following one's desires, including the act of changing Allah SWT's creation, transgender is an act that does not function Allah's creation according to its function, according to nature. Transgender is the act of resembling the opposite sex; the perpetrator received a curse from Rasulullah SAW and is classified as a Haram act. According to Buya Hamka, the prohibition on transgender marriages means same-sex marriages occur, sexual intercourse is not by nature, there is no fertility (procreation), the goal of marriage cannot be achieved, and the five basic principles of religion are threatened, namely faith, reason, the right to life, property, and offspring. Genital surgery carried out by transgender people causes more significant harm. Islam is determined by external aspects or physical indications, not psychologically.
Keywords: prohibition, transgender marriage, buya hamka

Abstrak: Penelitian ini mengkaji tentang larangan pernikahan *transgender* menurut Buya Hamka dalam *Kitab Tafsir Al-Azhar*. *Transgender* merupakan gejala ketidakpuasan seseorang karena merasa tidak ada kecocokan antara bentuk fisik, alat kelamin, dan keadaan mentalnya, atau karena tidak puas dengan alat kelaminnya. Hasil akhir penelitian ini dapat disimpulkan yaitu: Larangan transgender menurut Hamka berdasarkan an-Nisa ayat 119, Ar-Rum ayat 30 dan al-Baqarah: 216, hadits, ijma', dan fatwa bahwa transgender adalah perilaku tindakan setan yang menipu dan mengikuti hawa nafsu termasuk tindakan mengubah ciptaan Allah SWT, transgender adalah perbuatan yang tidak memfungsikan ciptaan Allah sesuai fungsinya, sesuai kodratnya. Transgender adalah tindakan menyerupai lawan jenis; pelaku mendapat laknat dari Rasulullah SAW dan tergolong perbuatan haram. Menurut Buya Hamka, pelarangan perkawinan *transgender* berarti terjadinya perkawinan sesama jenis, persetubuhan tidak wajar, tidak ada kesuburan (prokreasi), tidak tercapainya tujuan perkawinan, dan

terancamnya lima prinsip dasar agama. yaitu iman, akal, hak hidup, harta benda, dan keturunan. Operasi kelamin yang dilakukan oleh kaum transgender menimbulkan kerugian yang lebih besar. Islam ditentukan oleh aspek luar atau indikasi fisik, bukan psikologis.
Kata Kunci: larangan, pernikahan waria, buya hamka

A. Introduction

The phenomenon of transsexualism or transgender is a symptom of dissatisfaction because there is no match between physical form and genitals and mental health, or there is dissatisfaction with one's genitals. The expression can be in make-up, style, behavior, or even sex reassignment surgery. Transsexuality can be caused by inherited factors (hormones and genes) and environmental factors. Environmental factors include wrong education in childhood by allowing boys to develop female behavior, during puberty by disappointed and traumatized homosexuals, and trauma from sexual relationships with boyfriends, husbands, or wives. It is necessary to distinguish between psychiatric and congenital causes of transsexuality. In the case of transsexuals, due to aberrant (congenital) hormonal balance, balancing hormonal conditions to bring the biological tendencies of the sexes closer together can be done. They are normal because they don't have any abnormalities, genetic or hormonal, and tending to look at the opposite sex to follow mental urges and desires is something that is deviant and is not justified according to Islamic law. In the DSM (Diagnostic and Statistical Manual of Mental Disorders) – III, this deviation is also called gender dysphoria syndrome. This deviation is divided into several subtypes, including transsexual, homosexual, and heterosexual.[1]

Recently, there has been more and more phenomenon of Transgender men roaming the streets for their survival by busking, especially in urban areas; some of them even wear Muslim women's attributes by wearing a head scarf on daily activities. Ironically, television media promotes and socializes the behavior of the opposite sex in various talk shows, parodies, and humor programs. Things like this will undoubtedly contribute to providing legitimacy and a figure that society can emulate when playing with gender or even changing orientation and sexual disorders. Transgender issues began to emerge in the world of medicine since gender reassignment was carried out in Western countries around the 1950s. One of them was a sex change operation from male to female by a United States Army soldier named George Jorgensen.[2] George underwent sex change surgery in Denmark in 1952 by removing his male genital organs. After the operation, George changed his name to Christine.

In Indonesia, transgender people became known in 1973, in the case of Iwan Rubianto Iskandar. Iwan Rubianto Iskandar has undergone sex change surgery, initially being male and becoming female. The name used after the sex change operation was Vivian Rubianti Iskandar. Iwan Rubianto underwent sex change surgery at the hospital in Singapore.[3] The case has been inspiring Dedi Yuliardi. On May 3, 1988, he underwent sex change surgery at Soetomo Surabaya. Dedi Yuliardi became a woman and changed his name to Dorce Ashadi; as a celebrity, his name is Dorce Gamalama.

This sex change from a legal aspect is a new problem in society. This matter was not yet regulated in the law at that time or did not predict the occurrence of such things, and the law

[1] Setiawan Budi Utomo. *Fiqih Aktual: jawaban tuntas masalah kontemporer*. Gema Insani Press: Jakarta.2003. p. 171.

[2] Mawar, http://berita-dunia-infique.com/,Asal Usul Operasi Kelamin. Diakses pada tanggal 1 Desember 2011 pukul 23.18.

[3] Rosa Agustina, *Judge Made Laws in Indonesia as Civil Law Country*. Makalah disampaikan pada Current Issues in Indonesia Law. Pasca Sarjana Universitas Indonesia: Jakarta. 2017. p 262.

requires confirmation of a person's status, whether female or male, because determining such status is necessary both in civil law, such as marriage, inheritance, work agreements, etc., and criminal law. That the law only recognizes the terms male or female.[4] According to Adnan Buyung Nasution from the Iwan Robianto case, three aspects of the problem become arguments in changing the status: the legal aspect, the medical aspect/anatomy, and the moral aspect. The expert witness from the Islamic perspective is Prof. Dr. Hamka, who, as quoted in his opinion, essentially states that gender reassignment is acceptable.[5] If you look for the law in the Qur'an or fiqh, there is no regulation, and therefore, Islam provides space for experts to develop their opinions.[6]

In the article "Transgender Muslim Migrant Muslim Women in the Netherlands,".[7] Bima, an Indonesian transgender[8] man who has lived in the Netherlands for a long time, lives alone in the old city of Amsterdam. He wants to adapt his body to his soul as a man. The operating team needed a certificate from an Islamic leader because the doctor was hesitant to carry out sex change surgery because of the prohibition in Islam. Finally, he met Buya Hamka after hearing Bima's life story, and Hamka allowed him to. In 1976, he decided to change his sex.[9] Muhammad Fatah became Lucinta Luna submitted a request to the West Jakarta District Court on Thursday, 15 December 2016. He requested to change his gender to female and the name Ayluna Putri.

The person's desire to change gender is due to the inconvenience experienced by the person with the gender they were born with. Psychologically, a person whose default gender at birth is male feels uncomfortable with his gender because his attitudes and behavior tend to be more feminine, which causes him to change his gender from male to female to create comfort for himself overall. Psychologically.[10] Likewise, on the other hand, someone who was born as a woman from birth but has the attitudes and behavior of a man who does not feel comfortable being born as a woman. This resulted in him changing his gender from female to male, employing sex change surgery.

In Islamic law, people who have changed their gender from their original gender since birth to a gender that is opposite to their actual gender are prohibited, and it is an act of sin because it has changed what Allah has ordained for humans. Regarding the law of changing sex, the Qur'an states that in QS Al-Rum (30) verse 30, this verse explains that humans were created

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[4] Adnan Buyung Nasution. Few Problematic of Law, Presented on a Seminar "Aspek *Hukum dan Operasi Pengantian Kelamin"* Health Department of Republic Indonesia, March 1978. p. 622.

[5] Dimuat dalam harian "sinar Harapan" dengan judul "Lorong-lorong keadilan bagi pengikut-pengikut Vivian Perlu dibuka lebih lebar" by a journalist. See also Adnan Buyung Nasution, beberapa permasalahan hukum, Presented on a Seminar "Aspek Hukum dan Operasi Pengantian Kelamin" Health Department of Republic Indonesia, March, 1978*, ibid*, p. 622.

[6] Herman Raja Guguk. *Hakim Indonesia mengesahkan penggantian dan penyempurnaan kelamin*, director of Postgraduate Program of Law, Universitas al-Azhar, Indonesia. p. 2.

[7] Tulisan Budi Wibowo. Published on December 12, 2011-9:32 (by Jeans Van de kok (photo: RNW). http://www.rnw.nl/bahasa-indonesia/article/micran-transgender-muslim-di-belanda

[8] He was born as a baby girl, then realized that he was actually a boy at heart. From childhood, he played with boys, rarely played with girls. Bima underwent two sex change operations in Jakarta to remove her breasts and uterus and egg cells. The third operation was due to be carried out in the Netherlands to obtain a penis. In ETC Bima converted to Islam in 1976 and decided to change her sex.

[9] Buya Hamka's letter of statement: "Oleh sebab saya melihat kecendrungan pemuda ini, saudara Bima adalah memiliki sifat laki-laki, maka bolehlah ia dioperasi, untuk menyempurnakan kelaki-lakianya itu. Menurut pendapat saya, penyempurnaan kelaki-lakian ini secara pengobatan atau operasi, tidaklah bertentangan dengan agama Islam, asal saja ado dokter yang menyanggupi operasi itu." *Ibid*

[10] Soetojo Prawirohamidjojo dkk. *Hukum Orang dan Keluarga*. 13th Ed R: Bandung. 2000., p 8.

according to nature. Then, QS Al-Hujrat (49) verse 13 explains glory in the sight of Allah. In the hadith of the Prophet Muhammad, narrated by Abdullah bin Mas'ud "Indeed, you will find it. Allah Ta'ala said, "What the Messenger gives you, then accept it. Leave what he forbids." (QS. Al Hasyr: 7)

This *hadith* shows that Islam prohibits a man or woman of typical gender from changing their gender because it falls within the realm of changing Allah's creation without valid reasons according to Islamic law.[11] In another *hadith*, just resembling the opposite sex is included in something that is cursed, significantly if you change yourself through gender reassignment surgery. As *Hadith* of the Prophet SAW narrated by at-Thurmidhi.

> Meaning: "Muhammad bin Ghilan menceritakan kepada kami, Abu Daud ath-Thayalisi menceritakan kepada kami, Syu"bah dan Hamman menceritakan kepada kami, dari Qatadah Ikrimah, dari Ibnu Abbas, dia berkata. "Rasûlullâh Shallallahu „alaihi wa sallam melaknat para lelaki yang menyerupai kaum wanita, dan para wanita yang menyerupai kaum lelaki". (HR. Tirmidzi)[12]

The prohibition of the next transgender issue is in the fatwa of the Indonesian Ulama Assembly (MUI), II National Conference of Indonesian Ulama Assembly Number 05/Kep/Munas II/MUI/1980. From the aspect of Islamic law, there is a prohibition against transgender in the *Qur'an, Hadith, and fatwas*, but in social life, this transgender phenomenon is still found. The person who first received legal force for changing gender status was Iwan Rubianto, and recently, it was Muhammad Fatih from the transgender case that the author described above, Buya Hamka, who became their guide for carrying out this gender change. In fact, in the same issue, many took cover behind the Iwan Rubianto Iskandar case to legalize the shift in identity status. Meanwhile, the fatwa of the Indonesian Ulama Assembly already has rules and regulations, chaired by Buya Hamka himself, that the act of changing a male's gender to a female or vice versa is haram because it is not following human nature. However, in reality, there are still those who discover this transgender phenomenon in life, even up to the stage of marriage. Transgender is not a modern human behavior, but it has existed and is a part of human sex. In the history of human civilization, the transgender phenomenon has always been associated with the story of the living Prophet Luth in the middle of homosexuals who have deviant sexual behavior. Although the Qur'an strictly forbids homosexual behavior even today, there are still people who practice it.

Based on the background of the problem described above, the author is interested in discussing in this journal the issue of prohibiting transgender marriages according to Buya Hamka's opinion in the al-Azhar commentary book.

This research aims to contribute to understanding family law about transgender marriage prohibition in the book *Tafsir al-Azhar*, written by Buya Hamka, and the impact of marriage on the family.

B. Provisions Regarding Marriage

1. Understanding Marriage

Marriage in Arabic is called an-nikah, which means intercourse, gathering, and contract. 4 Based on this etymological meaning, fiqh scholars define marriage in the context of biological relationships. Many people give opinions regarding the meaning of marriage, but these opinions do not show any contradiction between one idea and another. Among these opinions

[11] Rahman Mustari. *Hadits-Hadits Syaih dalam Islam.* Lentera Ilmu: Jakarta. 2011. p. 52.
[12] Ibid

include:

a. According to Wahbah al-Zuhaily

Marriage is a contract that allows al-istimta' (sexual intercourse) with a woman, or doing wathi,' and gathering as long as the woman is not a woman who is forbidden either because of heredity or sexual intercourse.[13]

b. According to Hanabilah

Nikah is a contract that uses the *lafaz inkah*, which means tajwiz, to take advantage of it and have fun.[14] According to Hanifiah marriage is a contract that provides benefits for carrying out *mut'ah* intentionally.

c. According to Sajuti Talib

Marriage is a strong and sturdy agreement between a man and a woman to legally live together to form an eternal, polite, loving, peaceful, and happy family.[15]

d. According to Hazairin

The essence of marriage is sexual relations. According to him, there is no marriage if there is no sexual relationship.[16]

In Article 1 paragraph (2) Marriage Law Number 1 of 1974, marriage is defined as an inner and outer bond between a man and a woman as husband and wife to form a family, a happy and eternal household based on the belief in the Almighty God.

The inclusion of the belief in the Almighty God is because the Indonesian state is based on Pancasila, the first principle of which is the faith in the One and Only God. It can be understood that marriage is expressly stated to have a very close relationship with religion and spirituality so that the element of wedding not only has a physical/physical part but also has an inner/spiritual aspect.

Meanwhile, according to the Compilation of Islamic Law, the definition of Marriage in Article 2 states that Marriage in Islamic Law is a marriage that is a solid contract or *miitsaaqan ghalizhan* to obey Allah's commands and carry them out in worship. In the Qur'an, Allah's order to humans to marry is mentioned in Q.S An-Nuur (24) verse (32).

The Prophet Muhammad SAW strengthened the Word of Allah above by saying: "Marriage is my sunnah, whoever follows my sunnah is of my group, and whoever hates my sunnah is not of my group" (HR. Bukhori-Muslim).

2. Wedding Destinations

The purpose of the wedding can be detailed as 1) permitting sexual relations to fulfill human needs; 2) creating a family based on love; 3) and obtaining legitimate offspring.

The primary purpose of marriage is to fulfill instinct demands or human nature desires. With marriage, the fulfillment of the requests of human nature can be distributed legally. If humans try to meet their human nature needs through illegal channels and are carried out

[13] Wahbah al-Zuhaily. *al-fiqh al-Islami Wa Adillatuh. Juz VII*. Damsyiq: Dar al-Fikr. 1989. p. 29.

[14] Abdurrahman Al-Jaziri. *Kitab „ala Mazahib al-Arba"ah*. t.tp. Dar Ihya al-Turas al-Arabi. 1986. Juz IV p.3.

[15] Mohd. Idris Ramulyo. *Hukum Pernikahan Islam: Suatu Analisis dari Undang-Undang No.1 Tahun 1974dan Kompilasi Hukum Islam*. Bumi Aksara: Jakarta. 1996. p.2

[16] Ibrahim Hosen. Fikih *perbandingan dalam Masalah Nikah Talak dan Rujuk*. Ihya Ulumuddin: Jakarta. 1971. p.65.

against anyone, then the human condition will be no different from that of animals, and society will naturally become chaotic and mixed up incoherently.[17] The second goal of marriage is creating a family based on love. Marriage creates a bond between husband and wife in living together filled with a sense of peace (sakinah) and affection (mawaddah wa rahma). The Word of Allah SWT is explained in (QS Arrum: 21).

Apart from that, the purpose of marriage is to obtain legitimate offspring. Obtaining offspring in marriage for human life contains two aspects of importance: the importance of getting children is because children are expected to be able to help their parents in their old age. The general or universal aspect related to heredity is that children are the ones who continue one's descendants and who will continuously develop to revitalize and prosper this world. Also, offspring obtained through marriage will avoid mixing up descendants so that human genealogy and offspring can be maintained legally.[18]

Understandably, the objectives of a wedding cannot always be realized according to expectations; there are times when, in domestic life, there are misunderstandings, disputes, and small fights; some even go on for a long time, triggering the breakdown of the marriage relationship between husband and wife.

3. Conditions of Marriage

Marriage requirements are essential because if a marriage is carried out without fulfilling the requirements specified in the law, the marriage can be threatened with annulment or annulled. The conditions for marriage are contained in Article 6 of Law Number 1 of 1974

The parties wishing to enter into a marriage must fulfill certain conditions relating to both parties wanting to carry out the wedding, namely the requirements for the union and the states regarding the implementation of the marriage itself, which are often called the pillars of marriage. The harmony of marriage is the essence of the wedding itself, so without one of the pillars, the marriage cannot be carried out.

4. Marriage Cancellation

Article 22 of Law Number 1 of 1974 clearly states: "A marriage can be annulled if the parties do not fulfill the requirements for entering into a marriage." In the explanation, the word "can" in this article can be interpreted as whether it can be canceled or not if, according to the provisions of the respective religion, it does not determine otherwise. A marriage can be annulled, meaning that a marriage had previously occurred and then been rejected due to a violation of specific rules.[19]

There is an impression that the annulment of this marriage occurred due to a lack of proper supervision by the family or authorized officials, so the marriage was still carried out even though a violation of the Marriage Law or the Munakahat law was discovered. If this happens, the Religious Court can cancel the marriage at the request of the interested parties.

The parties who can apply for an annulment of a marriage are the family members in the straight-upward lineage of the husband and wife and people with a direct interest in the marriage. According to the Compilation of Islamic Law, marriage annulment is regulated in Article 70.

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[17] Imam Al Ghozali. *Menyingkap Rahasia Pernikahan*. Kharisma: Bandung. 1975. p. 22.

[18] Misra Netti, *Pelarangan Transgender Menurut Buya Hamka (Dalam Kitab Tafsir Al Azhar)* Jun 30,2022 Https://Doi.Org/10.54576/Annahl.V9i1.45

[19] Martiman Prodjohamidjojo. *Hukum Pernikahan Indonesia*. Indonesia Legal Center Publishing: Jakarta. 2002. p. 25.

5. Marriage and its Legal Status

Marriage law and the effects it causes follow the characteristics of the contract itself, such as validity, purity, void, etc. These influences will differ due to differences in nature, the impact of a valid contract being different from a dependent contract, and so on.

a. Pure Legal Marriage and Its Laws

A pure legal marriage fulfills all the requirements of the contract, all the legal conditions, and all the conditions for implementation, namely that both people entering into the contract are experts in carrying out the contract; the *shigha*t shows eternal ownership of pleasure, states that in one ceremony of *ijab* and *qabul*, there is no difference. Between the two of them, each prospective husband and marriage guardian hears the other's voice, the wife is the object of the recipient of the marriage being contracted, attended by two witnesses who fulfill all the requirements for testimony, and each of the two people who are acquiring, the minds of the two parties are not from parents, there must be sharia traits that control their power. When these conditions are met, the marriage contract becomes purely valid and gives rise to sharia influences.[20]

b. Dependent Marriage and Its Laws

A dependent marriage contract is a valid contract that is terminated with the permission of a person who has power, such as a marriage contract for a small child who is already clever *(mumayyiz)*, which is terminated with the permission of his guardian, a *fudhuli* agreement (carried out by someone else who is not a representative and not a substitute) is removed with the consent of the person being married. , namely husband or wife. According to Imam Muhammad *Al-Wali*, wise and mature women are equated with the *fudhuli* contract. If he is married without prior permission, the warranty depends on his authorization, his guardianship is united, and the guardian has no right to force the marriage. The contract law depends on the woman's permission; if she permits, the contract is perfectly valid and gives rise to all laws, such as dowry, maintenance, inheritance, *iddah*, etc. Meanwhile, if there is no permission, it is not halal to interfere, and there will be no inheritance between them. Only if the wife is already mixed up and becomes pregnant does the child's birth remain with the husband; he is obliged to perform *iddah* because he is separated because he must be separated, and the husband is obliged to pay the dowry.

c. Broken Marriage and the Law

Hanafiyah scholars differentiate between vanity and *fasid* (damaged) marriages. Vanity is something that is not strictly regulated, and its nature is like selling a carcass or marrying a woman who is haram to marry. Meanwhile, *fasid* is something that is prescribed in essence, not in nature, namely something that loses one of several conditions, such as a marriage contract without a marriage witness, which is limited in time by using the nikah or marriage vows or other pronunciations that constitute a marriage contract and polygamy, namely gathering two female siblings who are both haram to each other (mahram). If a defect occurs within the terms of the marriage contract, it is called vanity. If it occurs outside the terms of the marriage contract, it is called *fasid* (damaged), such as requiring a condition not needed for the contract.

[20] Ibid p. 127.

Fasid marriage contract law does not require anything from the effects of marriage. If someone has interfered with a woman based on a valid marriage contract, this is immoral. Both husband and wife who have entered into a *fasid* agreement should separate on their own accord because entering into a *fasid* contract is not permitted according to sharia'. If they do not separate *(furqah)* based on their conscience, those who know about it are obliged to separate them or report them to the headman so that they are separated. This was carried out because it looked at the benefit of the Muslims, both from a worldly and spiritual perspective. This is one of the places where valid assumptions are raised.

In marriage there is sexual relations, this sexual relationship is divided into two types, namely:

1. Permitted sexual relations

In principle, in Islam, the institution of marriage has two main objectives. First, get peace of mind and avoid anxiety and endless doubts. Second, giving birth to pious/salihah children, Allah SWT. said (QS. An-Nisâ:1). This verse shows that sexual intercourse is a necessary human nature distributed through marriage. This is intended to create a *sakinah, mawaddah, and warahmah* family. According to the term, marriage is sexual relations. Still, the meaning of *majazi*, or the legal meaning, is a marriage contract (agreement) that makes sexual relations between a man and a woman lawful as husband and wife. According to Imam Syafi'I, the meaning of marriage is a contract by which sexual relations between a man and a woman become lawful. In contrast, according to the sense of *majazi* it means sexual relations. Mahmud Yunus defines marriage as sexual relations.

Meanwhile, Hazairin said that the essence of marriage is sexual relations; according to him, there is no marriage if there are no sexual relations. Furthermore, Ibrahim Hosen defines marriage as a contract in which sexual relations between a man and a woman are lawful.[21]

It can be understood that marriage has more connotations of sexual relations between men and women. Halal sexual relations, in the Islamic view, are sexual relations between men and women through marriage.

2. Forbidden sexual relations

Prohibited sexual relations means relations between husband and wife at certain times, such as menstruation, postpartum, and having sexual relations with a woman other than his legal wife. Prohibition of sexual relations when the wife is menstruating or postpartum, Allah SWT. Says QS Al-Baqarah: 222.

Sexual relations that are prohibited other than those mentioned above in Islam are homosexuality; this act is called *liwath*. This term arose because this act was first carried out by the people of the Prophet Luth who lived at the same time as the Prophet Luth in the Qur-an, as contained in the surah, Al-A'raf (7): 80-84, Al-Hijr (15): 59-77, Al-Anbiya (21): 74-75, Ash-Syu'ara (26): 160-175, An-Naml (27): 54-58, Al-Ankabût (29): 28- 35, Ash-Shafaat (37): 133-138, and Al-Qamar (54): 33-40.

C. Transgender

1. Understanding Transgender

Etymologically, transgender comes from two words, namely "trans," which means moving

[21] Mohd. Idris Ramulyo. *Hukum Pernikahan Islam*. Ed. Ke-2. PT. Bumi Aksara: Jakarta 2002. pp. 1-3.

(hand, dependent), or transfer of the word "gender," which means sex.[22] In terms of terminology, transgender is a term used to describe people who act, feel, think, or look different from the sex assigned at birth. Transgender does not indicate any specific form of sexual orientation of their organs.[23] Transgender is a symptom of a person's dissatisfaction because they feel that there is no match between their physical form and genitals and their mental state or because they are dissatisfied with their genitals. The expression can be in the form of grooming, makeup, style and behavior, and even sex reassignment surgery. In the DSM (*Diagnostics and Statistical Manual of Mental Disorders), this deviation is also known as gender dysphoria syndrome.*[24]

Transgender in Arabic is called *Mukhannats*. Etymologically, *mukhannats* comes from the word *khanitsa-khinatsan*, which means acting like a woman.[25] In terms of terminology, *mukhannats* dress in women's clothing and resemble women in their movements, actions, and speech.[26]

It can be understood that transgender is a person's gender identity that is not the same as the gender assigned to them. "A person designated as a particular sex, generally after birth based on genital condition, however, feels that this is wrong and does not describe themselves perfectly. Do not identify (themselves) or do not appear to be the sex (as well as their assumed gender) assigned at birth. Transgender is not a sexual orientation. People who are transgender can identify themselves as heterosexual, homosexual, bisexual, or asexual, which includes the transgender group.

2. Transgender History

The term transgender has only been known since 1965 through psychiatrist John F. Oliven from Columbia University. When writing the second edition of his reference book aimed at health experts entitled Sexual Hygiene and Pathology in 1965, he used the lexical *trans+gender* in the *Transsexualism* chapter*, Primary Transvestism section (*Transvestism Primary) by writing, "transgenderism' is what is meant," because sexuality is not a significant factor in primary transvestism.[27] Then, the leading figure in Crossdressing, Virginia Charles Prince, used the term in December 1969 for the title *Transvestiteas* as the title of a magazine he founded for crossdressers.[28]

Christine Jorgensen, in 1979, rejected the term transsexual in public and identified himself as transgender as the newspaper wrote, "Gender has nothing to do with who we are in bed, but rather with identity."[29] By 1984, the concept of a "transgender community" had developed, with transgender being used as an umbrella term.[30] By 1985, Richard Elkins established the "Trans-Gender Archive" at the University of Ulster.[31] The International

[22] Ibid*,* p. 197.

[23] Sarlito Wirawan Sarwono. *Psikologi.* Erlangga: Jakarta. 2008. p. 109.

[24] Setiawan Budi Utomo. *Fiqih Aktual Jawaban Tuntas Masalah Kontemporer.* Gema Insani: Jakarta. 2003. p. 171.

[25] Munawwir. *Kamus al-Munawwir Arab-Indonesia.* Pustaka Progresif: Surabaya. 1997. p. 371.

[26] Muhammad Amin bin Umar Abidin. *Raddu al-Mukhtar ala al-Durri al- Mukhtar.* Juz IV. p 69.

[27] Oliven, John F. *Sexual Hygiene and Pathology*. The American Journal of the Medical Sciences: Amerika 1965. Vol 250. p. 235.

[28] Richard Eknis. Dave King. *The Transgender Phenomenon.* Sage Publications. 2006. p. 13-14.

[29] Jerry Parker. *Transgender Woman.* Winnipeg Free Press. 1979. p. 27.

[30] Ibid, p. 41.

[31] Richard Eknis. Dave King. *The Transgender Phenomenon.* Sage Publications. 2006. p. 13-14.

Conference on Transgender Law and Employment Policy in 1992 defined transgender as a broad umbrella term that includes "transsexuals, trans genders, crossdressers" who transition.[32]

Muhammad bin Ali bin Muhammad al-Syaukani, in his book Nailu al-Authâr, explains that during the time of the Prophet, there were already transgender people, and the known names included Hita, Matik, and Hinaba. There were transgender people in the time of the Prophet who were genuine transgender people and some who were artificial. Real transgender people generally do not appear to be harmful to women. And because of that, the Prophet's wives considered them (genuine transgender people) to be *ghoiru until irbah* (having no needs and no lust). Even so, the Prophet forbade them to enter (associate) with women freely, and there must be a hijab/veil between them. For those who did not comply, after that, the Prophet forbade them to enter and were not allowed to return except once a week, namely every Friday, to receive food rations; the rest of the time, they lived in *Baida*' (field) or *Badiyah* (remote village).[33]

The terms waria or transgender are better known in Indonesia than the terms lesbian and gay. This term is better known and attached to men who consider themselves women than to women who believe themselves men. Women who think of themselves as men or prefer a masculine style are called tomboys.

3. Types of Transgenders

There are two types of transgenders (mukhannats). First, *(mukhannats) min ashlil khilkah* is a man whose innate characteristics are like women, from how he speaks, body gestures, walks, and behavior. Second, Transgender (mukhannats) *bil qashdi,* which is made up, namely an ordinary man who deliberately becomes a sissy, imitating the style of speaking, walking, and behaving like a woman. This group is mukhannats who are cursed as in the hadith, which prohibits men from imitating women's behavior.

Imam Nawawi added in his book "*Sharh Sahih Muslim*" that the second is mukhannats, which is not created as a mukhannats. However, he pretends to act like a woman in his movements and his makeup, way of speaking, and style of dress. This is the despicable transgender person (mukhannats); there are authentic hadiths that curse it. As for the first mukhannats, he is not condemned.[34]

Transgender factors are influenced by various aspects, both from the self-aspect, starting from the influence of genes, hormones, or chromosomes that are innate from birth, aspects of the family environment (wrong upbringing from parents), aspects of society, namely inappropriate relationships, and the existence of international movements. Apart from those mentioned, some also come from food factors, such as haram. Ashadith of the Prophet which reads:

> *Meaning: "Diriwayatkan dari Jabir bin Samurah radhiyallahu „anhu, ia mengisahkan: Ada seorang laki-laki yang bertanya kepada Rasulullah shallallahu „alaihi wa sallam: Apakah kita diwajibkan berwudlu karena memakan daging kambing? Beliau menjawab: Engkau boleh berwudlu, dan juga boleh untuk tidak berwudlu". Lelaki itu kembali bertanya: Apakah kita wajib berwudlu karena memakan daging onta? Beliau menjawab: "Ya, berwudlulah engkau karena memakan daging onta." (H.R* Muslim.)

[32] Internationals Conference on Transgender Law and Employment Policy.

[33] Muhammad al-Syaukanni. *Nailu al-Authar*. Mesir: Dar al-Hadits. tt. Juz VI. P. 176.

[34] Imam al-Nawawi, *Sahih Muslim bi Syarhi al-Nawawi.* Beirut: Dâr al-Kitab al-Arabi, 1987. p. 317.

The hadith above shows that the temperament and personality of every human being can be influenced by the food consumed. The Prophet suggested that people who eat camel meat are required to perform ablution to eliminate the harmful effects of the meat they eat.

D. Prohibition of transgender marriage according to Buya Hamka (Al-Azhar Tafsir Book)

Hamka[35] has explained the meaning of marriage in his "interpretation" that marriage is the existence of two persons, a man and a woman, whose lives are combined. One is establishing a household and a family with certain conditions and harmony.[36] The fundamental purpose of marriage is to produce offspring for further survival. Whereas related marriages carried out by transgender groups are not explicitly mentioned in the Qur'an and Hadith regarding transgender marriage laws.

If a transgender marriage occurs, many deviations will occur, such as same-sex marriage, homosexual, lesbian, gay, bisexual, and so on. Islam's view of sexuality is based on knowledge of human nature and efforts for sexual fulfillment so that each individual in society does not exceed the limits of their personality. He must walk in a usual way according to the line framed with Islamic rules. Through marriage, the aim is to obtain offspring for further survival. As the Word of Allah SWT. in the Koran (QS. Al-Rûm: 21).[37]

Buya Hamka explained his interpretation: the Islamic view of marriage targets the behavior of channeling human sexual desires correctly, which Allah SWT approves. By one's nature, living in harmony and being able to fulfill the demands of life typically without neglecting other needs. The man looks for the woman until he finds the girl waiting for the man to come. So, energies are combined into one. Because the combination becomes one, human reproduction can be carried out directly. And "there is love and affection between you." Love and affection will naturally grow. Because positive always wants to meet negative, males look for females, and males wish for females.[38] Human reproduction will not occur if positive posi, positive, negative, and pessimistic, female and female or vice versa, male and male or vice versa.

Marriage exists to legalize the relationship between a man and a woman.[39] That is, it is aimed at procreation (sex as propagation); on the other hand, sex is seen as a way to get pleasure (sex as a recreational and fun). This understanding still limits sexuality too much on physical area, even though it is more than that, sex is a statement of feelings (sex as relational).[40]

This provision is a *mujma' 'alaihi* law. This is explained in QS al-Baqarah (2): 223. The word "Nisa" in this verse emphasizes that women are permitted to marry men, depicting a wife with a place to cultivate in the sense of a field; this signals that the marriage partner must be someone who produces, namely, a woman. In various fiqh literature, marriage is declared valid if it meets the requirements for the pillars of marriage, namely: a) the prospective husband is a

[35] Haji Abdul Malik Karim Amrullah, better known as HAMKA, is a very famous cleric, writer, historian, and politician in Indonesia. Buya Hamka is also an autodidactic learner in scientific fields such as philosophy, literature, history, sociology, and politics, both Islamic and Western. Hamka was once appointed minister of religion and is active in Indonesian politics. Hamka was born in the village of Molek, Maninjau, West Sumatra, on February 17, 1908, and died in Jakarta on July 24, 1981, at the age of 73 years. See Deliar Noer,*Modern Islamic Movement in Indonesia*, *1900-1942*, (Jakarta: LP3ES Member of IKAPI, 1985), Cet-3, p. 46.

[36] Hamka, *Hamka Berbicara Tentang Perempuan*. Jakarta: Gema Insani. 2014. p. 71.

[37] Departement of Religion of Republic Indonesia. *Alquran Dan Terjemahan dengan Transliterasi.* p. 803.

[38] Hamka, *Tafsir Al-Azhar*. Pustaka Nasional PTE LTD, Singapura: Jakarta. 1989. Jilid 7. p. 5502.

[39] Salim H.S, *Pengantar Hukum Perdata Tertulis* (BW). Jakarta: Sinar Grafika, 2002. p. 61.

[40] Fx Rudi Gunawan, *Filsafat Seks*. Yogyakarta: Bentang. 1993. p 8.

Muslim, b) the prospective wife, even though she is Jewish or Christian, c) the marriage guardian of the prospective husband, d) two fair witnesses, e) explicit consent and qabul.

Based on this, it can be understood that marriage requires a partner from a prospective bride and groom of different genders (male and female). These legal provisions are binding and cannot change from the dawn of time until the end of life. It cannot be said that the institution of marriage is performed with fellow type through the behavior and actions of the transgender person.

Buya Hamka explained that after love and affection appear regarding the satisfaction of sexual intercourse, the term mawaddah, or love for both parties, becomes more material. Sexual sexual desire does not continue throughout life; the ratio is that men are 60 years old while women are 50 years old. At this age, sexual desire automatically begins to relax. According to Hamka, it is not just mawaddatan between husband and wife; the older they get, the deeper the affection between both parties becomes. That is mercy, namely compassion. Appreciation is more profound than love.[44] It can be concluded that by carrying out a marriage properly according to the provisions of the Qur'an and Sunnah, it will be easy to create *sakinah, mawaddah warahmah.* This is different with Transgender people; they will not feel what is called *sakinah mawaddah warahmah*; instead, they will experience sin and doom.

According to Hamka, in his interpretation, the relationship between men and women in marriage is one of the signs of the greatness of Allah SWT, the emergence of peace, *sakinah, mawaddah warahmah,* from one becoming many through this proliferation, if there is no meeting between men and women this will be no mixing; therefore, humans will become extinct in this world.[41] To regulate life so that it runs naturally and orderly, it is explained that the purpose of religion is to protect five things: (1) Protect the religion itself, (2) protect the mind so that it is not damaged, (3) protect the soul so that it does not perish according to what is unnatural (4) protecting property, and (5) protecting offspring.[42] The most crucial goal of marriage is to obtain offspring and the reproduction (sex as propagation) of human life to protect and preserve offspring (hifz al-nasl). Through a valid marriage, legitimate offspring, pious/pious offspring, will emerge and be recognized before the law. The emergence of offspring and generations as human successors can only be realized if a male and female couple carries it out. As Allah says in QS al-Hujarat (49): 13

Based on this verse, it can be understood that marriages carried out by transgender people are seen as destructive because they violate human nature. Biologically, humans have been created in pairs (male and female) as a motivation and encouragement for mutual attraction between them. A woman has a body structure that Allah has made in the form of a womb so that she can conceive and give birth to offspring, while a man has sperm in the body of a man who will meet with egg cells to meet, be fertilized and develop in a woman's uterus. Therefore, the nature of creating lust, which is channeled through the institution of marriage, is to obtain peace in one's heart and mind and to have children. Ibn Khaldun and Giambattista Vico (Italian historian Angelo Bertolo) combined their analysis by warning that the collapse of Western civilization was due to declining birth rates.[43] Al-Ghazali mentioned the relationship fellow as a type that is forbidden because it will sever offspring.[44]

Marriage is not only for the continuation of offspring or for the sustainable regeneration

[41] Hamka. Tafsir Al-Azhar. p. 4404.
[42] *Ibid*. p. 4404.
[43] Fx Rudi Gunawan, *Filsafat Seks*. Yogyakarta: Bentang. 1993. p 8.
[44] *Ibid*. p. 5503.

of humanity; the next aim of marriage is to create a household that is sakinah, mawaddah, and rahmah), namely, creating tranquility, peace, love, compassion, and affection. As explained by Buya Hamka in his interpretation above and in compilation of Islamic Law in Article 3 is in line and in harmony with the word of Allah SWT, which is reflected in QS al-Rum (30) verse 21. If transgender people carry out the marriage, of course, the goal of marriage will not be achieved. In essence, Islam always upholds human dignity by emphasizing the command to maintain the principles of goodness (maslahat). Transgender marriage is strictly prohibited in Islam because it is entirely far from the direction of benefit. This is because transgender marriage can threaten the existence of essential human benefits, namely not maintaining the continuity of human offspring *(hifz al-nasl*). After all, transgender marriage will degrade the family and community system, even cutting off the next generation, because transgender people consider themselves trapped in a different body. Wrong and adapting their inner turmoil to their souls, thus encouraging them to have same-sex sexual relations through marriage; this will not result in offspring; this is done only for the momentary pleasure of lust without seeing that the damage is greater than the benefit because, in essence, men are Transgender men have normal or perfect internal organs or sex in its creation. After all, one of the partners is not pure/originally a woman; even though the transgender man changed his gender through surgery and was determined to be a woman by the district court, the person concerned does not have a uterus for the growth and development of the fetus in the woman's stomach.

This action does not fulfill human benefits in the form of protection of the mind (hifz al-aql) because transgender marriage hurts, damaging the brain's nerves, weakening the senses, and reducing work morale. Thoughts and feelings haunted by persistent guilt. Transgender marriages also have consequences and threaten the human soul that should be protected (hifz al-nafs) because this marriage behavior results in sexual relations. Fellow type can be risky as it could be contracting deadly diseases such as HIV, AIDS, and other sexually transmitted infections.

In transgender marriage, this eliminates respect for the human soul. Besides, doing this marriage means ignoring the principle of honor protection *(hifz al-'irdh)*, which results in damage to human dignity (especially the perpetrator) both before God and fellow man. Because transgender marriages result in homosexual acts. This action is based on the proposition of QS an-nisa' (4): 15.

It can be understood that marriages carried out by transgender behavior are seen as *tahlilul haram* (making lawful what is haram), the sin of which is more significant than violating the haram itself. This act includes heresy and leaving Islam. Because performing tasyabbuh/resembling someone of the opposite sex is something that is cursed by Allah and the Prophet Muhammad SAW, this curse is caused by transgender men who follow this tendency. Of course, the anger and wrath of Allah and the Prophet SAW will be more significant, and the sin will be greater if the act is legalized through marriage and considered a show that is forbidden to be halal.

Marriages carried out by transgender groups to change their gender shape are classified into two terms, namely: 1) *al-Fasid* marriage. 2) *Al-Bathil's* wedding. If viewed from the qiyas law, the marriage of al-fasiq and al-Bathil is an act classified as invalid, and al-bathil is carried out. This means that the law is null and void. An *al-fasid* marriage is a marriage carried out without fulfilling one of the conditions of marriage. In contrast, an al-bathil marriage is a marriage carried out without fulfilling the pillars of marriage. Even though the two terms are different, they are still the same. That is, both are invalid.

E. CONCLUSION

Transgender marriage for perpetrators of genital surgery for the purpose of *taghyir* or *tabdil* (change) is haram. Several scholars, including Buya Hamka in the *Tafsir Al-Azhar* book, believe the legal implications will not change the original law before the operation. The original law was that it depended on gender before the operation. If he originally had a penis (male) and then underwent surgery to change it into a vagina (female), then he is still punished as a man. So, she cannot marry a man forever because he is genuine. Therefore, it becomes haram if he continues to carry out his marriage because automatically, he will marry the prospective male companion, too. This haram law is attributed not because its operation is haram, but because of its original law (*the law of al-luwathah*). Therefore, it will also be unable to fulfill the marriage's requirements for harmony.

One of the pillars of marriage is the presence of a groom and a bride. Meanwhile, the conditions for marriage, according to Imam Hanafi, Syafi'I, and Hambali, are that the prospective bride and groom must *muayyin* (appear) in the sense that the identity is apparent. Here, it can be interpreted as clear whereabouts and whose identity is apparent. Imam Hambali even added the condition that there are no Sharia obstacles between men and women in marriage. If so, marriage with transgender people has been hindered by Sharia.

In fiqh, transgender marriage contracts can be categorized as *fasid* marriages as well as false marriages. *A* valid marriage is a marriage that does not fulfill one of several existing conditions. Meanwhile, a fraudulent marriage is one in which the harmony is not fulfilled. The laws of valid marriage and wrong marriage are both invalid. In the terminology of the Marriage Law*, fasid* marriages and false marriages can be used as an annulment of marriage and not as a prevention. The difference is that prevention is more appropriate to use before the wedding takes place.

Meanwhile, the impressive cancellation of the wedding has taken place. Then, it was discovered that the provisions regarding requirements and pillars and applicable laws were violated. However, prevention and cancellation still have negative consequences for the wedding.

Transgender marriages can be prevented. In Marriage Law No. 1 1974, article 13 states that a marriage can be contained if a party does not fulfill the requirements for carrying out a marriage. The same as article 60, paragraph 2 KHI states that marriage prevention can be carried out if the prospective husband or wife who is going to get married does not meet the requirements for getting married according to Islamic law and statutory regulations.

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