



IMPLICATIONS OF TRANSGENDER ON MARITAL STATUS FROM THE PERSPECTIVE OF MEDAN CITY SCHOLARS

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ABSTRACT

The phenomenon of gender reassignment (transgender) presents complex legal issues, particularly concerning marital status from an Islamic legal perspective. This research examines the Islamic view on gender reassignment, the validity of marriage post-reassignment, and the implications on marital status according to scholars in Medan City. Using a qualitative method with a normative-sociological approach, data was gathered through a literature review and interviews with scholars from the Indonesian Ulema Council (MUI), Muhammadiyah, and Al-Washliyah. The findings show that Islamic law views intentional sex reassignment, without medical reasons, as contrary to human nature and impermissible. While the marriage contract remains valid, gender reassignment disrupts the marital essence, rendering the marriage unsustainable. Medan scholars believe that gender reassignment does not invalidate the marriage but provides a strong basis for ending it through Islamic legal mechanisms, with fasakh being the most just solution. This research contributes to Islamic family law studies, emphasizing the Sharia-oriented approach in addressing transgender issues.

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1. INTRODUCTION

The development of modern medical science has brought about significant changes in how humans understand their bodies and identities. One phenomenon that has emerged with the advancement of medical technology is transgenderism, which is a person's change of gender identity from their original sex to another. In the view of Islamic law, the concept of gender holds a fundamental position because many Sharia laws depend on it, such as guardianship, inheritance, mahram, and rights and obligations within the household. The Quran emphasizes that Allah created humans in two different sexes, male and female, as mentioned in Surah An-Nisa: 1 and Surah Al-Hujurat: 13. These verses affirm that gender differences are a natural part of creation that cannot be fundamentally altered by humans through medical intervention.

In the classical jurisprudence tradition, scholars like Ibn Qudamah asserted that a person biologically created as male cannot become female solely through medical or surgical procedures, as such changes do not alter the original essence of creation (asl al-khalqah).

Meanwhile, contemporary scholars such as Yusuf al-Qaradawi distinguish between sex reassignment surgery that is medically therapeutic, i.e., for patients with genital abnormalities or intersex conditions (khunsa musykil), and transgender surgery performed based on personal desire to change one's gender identity.

According to Law Number 1 of 1974 concerning Marriage, it is stated that marriage is a bond of body and soul between a man and a woman to form a happy and lasting family based on the One God. This formulation shows that the difference in gender is an essential element for the validity of marriage.

Gender reassignment that occurs after marriage raises extremely complex legal issues: is the marriage contract automatically void, or must it be dissolved thru specific legal mechanisms such as divorce, *khulu'*, or *fasakh*? Meanwhile, in Islamic law, the dissolution or annulment of marriage can essentially only occur thru three main ways: *Talaq*, which is divorce at the husband's will; *Khulu'*, which is divorce at the wife's request with a specific ransom; and *Fasakh*, which is the annulment of marriage by a judge due to the presence of a religious reason that prevents the continuation of the marriage.

This is the core issue of this research, as there is currently no explicit regulation in the Islamic Law Compilation (KHI) or national fatwas that detail the legal status of marriage after transgender (sex change). Therefore, a study is needed to explore the views of local scholars in Medan City regarding the validity, sustainability, and legal implications of marriage after one of the partners undergoes transgender surgery, as well as the status of children born before the gender change, the division of joint property after the marriage is annulled, and inheritance rights between former spouses. Thus, this research attempts to fill the gap in studies that connect Islamic legal theory, contemporary fatwas, and the views of local scholars. This research is expected to provide a comprehensive understanding of the implications of transgenderism on marital status in Islamic law by formulating the research questions as follows.

2. RESEARCH METHODS

This research is normative-sociological research. Normative is used to examine Islamic legal provisions related to gender reassignment and the validity of marriage based on Islamic legal sources such as the Quran, Hadith, classical fiqh books, and scholars' fatwas. Meanwhile, sociological methods are used to understand how Medan city scholars interpret and apply Islamic law within the ever-changing social context of society.

This research is descriptive-analytical and also preventive-anticipatory. It is descriptive-analytical because this study attempts to systematically and deeply describe and analyze the views of Medan City scholars on the transgender phenomenon. Preventive-anticipatory because this research does not wait for real cases to emerge, but rather explores Islamic legal perspectives as a form of preparedness and anticipation for the possible occurrence of similar events in the future.

This research uses two main data sources: library data and field data. Library Research data is obtained from written sources, including: Primary legal materials, secondary legal materials, and tertiary legal materials. Data collection techniques thru Library Research. Then, in-depth interviews were conducted in a semi-structured manner, using a general guide to stay focused while remaining open to the development of the informant's opinions. This interview is intended for the religious scholars in Medan City.

3. RESULT AND ANALYSIS

Islamic Law's Perspective on Sex Change (Transgender)

In Islam, the Quran does not explicitly use the term transgender. The Quran explicitly states that human gender is part of a fixed (*tsabit*) system of creation and cannot be fundamentally changed. As Allah SWT says: (Q.S. ar-Rum [30]: 30).

Imam al-Nawawi explained that a *khuntha* is an innate biological condition, not the result of human choice or manipulation, because their condition is a creation of Allah. Therefore, scholars formulated detailed rules regarding inheritance, worship, and transactions based on dominant biological traits. Classical scholars did not equate *khunsa* with transgender people, because transgenderism is a modern psychological/social identity phenomenon.

Islam emphasizes that humans are created with two sexes, each having different social and biological functions. Allah Almighty says: "And that it is He who created the male and female pairs from the sperm when it is emitted." (Qur'an 53:45-46).

Contemporary scholars believe that gender identity in Islam is determined by biological structure (sex) and not by an individual's inner perception or psychological experience. Therefore, feelings of incongruity between psychological identity and biological sex (gender dysphoria) do not automatically change a person's legal status from an Islamic law perspective.

Wahbah Al-Zuhaili emphasized:

The original principle in the human body is that it is forbidden (to be changed), and it is not permissible to change it except for emergency treatment or to remove congenital defects.

Furthermore, Abdul Karim Zaydan also believes that gender is a fact of creation (*ḥaqiqah khalqiyah*) that does not depend on an individual's subjective feelings.

He affirmed:

Masculinity and femininity are two realities of creation that are not altered by will or psychological feelings.

Then, Muḥammad Taqī al-'Utsmani also discussed gender reassignment in the context of fiqh al-nawazil (contemporary cases).

Al-'Utsmani stated:

Psychological suffering cannot be used as justification to change the creation that God has ordained for humanity.

From the above explanation, it can be concluded that in the Islamic view, sex change without a medical basis is not merely a physical act, but includes a violation of the natural order of creation. Islam distinguishes between medical actions that are *tabyin* (explaining God's creation), such as managing cases of *khuntsa musykil*, and actions that are *taghyir* (changing God's creation).

The Validity and Continuity of Marriage After Gender Reassignment (Transgender)

Islamic law views humans as creatures created by God in the most perfect form. This principle is affirmed in the Quran, which states that Allah created humans in the best of forms. Scholars concluded that transgender individuals are not recognized as having a change in legal status in Islam. A person born male is still judged as male, and vice versa, even if they have undergone physical changes or gender identity changes.

In the context of post-marital gender reassignment, the main issue that needs to be emphasized is whether such a change has implications for the validity of the marriage contract that was previously entered into. The majority of scholars hold the view that the validity of a marriage contract is not affected by events that occur after the contract is made, unless there is a clear religious text that explicitly states its annulment.

Ibn Qudamah explained that a valid marriage contract is not nullified except by the causes determined by Sharia, such as divorce, *khulu'*, or *fasakh*. There is no provision stating that a physical change in one of the partners after the marriage contract automatically invalidates the marriage contract.

To assess the validity of a marriage contract after gender reassignment, the marriage pillars need to be re-analyzed one by one. First, from the perspective of the parties to the contract, namely the prospective husband and prospective wife. At the time of the marriage ceremony, the legal identities of the parties are determined based on their biological sex as recognized by Islamic law. As long as these conditions are met, this pillar is considered valid. Second, the marriage guardian. The validity of the marriage guardian is not affected by changes that occur after the marriage contract, because the guardian performs their function at the time the contract takes place. Therefore, post-marriage gender changes do not affect the validity of the guardianship that has already been established.

Third, witnesses and the declaration of acceptance. The valid witnesses and the declaration of acceptance at the time of the marriage contract still have legal force, even if there is a subsequent change in circumstances for one of the parties. Thus, there are no defects in the pillars of marriage that can invalidate the validity of the marriage contract due to a change in gender after the contract. This analysis shows that from the perspective of the pillars and conditions of marriage, there is no religious reason to declare the marriage contract automatically invalid simply because there is a change in gender after the contract.

Therefore, a more appropriate approach is to distinguish between the formal validity of the marriage contract and the substantive suitability for the marriage to continue. With this approach, legal certainty is maintained without ignoring the social and psychological realities faced by married couples.

Based on the analysis above, it can be concluded that a valid marriage contract initially remains legally valid even if one of the partners undergoes a sex change after the contract is made. There is no basis in the Quran or Islamic jurisprudence that justifies the automatic annulment of a marriage contract in such cases.

However, the validity of the marriage contract does not mean that the marriage must be maintained under all circumstances. Therefore, although the contract remains valid, the continuation of the marriage must be assessed separately, considering the aspects of benefit and harm. In the context of post-marital gender reassignment, the termination of marriage becomes a complex issue because there are no explicit provisions in the religious texts, requiring in-depth analysis through the mechanisms of divorce, *khulu'*, and *fasakh*, and their relationship with positive law in Indonesia.

Divorce is the husband's right to dissolve the marriage bond with specific words in accordance with the provisions of Islamic law. Divorce can be a mechanism for ending a marriage when the husband or wife (in their original legal position) feels that family life is no longer sustainable. However, divorce still depends on the husband's will. Wahbah al-Zuhaili explains that divorce is not an obligation, but a permission that must be used proportionally and responsibly.

Khulu' is a mechanism for ending a marriage at the wife's request by providing compensation (*iwadh*) to the husband. However, *khulu'* has weaknesses because it requires the husband's consent and the payment of compensation, potentially disadvantaging the wife. Ibn Qudamah explained that *khulu'* is essentially a form of divorce with a ransom, so its validity still depends on the husband's willingness.

Fasakh is the annulment of marriage by a judge due to religious reasons that prevent the achievement of the marriage's objectives. In Islamic jurisprudence, fasakh can be performed when there is a defect or condition that prevents one party from fulfilling their obligations as a husband or wife. Abd al-Karim Zaydan explained that fasakh can be granted if there is real and ongoing harm, and there is no other more beneficial alternative.

Post-marital gender reassignment can be likened to a defect that hinders the biological and social functions of marriage. Therefore, fasakh is the most appropriate mechanism because: it does not depend on unilateral will, guarantees legal certainty, protects the injured party, and is in accordance with the principles of maqasid al-syariah. This approach shows that fasakh has greater flexibility in addressing contemporary issues.

The Views of Medan City Scholars on the Implications of Gender Reassignment (Transgender) on Marital Status

The MUI scholars of Medan City affirmed that marriage in Islam can only take place in principle between a man and a woman. Gender reassignment after marriage is considered to eliminate the essence of the marital relationship as prescribed.

One of the MUI administrators stated:

"If we talk about marriage in Islam, it's clear that it's between a man and a woman. Well, if one of them changes their gender in the middle of the journey, then essentially, their marital relationship is no longer as prescribed. Although the contract was valid before, the conditions after that have clearly changed.

Nevertheless, MUI scholars did not immediately declare the marriage automatically null and void. The marriage contract that has been legally valid remains legally recognized, but its continuation must be determined thru legitimate legal mechanisms. This was emphasized by the MUI management: "The marriage contract was indeed valid at the time it was performed, because the conditions and pillars were met. But after a gender change, that's already a new issue. It can't be left like this; there must still be a legal resolution, whether it's divorce or fasakh.

The Muhammadiyah scholars of Medan City view the issues of transgender and marriage thru the lens of maqāṣid al-syarī'ah. Marriage is not only viewed from the validity of the contract, but also from whether the goals of marriage are achieved or not.

A Muhammadiyah scholar stated:

"In Islam, what is considered is not just the validity of the contract, but also the purpose of the marriage. If a gender change makes the goals of marriage unattainable, then maintaining the marriage can actually create new problems.

According to this view, gender reassignment leads to the loss of the primary purposes of marriage, such as domestic tranquility and the continuation of lineage. Therefore, maintaining the marriage under such conditions is considered inconsistent with the principle of public interest.

Muhammadiyah scholars emphasize:

Gender reassignment cannot be used to justify same-sex relationships. So even tho its legal status needs to be resolved amicably, a marriage like that clearly cannot continue.

This view aligns with the theory of maqāṣid al-syarī'ah, which places the preservation of offspring (ḥifẓ al-nasl) as one of the primary objectives of Islamic law. Thus, post-marital gender reassignment is seen as having implications that necessitate the dissolution of the marriage thru fair legal channels.

In the view of Al-Washliyah, gender reassignment causes the husband-wife relationship to no longer align with the natural state established by Islamic law. Therefore, the marriage cannot be maintained.

This was confirmed by another scholar:

"If it's no longer in accordance with the natural disposition of men and women, then the marriage cannot be maintained. But it still has to go thru legal channels so that no party is harmed.

This approach aligns with the classical jurisprudential view that places the preservation of natural disposition and lineage as the foundation of Islamic family law.

Based on interviews with religious scholars in Medan City, it was found that post-marriage gender reassignment should not be understood solely as a moral or social issue, but must be resolved legally thru clear mechanisms, whether thru divorce, khulu', or fasakh.

Divorce is considered a legitimate mechanism because it is initiated by the husband, who holds the right to divorce.

An MUI scholar from Medan City stated:

"From a legal perspective, the safest way is actually divorce. Because their marital status is no longer sustainable, but the marriage contract was valid before. So, they decided to separate amicably.

This view aligns with classical jurisprudence, which states that divorce is a legitimate instrument for ending a marriage when the purpose of the marriage is no longer achieved.

In the context of khulu', scholars in Medan generally believe that this mechanism is less relevant if gender reassignment is done consciously and intentionally by one party. Khulu' is understood as divorce at the wife's request, with her providing a ransom (iwadh) to the husband.

The Muhammadiyah scholars of Medan City stated:

"If gender reassignment comes from personal choice, it doesn't seem right to burden the spouse thru khulu'. Because the spouse is actually harmed."

This view asserts that khulu' is more appropriately applied in the context of ordinary household disharmony, rather than as a result of fundamental changes in biological identity.

The majority of scholars in Medan City tend to view fasakh as the most appropriate form of marriage dissolution in cases of gender reassignment (transgender). Fasakh is understood as the annulment or dissolution of marriage by a judge due to a legal cause that prevents the continuation of the marriage.

A scholar from Al-Washliyah in Medan City affirmed:

"This is not just an ordinary divorce. Because the fundamental condition has changed." So, it's more appropriate for the judge to dissolve the marriage, rather than burdening one of the parties.

Gender reassignment is considered a legitimate reason that causes the loss of the ability to perform marital functions properly. Therefore, fasakh is considered fairer because it doesn't place the burden of fault entirely on one party.

4. CONCLUSION

The conclusion of this study indicates that from the perspective of Islamic law, sex change (transgenderism) is not considered to alter a person's original legal status, as gender is viewed as a permanent decree of God. The majority of scholars, both classical and contemporary, agree that gender reassignment driven by psychological identity or personal desire does not change a person's legal status. A valid marriage contract before gender reassignment remains valid under Islamic law, as there is no evidence or legal principle that invalidates a marriage contract solely due to a change in the physical condition or identity of the couple. However, while the marriage contract remains valid, the continuation of the marriage after gender reassignment cannot be maintained, necessitating a fair legal resolution in accordance with Islamic law principles. The religious scholars of Medan City, consisting of MUI, Muhammadiyah, and Al-Washliyah, agreed that post-marital gender reassignment does not automatically invalidate the marriage contract, but serves as a strong basis for ending the marriage thru legitimate legal mechanisms, with fasakh considered the most appropriate and just solution compared to talak or khulu', which do not always guaranty fairness for the disadvantaged partner.

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