

Islamic Legal Status on *Hajj* for Transgender People according to Muslim Scholars in North Sulawesi

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Abstract

This study investigates the perceptions of scholars concerning transgender people's legal status on their Hajj ritual validity. In North Sulawesi, seven scholars are considered the opinion-makers and authorities following their understanding of Hajj ritual procedures in Islamic law. The data were analyzed using qualitative methods through interviews and the needs theory by al-Shāṭibī, Ibn Khaldun, and Maslow. The results showed that the gender status of those yet to transition remains original. In contrast, the transitioned transgender people's status should change to the original law following the court's decision. Second, the scholars approved Hajj rituals for those yet to transition because they had their actual gender and sex. Furthermore, Hajj rituals for transgender people were also legally acceptable in Islamic law following the new status exception by the court. Finally, this article reveals that hajj rituals for transgender people are valid based on their initial gender or the court's decision. The hajj practices are invalid for those who illegally transition or without court approval.

Keywords: Hajj conception, Hajj rituals, transgender people, Ulama in North Sulawesi.

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Introduction

Transgender people face endless critics from society,¹ especially on their religious standing. The human anatomy classification is categorized by modern science as male, female, true hermaphrodites, and pseudo hermaphrodites. In contrast, the law follows the scientific gender binary classification as male or female. However, the Islamic jurisprudence on hermaphrodites contradicts science and Islamic law.² Therefore, the traditional Islamic law approach to hermaphrodites' management is challenged by medicine.

According to Quranic verses, humans were created as male or female (QS. 92:3).³ The Qur'an only mentions male or female genders,⁴ but hermaphrodites exist as male and female. The hermaphrodite phenomenon explains that Allah bestows males and females to whomever He wills (QS. 42:50).⁵ Ibn al-'Arabi stated that hermaphrodites exist and are bound by a law

¹ Wayne Martino and Jennifer C. Ingrey, "The Bathroom Polemic: Addressing the Ethical and Political Significance of Transgender Informed Epistemologies for Feminist Transdisciplinary Inquiry," *Transdisciplinary Feminist Research*, May 17, 2020, 76–89, <https://doi.org/10.4324/9780429199776-7>; Renato M. Liboro, Robb Travers, and Alex St. John, "Beyond the Dialectics and Polemics: Canadian Catholic Schools Addressing LGBT Youth Issues," *The High School Journal* 98, no. 2 (2015): 158–80, <https://doi.org/10.1353/hsj.2015.0000>; Wayne J. Martino and Wendy Cumming-Potvin, "Teaching about 'Princess Boys' or Not," *Men and Masculinities* 18, no. 1 (April 25, 2015): 79–99, <https://doi.org/10.1177/1097184X14551278>.

² Shah Haneef, Sayed Sikandar, and Ali Ahmed Zahir, "Gender Categorization Between Islam and Science: The Problem of Integration from Islamic Jurisprudence Perspective," *Revelation and Science* 6, no. 1 (2016): 1–6, <https://journals.iium.edu.my/revival/index.php/revival/article/view/127>.

³ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya* (Jakarta: CV. Putra Sejati Raya, 2003), p. 1067.

⁴ Evra Willya, "Hak-Hak Reproduksi Dalam Pandangan Islam," *Marwah: Jurnal Perempuan, Agama Dan Jender* 11, no. 1 (June 2, 2012): 1, <https://doi.org/10.24014/marwah.v11i1.497>.

⁵ Kementerian Agama RI, p. 791.

differently from other genders. However, they are given the law for males or females when included in different genders.⁶

Scholars define hermaphrodites as *khunsa*, meaning two genitals or neither male nor female. The al-Kasani argued that an individual could not be both genders simultaneously.⁷ However, some males feel, act, dress, and behave as females, known as *waria*⁸ in Indonesian⁹ or *mukhannas* by scholars. Females who feel, act, and dress like a male, are known as *tomboi* in Indonesian¹⁰ or *mutarajjilah* by scholars.

Transgender people experience social, legal, and religious challenges. Craig et al. stated that social challenges include discrimination and marginalization, specifically in finding a job.¹¹ The legal aspect involves transgender people who die of HIV/AIDS¹² cannot be buried due to a lack of an Identity Card.

⁶ Abi Bakar Muhammad bin Abdullah Ibnu al-‘Arabi Al Maliki, *Ahkām Al-Qur’ān Al-Ṣugra* (Beirut-Libanon: Dār al-Kutub al-‘Ilmiyah, 1971), p. 486.

⁷ Imam ‘Alauddin Abi Bakar bin Mas’ud al-Kāsāni Al Hanafi, *Badāi’ Al-Ṣanāi’ Fī Tartibi Al-Syarāi’*, II (Beirut-Libanon: Dār al-Kutub al-‘Ilmiyah, 2003), p. 461.

⁸ Waria is an acronym of wanita (female) and pria (Male). Waria is used as a term to define transgender people (especially from man to women) in Indonesian term.

⁹ Kementerian Pendidikan Nasional RI, *Kamus Besar Bahasa Indonesia (KBBI)*, 3rd ed. (Jakarta: Pusat Bahasa, 2002), p. 1269.

¹⁰ Kementerian Pendidikan Nasional RI, p. 1204.

¹¹ Shelley L. Craig et al., “Fighting for Survival: The Experiences of Lesbian, Gay, Bisexual, Transgender, and Questioning Students in Religious Colleges and Universities,” *Journal of Gay & Lesbian Social Services* 29, no. 1 (January 2, 2017): 1–24, <https://doi.org/10.1080/10538720.2016.1260512>.; Fauzi Iqbal Hibatulloh et al., “Discrimination and Legal Protection of Transgender: What Can We Learn?,” in *Proceedings of the 6th International Conference on Social and Political Sciences (ICOSAPS 2020)* (Paris, France: Atlantis Press, 2020), 559–556, <https://doi.org/10.2991/assehr.k.201219.085>.

¹² Nurul Ummah, Mokhammad Najeh, and Tongat Tongat, “Transgender in Indonesia According to The Legal, Health and Culture Perspective,” in *Proceedings of the 3rd International Conference on Indonesian Legal Studies, ICILS 2020, July 1st 2020, Semarang, Indonesia* (EAI, 2021), <https://doi.org/10.4108/eai.1-7-2020.2303651>.

Therefore, scholars named them *khunsa musykil* (people whose gender is difficult to determine), showing their challenges in *fiqh*, because the Qur'an only recognizes males and females (QS. 53:45).¹³

The transgender people's religious challenges include leading prayers, inheritance distribution, marriage, and Islamic provisions of Hajj ritual. Following Hajj rituals, the Ministry of Religion dispatches transgender Hajj regardless of sex transition. The Integrated Hajj Information and Computerized System (SISKOHAT)¹⁴ states that transgender people yet to undergo sex reassignment surgery are valid for Hajj. Following this, 42-year-old Sutika bin Marwapi from Cangkring Baru, Jenggawah, Jember, East Java performed Hajj with Kloter 69/Jember on October 15, 2012. Similarly, 52-year-old Sutrisnawati from Kunir, Jatimulyo, Lumajang, East Java, performed Hajj in Mecca with Kloter 58/Lumajang on September 1, 2016. Lastly, 50-year-old Ari bin Hadi from Kolaka, Southeast Sulawesi, performed his fourth Hajj in Mecca in 2018. Furthermore, all three had physical and natural female characteristics.

An Indonesian Hajj officer in Armina's work area reported that Dorce Gamalama performed sex reassignment surgery with female status and performed Hajj in 1990, 1991, and 2005. In the same year, 1,426 Hajj pilgrims, including 649 Indonesians, died in a stampede at the Haratul Lisan tunnel, Mina.¹⁵ Furthermore, North Sulawesi had not performed Hajj rituals for transgender people until 2019.

There are few studies on the transgender Hajj conception and rituals by North Sulawesi scholars. Nevertheless, research only focuses on gender identity, freedom, health, genetics, and Islamic law.

¹³ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya*, p. 875.

¹⁴ Sistem Informasi dan Komputerisasi Haji Terpadu (SISKOHAT) Kementerian Agama RI Kota Bitung, accessed on July 1, 2019.

¹⁵ Sistem Informasi dan Komputerisasi Haji Terpadu (SISKOHAT) Kementerian Agama RI Kota Bitung, accessed on August 19, 2019.

Pitaloka investigated gender identity contestation in heterosexist countries,¹⁶ focusing on LGBT in Indonesian mass media. They stated that marginalized agenda and social exclusion of sex and non-heterosexual gender are considered normal. This condition is shown by analyzing the government elites that politicize heterosexist gender identity through sex, gender, and institution following national narratives and state regulations. The state views gender identity as defining oneself inwardly and outwardly through discourse and action. Hutami stated that other parties pressure transgender people through public discourse on gender boundaries.¹⁷ It showed that they use gender attributes to free their bodies and souls from gender constraints. Helti, on the health perspective of transgender people classified as *waria* (shemale), stated that most were infected by HIV/AIDS (human immune virus/acquired immune deficiency syndrome) due to multiple sex partners.¹⁸ Suparti also argued that the transgender phenomenon impacts sexuality and all life aspects.¹⁹

Previous studies avoid the Islamic religious approach to transgender people. However, Kholis examined the Islamic law humanism perspective on transgender people, stating that fiqh literature focused on external physical reviews and used literal-practical meanings referring to *waria* as *khunsa*. The males that resemble the opposite gender are known as *mutasyabbih*, which

¹⁶ Dyah Ayu Pitaloka, "Kontestasi Identitas Gender Dalam Negara Heteroseksis: Studi Kasus Identitas Lesbian, Gay, Biseksual Dan Transgender (LGBT) Di Media Massa Di Indonesia" (Universitas Gadjah Mada Yogyakarta, 2018).

¹⁷ Erinda Ayu Hutami, "Gender Fluidity Sebagai Isu Kebebasan Dalam Novel Pasung Jiwa Karya Okky Madasari" (Universitas Gadjah Mada Yogyakarta, 2017).

¹⁸ Mestika Rija Helti, "Perilaku Transgender (Waria) Dalam Upaya Pencegahan HIV/AIDS Di Puskesmas Teladan Kota Medan Tahun 2016" (Universitas Sumatera Utara Medan, 2016), <http://repositori.usu.ac.id/handle/123456789/16675>.

¹⁹ Dwi Suparti, "Transgender Dalam Novel Taman Api Karya Yonathan Rahardjo: Kajian Strukturalisme Genetik" (Universitas Muhammadiyah Surabaya, 2012).

violates nature and is cursed.²⁰ Furthermore, fiqh is inconsistent with the *waria* identity, sometimes, it is identified as female, male, half male, and half female. Previous studies showed that transvestites are born that way (*mukhannas min asl al-khilqah*) and are not cursed in some fiqh schools. This thought is supported by the Liberal Islam Network (JIL) and Krisdianto, which states that society should recognize human beings' existence and freedom in sexual orientation choices and the LGBT community. According to Krisdianto, the JIL support of the LGBT existence and human rights freedom is based on religious arguments interpreted as contemporary historical science, psychology, and phenomenology.²¹ This study differs from previous ones but focuses on a similar object (transgender). Previous studies neither focus on Hajj conception and rituals for transgender people by North Sulawesi scholars nor explore different locations and scholars.

The purpose of this study was to analyze the views of North Sulawesi scholars regarding the validity status and rituals of the Hajj performed by transgender actors. Furthermore, this study offers a foundation for transgender people to perform Hajj from the North Sulawesi scholars' perspective aside from other literature and philosophies. This research is essential because the pilgrimage is related to Islamic obligations for those who can afford it. Meanwhile, transgender actors, considered deviant from religion, also participate in the Hajj. Therefore, it is necessary to find a way out according to religious guidance so that transgender actors can also carry out the pilgrimage like Muslims in general.

The data were analyzed using a qualitative approach with interview techniques. Seven North Sulawesi scholars were interviewed on transgenders' Hajj conception and rituals in

²⁰ Nur Kholis, "Humanisme Hukum Islam Tentang Waria Kajian Filsafat Hukum Islam Tentang Praktik Keagamaan Waria Di Pesantren Khusus Waria Senin-Kamis Yogyakarta" (IAIN Walisongo Semarang, 2013), <https://eprints.walisongo.ac.id/id/eprint/35>.

²¹ Didit Krisdianto, "Konsepsi Lesbian Gay Biseksual Dan Transgender (LGBT) Perspektif Jaringan Islam Liberal (JIL)" (UIN Sunan Ampel Surabaya, 2017), <http://digilib.uinsby.ac.id/id/eprint/19559>.

Indonesia. The scholars included Habib Muhsin Bilfaqih, K.H. Abdul Wahab Abdul Ghafur (Chairman of Indonesian Ulema Council (MUI) North Sulawesi), Salma Mursyid (Dean of the Sharia Faculty, IAIN Manado), K.H. Abdurrahman Mahrus, K.H. Yaser Bachmid (Vice Chairman of MUI Manado City), K.H. Abdurrahman Latukau (Vice Chairman of MUI North Sulawesi), and K.H. Mashar Kinontoa (Chairman of MUI Manado). These informants were selected to provide their views and thoughts regarding the validity status and practices of Hajj for transgender actors, considering that they have the capacity and authority in this matter. The Hajj is related to the obligations of Muslims to those who can carry it out. Scholars as people who understand Islamic law, especially those related to the validity and rituals of Hajj, are considered appropriate to be research informants. In addition, scholars have the capacity and authority to issue fatwas related to religious issues, including those related to Hajj which are obligatory for Muslims who can carry them out.

Only those who have not experienced sex reassignment surgery perform Hajj rituals following the Integrated Hajj Information and Computerization System (SISKOHAT) of the Ministry of Religion. Furthermore, Dorce Gamalama performed sex reassignment surgery with female status. Several classical scholars' opinions were used in addition to the interviews as a primary source, such as al-Ṭabarī (d. 923 AD), Imam al-Nawawī (d. 1277 AD), Ibn Taimiyah (d. 1328 AD), al-Zahabī (d. 1348 AD), al-Iraqī (d. 1403 AD), al-'Asqalani (d. 1449 AD), al-Haitamiy (d. 1566 AD), al-Munawī (d. 1621 AD), al-Syarwani, al-Bahutī (d. 1641 AD), and others. The data sources also included books, journals, and other relevant online literature.

The data analysis applied the needs theory from al-Shāṭibī, Ibn Khaldun, and Maslow. According to al-Shāṭibī (d. 1388 AD), there are three basic human needs, *darūriyah* (primary needs), *hājīyah* (secondary needs), and *tahsiniyah* (tertiary needs).²² Ibn Khaldun (d. 1406 AD) stated that basic

²² Al Shāṭibī, *Al-Muwafaqat Fi Uṣūl Al-Syari'ah* (Beirut: Dār al-Ma'rifah, n.d.), p. 7.

human needs consist of *ma'asyan* (primary needs) and *riyasyan* (complementary needs). Furthermore, *Ma'asyan* reflects *darūriyah* and *hājiyah* level needs, whereas *riyasyan* represents external needs of *darūriyah* and *hājiyah*.²³ Maslow reconstructed the theory (d. 1970 A.D.) by dividing basic human needs into physiological, safety, social, esteem, and self-actualization. According to Maslow, social needs reflect a sense of belonging.²⁴ Transgender people considered "unsettling" should follow society's life pattern, including Hajj, to be accepted.

The data analysis involves the reduction, display, and conclusion drawn. This study uses descriptive analysis to compare Hajj rituals performance for transgender people with the scholars' opinions.

Hajj: Conception and Ritual

Hajj means 'intention' or 'desire'. It is synonymous with *al-qasdu*, "deliberately doing something,"²⁵ which describes the intentional visit to the Ka'bah to interpret and perform acts of worship and pray.²⁶ In paragraph 3 of Article 1 in 2019 Law no. 8, "Hajj worship" is defined as Islam's fifth pillar required by Muslims following the Prophet's hadith.²⁷

Hajj performance provisions follow the understanding and mastery of Hajj *fiqh* to determine the validity. The first stage involves the legal basis, Hajj is an obligation for those capable

²³ Ibn Khaldun, *Muqaddimah* (Beirut: Dār al-Kutub al-ʿIlmiyah, 1933), p. 300.

²⁴ Abraham H. Maslow, *Motivation and Personality* (USA: Harper & Row, 1954), p. 35-51.

²⁵ A. W. Munawwir and Muhammad Fairuz, *Kamus Al-Munawwir Indonesia-Arab Terlengkap* (Surabaya: Pustaka Progressif, 2007), p. 237.

²⁶ Sulaiman Rasjid, *Fiqh Islam* (Bandung: Sinar Baru Algesindo, 2007), p. 247.

²⁷ Abi ʿAbdillāh Muhammad bin Ismāʿīl Al Bukhārī, *Al-Jāmiʿ Al-Ṣaḥīḥ* (Madina: Al-Maṭbaʿah al-Salafiyah, 1400), p. 20.; Abi Al Husain bin Muslim bin Al Hajāj Al Quṣairī Al Naisabūrī, *Ṣaḥīḥ Muslim* (Riyadh: Bait al-Afkar al-Dauliyah, 1998), p. 40.

(Qur'an 3:97).²⁸ Second, the obligatory requirements include Islam, *taklif* (*baligh* and reasonable), independence, and *istithā'ah* (capable).²⁹ According to Ibn Qudamah, the scholars unanimously determined the conditions.³⁰ The conditions for performing Hajj include³¹ financial capability, security guarantee (life and property), physical health, and women accompanied by their husbands (*mahram*)³² or in a group.³³ The third stage shows Hajj validity criteria as Islam, *mumayyiz* (adults/*baligh*), *miqat Zamani* (Hajj is performed in the month of Syawwal, Zulkaidah, and the first ten days of the month of Zulhijah according to most companions and scholars), and *miqat Makani* (the pillars and obligatory Hajj implementation at the designated place, *wukuf* at *Arafah* (stay at *arafah*), *ṭawaf* at the Ka'bah, and *sa'i* between Ṣafa and Marwah).³⁴

The fourth stage involves Hajj rituals performance. The scholars agreed that Hajj is performed by the selected ritual out of the three, *ifrad*, *qiran*, and *tamattu'*.³⁵ However, the scholars had different views on the primary type of Hajj because the Messenger of Allah had only one ritual. Fifth, Hajj pillars include *ihram* (intention to perform Hajj), *wuquf* at *Arafah*³⁶ (present in

²⁸ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya*, p. 92.; Kementerian Agama RI, *Fiqh Haji Komprehensif* (Jakarta: Ditjen Penyelenggaraan Haji dan Umrah, 2015), p. 71.; Naisabūrī, *Ṣahih Muslim*, p. 529.

²⁹ Wahbah Al Zuhailī, *Al-Fiqh Al-Islam Wa 'Adillatuhu* (Beirut: Dār al-Fikr, 1985), p 20.; Kementerian Agama RI, *Fiqh Haji Komprehensif*, p. 99.

³⁰ Abi Muhammad Abdullah Ibnu Ahmad Ibnu Muhammad Ibnu Qudamah, *Al-Mugni*, 3rd ed. (Riyadh: Dār 'Alamul Kutub, 620), p. 164.

³¹ Zuhailī, *Al-Fiqh Al-Islam Wa 'Adillatuhu*, p. 25.

³² Bukhārī, *Al-Jāmi' Al-Ṣahih*.

³³ Zuhailī, *Al-Fiqh Al-Islam Wa 'Adillatuhu*, p. 31-32.

³⁴ Kementerian Agama RI, *Fiqh Haji Komprehensif*, p. 100.

³⁵ Kementerian Agama RI, p. 74-75.

³⁶ Abi 'Abd Al Rahmān Ahmad bin Syu'aib bin 'Alī Al Nasā'i, *Sunan Al-Nasā'i* (Riyadh: Maktabah al-Ma'arif, 1417), p. 466.; Abi 'Īsa Muhammad bin 'Īsa bin Saurah Al Tirmizī, *Jāmi' Al-Tirmizī* (Riyadh: Bait al-Afkar al-Dauliyah, 1999), p. 163.; Abi 'Abdillah Muhammad bin Yazid al-Qazwīnī Ibnu Majah, *Sunan Ibnu Mājah* (Riyadh: Maktabah al-Ma'arif, 1417), p. 511.

the area of Arafah while sleeping, conscious, driving, sitting, lying, walking, and in a holy or unholy state),³⁷ *tawaf ifadah* (pilgrimage tawaf), *sa'i*³⁸ (walking between Safa and Marwah for worship), and controlling the pillars.³⁹ Hajj is invalid when one pillar is missed.⁴⁰ Sixth, the obligatory Hajj, namely⁴¹ (1) *ihram* from *miqat*;⁴² (2), *wukuf* at Arafah; (3), *mabit* at *nahr* night (the night of 10 Zulhijah) in Muzdalifah on most nights (QS. 2:198).⁴³ Following the Prophet;⁴⁴ (4), *mabit* in Mina is performed during *tasyriq*⁴⁵ on the 11th, 12th, and 13th days for those who continue in Mina (days to eat, drink, and dhikr to Allah/days completion, which follows the stipulation of Takbir after prayer and of qurban); (5), throwing *jumrah* (throwing the stone to the *jumrah 'aqabah* on 10 Zulhijah after sunrise, and throwing the other three *jumrah*: '*jumrah ula, wuṣṭa and aqabah*' after the sunset on the 11th, 12th or 13th day of *tasyriq*); (6), shaved⁴⁶ (QS. 48:27);⁴⁷ and (7), *tawaf wada'* (*tawaf* farewell from the Ka'bah).⁴⁸

Pillars and obligatory Hajj have a similar meaning but are different from Hajj. Hajj pillars validate Hajj conditions and should not be replaced with a "*dam*" (slaughtering an animal). In

³⁷ Al-Sayyid Sabiq, *Fiqh Al-Sunnah* (Kairo: Dār Miṣri li al-Ṭabā'ah, 1365), p. 494.

³⁸ Al-Imam al-Hafiz Abi 'Abdillah Ahmad bin Hambal, *Musnad Ahmad Bin Hambal* (Riyadh: Bait al-Afkar al-Dauliyah, 1998), p. 2041.

³⁹ Abdullah bin Muhammad bin Ahmad Al Ṭayyar, *Fikih Ibadah Fatwa Ibadah Faḍilah Al-Syaikh Muhammad Bin Ṣalih Al-Usmāni* (Surakarta: Media Zikir, 2010), p. 467.

⁴⁰ Bukhārī, *Al-Jāmi' Al-Ṣahīh*, p. 13.; Naisabūrī, *Ṣahīh Muslim*, p. 792.; Muhammad bin Ahmad bin Muhammad bin Ahmad bin Rusyd Al Qurtubī, *Bidāyah Al-Mujtahid Wa Nihāyah Al-Muqtaṣid* (Mesir: Dār al-Salām, 1995), p. 858.

⁴¹ Ṭayyar, *Fikih Ibadah Fatwa Ibadah Faḍilah Al-Syaikh Muhammad Bin Ṣalih Al-Usmāni*, p. 469.

⁴² Bukhārī, *Al-Jāmi' Al-Ṣahīh*, p. 471.; Naisabūrī, *Ṣahīh Muslim*, p. 461.

⁴³ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya*, p. 48.

⁴⁴ Bukhārī, *Al-Jāmi' Al-Ṣahīh*, p. 513.; Naisabūrī, *Ṣahīh Muslim*, p. 511.

⁴⁵ Syaikh Al Ṣālih Al Usaimin, *Al-Minhaj Li Murid Al-'Umrah Wa Al-Hajj* (Muassasah al-'Amiyah al-'Anud, n.d.), p. 133.

⁴⁶ Bukhārī, *Al-Jāmi' Al-Ṣahīh*, p. 517.; Naisabūrī, *Ṣahīh Muslim*, p. 489-490.

⁴⁷ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya*, p. 842.

⁴⁸ Naisabūrī, *Ṣahīh Muslim*, p. 522-523.

contrast, obligatory Hajj is a compulsory performance but does not determine the validity and can be replaced by offering an animal.⁴⁹

The Existence and Religious Practice of Transgender

Transgender consists of 'trans' means transverse; cross; penetrate, or through,⁵⁰ while 'gender' means sex or gender.⁵¹ Gender is interpreted as a trait or character related to the socially and culturally constructed sexes.⁵² The Ministry of Women's Empowerment defines gender following the community roles. These roles are learned, changed, and vary within and between cultures. In contrast to sex (the biological difference between male and female), gender refers to learned behavior, societal expectations, and masculinity and femininity differences.

Furthermore, sex identity is determined by genetic and anatomical characteristics,⁵³ whereas traits, attitudes, and behavior determine gender identity.⁵⁴ The difference distorts the meaning where gender is misinterpreted as sex. However, some

⁴⁹ Said Agil Husain Al Munawar and Abdul Halim, *Fikih Haji: Penuntunan Jama'ah Haji Mencapai Haji Mabrur* (Jakarta: Ciputat Press, 2003), p. 32.

⁵⁰ Kementerian Pendidikan Nasional RI, *Kamus Besar Bahasa Indonesia (KBBI)*, p. 1543.

⁵¹ John M. Echols and Hasan Shadily, *Kamus Inggris-Indonesia* (Jakarta: Gramedia, 1997), p. 265.

⁵² Lauren D. Davenport, "The Role of Gender, Class, and Religion in Biracial Americans' Racial Labeling Decisions," *American Sociological Review* 81, no. 1 (February 1, 2016): 57–84, <https://doi.org/10.1177/0003122415623286>.

⁵³ Jonathan Alexander, "Queer Theory for Straight Students: Sex and Identity," in *Literacy, Sexuality, Pedagogy: Theory and Practice for Composition Studies* (Colorado: University Press of Colorado, 2008), 101–26, <https://doi.org/10.2307/j.ctt4cgqkw.7>.

⁵⁴ Gila Ofer, "Gender Multiplicity in Group Analysis: Bridging Identities—Fluidity and Fixity in Group Analysis," *Group* 40, no. 2 (2016): 149–63, <https://doi.org/10.13186/GROUP.40.2.0149>.; Stephanie Feeney, Nancy K. Freeman, and Katie Schaffer, "Gender Expression and Identity," *YC Young Children* 74, no. 5 (2019): 84–93, <https://www.jstor.org/stable/26842313>.

people do not identify with any societal gender and change their preferred identity.

Transgender is defined as psychological and socio-cultural aspects because one is born male or female. It can also be interpreted as a person whose identity does not match the expected female or male status.⁵⁵ Therefore, transgender represents those without sexual orientation. A male transgender person has normal sex anatomy but psychologically feels like a woman. They have stiff male physiques but walk, talk and dress as females. According to Nadia, transgender people are also referred to as transvestic.⁵⁶ Therefore, they are people whose traits, attitudes, and behavior cross their gender, including single or multiple-sex or no gender.

Based on the fiqh perspective, transgender people or hermaphrodites are known as *khunsa*, which means to glow and fade.⁵⁷ In contrast, shemale/*wadam* are referred to as *mukhannas* and tomboys as *mutarajjilah*. Therefore, there are two types of transgender people, hermaphrodites (*khunsa*) and shemale (*mukhannas*) or tomboys (*mutarajjilah*).

Scholars define hermaphrodites as *khunsa*, meaning those with two genitals, male and female, or without genitals, neither male nor female. The Messenger of Allah laid the foundations to handle *khunsa* challenges, such as inheritance based on "where does he urinate."⁵⁸ According to al-Suyuti (d. 1505 AD), scholars divide *khunsa* into two, *khunsa musykil*

⁵⁵ Laurel Westbrook and Aliya Saperstein, "New Categories Are Not Enough: Rethinking the Measurement of Sex and Gender in Social Surveys," *Gender and Society* 29, no. 4 (2015): 534–60, <http://www.jstor.org/stable/43669994>.

⁵⁶ Zunly Nadia, *Waria Laknat Atau Kodrat?* (Yogyakarta: Pustaka Marwa, 2005), p. 36.

⁵⁷ Ibnu Manzur, *Lisān Al-Arab* (Beirut: Dār al-Fikr, 1990), p. 145.

⁵⁸ Abi Bakar Ahmad bin Al Husain bin 'Ali Al Baihaqi, *Al-Sunan Al-Kubra* (Beirut: Dār al-Kutub al-'Ilmiyah, 2003), p. 427.; Abu Muhammad 'Abdullah bin 'Abdu Al Rahman bin Al Faḍil bin Bahrām Al Dārimī, *Musnad Al-Dārimī* (Riyadh: Dār al-Mugni, 1420), p. 1942-1943.

(those with both genitalia or without) and *khunsa ghairu musykil* (those with ambiguous genitalia).⁵⁹

Al-Qur'an surah al-Hajj verse 5 discusses *mukhannas/mutarajilah*, in the editorial verse *mudgah mukhallaqah wa gairi mukhallaqah* (a lump of perfect and imperfect flesh).⁶⁰ Al-Ṭabari (d. 923 AD) interpreted *mukhallaqah* as a person born perfect with all organs, whereas *gairi mukhallaqah* means someone born incomplete or died in the womb.⁶¹ According to Ibn Kasīr (d. 1373 AD), *mukhallaqah* occurs at the fourth fetus stage, known as the change of *'alaqah* (clot of blood) to *mudgah* (clot of flesh). In contrast, the *gairi mukhallaqah* fetus leaves the womb through blood (dam) before its fourth stage.⁶² The meaning of this interpretation is indicated in the Quranic verses related to "*mudgah mukhallaqah wa gairi mukhallaqah*. It means that the zygote combination, when it fails to separate the male or female chromosomes, results in a combination of chromosomes XXY, XXX, XYY,⁶³ or hormonal occurrence,⁶⁴ sex anatomy abnormalities⁶⁵ found in transsexuals, transgender people, and hermaphrodites (*ambiguous genitalia*).

The transgender phenomenon is caused by intrinsic factors (hormones and genes) and environmental.⁶⁶ Generally, the determining factors for the transgender decision include

⁵⁹ Abū Al Faḍl 'Abd Al Raḥmān ibn Abī Bakr ibn Muḥammad Jalāl al-Dīn Al Khuḍayrī Al Suyūṭī, *Al-Asybah Wa Al-Nazāir* (Riyadh: Maktabah Nazl al-Muṣṭafa al-Bār, 1997), p. 153-154.

⁶⁰ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya*, p. 512.

⁶¹ Muhammad Ibnu Jarir Al Ṭabari, *Tafsir Al-Ṭabari* (Beirut: Dār al-Fikr, 1978), p. 87-89.

⁶² Ibnu Kasīr, *Tafsir Al-Qur'an Al-'Aẓīm* (Beirut: Dār al-Kutub al-'Ilmiyah, 1998), p. 207.

⁶³ Mangku Sitepoe, *Penyakit* (Jakarta: Gramedia, 1996), p. 993.

⁶⁴ Kartini Kartono, *Psikologi Abnormal Dan Abnormalitas Seksual* (Bandung: CV. Mandar Maju, 1989), p. 229.

⁶⁵ T. Hermaya, *Ensiklopedi Kesehatan* (PT. Cipta Adi Pustaka, 1992), p. 935.

⁶⁶ Sam Winter et al., "Transgender People: Health at the Margins of Society," *The Lancet* 388, no. 10042 (July 2016): 390-400, [https://doi.org/10.1016/S0140-6736\(16\)00683-8](https://doi.org/10.1016/S0140-6736(16)00683-8).

chromosomal, neuropsychological, and hormonal. In contrast, Febrya and Elmirawati suggested various determinants for the LGBT community, including family, social and environmental, biology, morals and character, and weak religious knowledge.⁶⁷

Therefore, mosque visits are challenging for transgender people, and they prefer to pray at home.⁶⁸ This condition is in line with an argument that allows this situation and triggers public fear instead of protecting the minority groups.

In other cases, an Islamic boarding school for transgender people emerges in Yogyakarta due to the challenge of worshipping in public mosques. The Al-Fatah Transgender Islamic Boarding School is the only school dedicated to transgender people globally and a haven following the Indonesian crackdown on LGBT rights.⁶⁹

Islam regulates that prayer, zakat, and other primary rituals are obligatory for Muslims, even for transgender people. However, neither women wearing *mukena* (prayer veiling) for women nor a cap and sarong for men during prayers are not implicitly regulated. Therefore, the worship procedures are within Islamic law, and the differences depend on context. In Indonesia, worshipers should wear a *mukena* and covered clothes, whereas, in Turkey, they can pray in any clothing. There are different ways of worship following the Qur'an, "Everyone acts according to their circumstances, and Allah knows best who is right in the way (QS. 17:84).⁷⁰ In clothing and prayer procedures, caps and *mukena* are not part of valid prayer

⁶⁷ Elmirawati Febrya, Indrid Weddy Viva Elmirawati, "Analisis Faktor Penyebab Orientasi Seksual Menyimpang Pada Narapidana Perempuan Di Lapas Klas II A Pekanbaru," *SISI LAIN REALITA* 2, no. 2 (2017): 13–30.

⁶⁸ Chaterina Janes Pratiwi et al., "Difficulties in Performing Prayers as a Muslim Transgender Individual," *Journal of International Dental and Medical Research* 12, no. 1 (2019): 310–17, <http://www.ektodermaldisplazi.com/journal.htm>.

⁶⁹ Siti Munifah, "Solidaritas Kelompok Minoritas Dalam Masyarakat (Studi Kasus Kelompok Waria Di Pondok Pesantren Waria Al Fatah Yogyakarta)," *Jurnal Sosiologi Agama* 11, no. 1 (January 21, 2018): 109–18, <https://doi.org/10.14421/jsa.2017.111-07>.

⁷⁰ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya*, p. 437.

conditions. Therefore, using a cap for Muslims is cultural and not a religious ritual. In Islam, the benchmark covers the genitals; hence, when a man wears a *mukena*, his prayer is valid because his *aurat* is covered. Similarly, the hadith states, "Indeed Allah does not look at your appearance and wealth, but looks at your heart and deeds" (HR. Muslim, no. 2564).⁷¹ Therefore, transgender worship is not judged by their dressing during prayers but by their sincerity.

Based on transgender people and their ambiguous legal status, Gibtiah advised:⁷² that they should not be a *makmum* (congregation) behind its other members or women, be marriage guardians, counted in Friday prayers, 40 of them in one place should not offer Friday prayers, not become judges/priests, be circumcised, and others should not bathe their corpses except their relatives. Furthermore, when their menstruation is abnormal, they should not perform *Itikaf* in mosques, have sexual relations, and take a bath during the obligatory prayers. They also should not marry other transgender people without clear legal status.

When gender identity discussions are based on the physical-biological issue, the social perspective should be considered. It states that gender identity focuses on the non-physical, psychology, attitude, and behavior. The worship perspective views it as a physical-biological issue, meaning gender from birth. The transgender people, *mukhannas/mutarajjilah*, live as the opposite sex due to psychological dissatisfaction with their biological anatomy, but they are identified as male or female in religious discourse.

The perspective of North Sulawesi Scholars against Transgender

The scholars agreed that transgender people are created in an "imperfect" state with gender abnormalities in their nature, attitude, and behavior. Based on the fiqh perspective,

⁷¹ Naisabūrī, *Ṣaḥīḥ Muslim*, p. 1035.

⁷² Gibtiah Gibtiah, *Fikih Kontemporer* (Jakarta: Prenada Media, 2016), p. 244-245.

transgender people are divided into *khunsa* and *mukhannas* or *mutarajjilah*. There are two types of *Khunsa*, *gairu musykil* (clear) and *musykil* (vague). Al-Nawawi categorized *mukhannas* or *mutarajjilah* into two, *min khalqin* (natural) and *bi takallufin* (occurs not outside/because it is affected). In contrast, al-'Asqalani refers to *min aṣli al-khilqah* (created from birth) and *bi al-qaṣdi* (deliberately behaving and speaking such a woman or a man).

The following are the classical scholars' perspectives on the transgender category of *mukhannas* or *mutarajjilah*.

No.	Scholars	Opinion
1.	al-Ṭabarī (d. 923 AD)	Men are prohibited from resembling women in behavior and characteristic, including their bodies and ways of speaking. ⁷³
2.	al-Nawawi (d. 1277 AD)	<i>Mukhannas</i> is divided into two. First, those born as <i>mukhannas</i> do not behave, dress, speak, and move like such women. Therefore, they are not reprehensible and sinful, without defects, and cannot be punished because they are among the <i>ma'zūr</i> . Second, those who intentionally behave such women in movements, silence, speech, and clothing are cursed in the hadith. ⁷⁴
3.	Ibn Taimiyah (d. 1328 AD)	The Shari'a judges men who behave such women and <i>vice versa</i> as sinners. ⁷⁵

⁷³ Muhammad Ibnu Jarir Al Ṭabarī, *Tafsir Al-Ṭabarī*, 7th ed. (Maktabah Ibn Taiṣiyah, 1374), p. 353.

⁷⁴ Al Nawawi, *Al-Minhaj Fī Syarh Ṣaḥih Muslim*, 8th ed. (Riyadh: Mu'assisah al-Qurṭubah, 1994), p. 336-337.; Al Nawawi, *Rauḍah Al-Ṭalibin*, 8th ed. (Al-Maktab al-Islami, n.d.), p. 64 & 90.

⁷⁵ Al Munawi, *Faid Al-Qadir Syarh Al-Jāmi' Al-Ṣagīr*, 5th ed. (Beirut: Dār al-Fikr al-ʿIlmiyah, 2003).

<p>4. al-Zahabi (d. 1348 AD)</p>	<p>Men who behave such women and vice versa, men who resemble women and vice versa, and women who wear men's clothes and <i>vice versa</i> are all cursed.⁷⁶</p>
<p>5. al-Iraqi (d. 1403 AD),</p>	<p>Some men who resemble women in body movements and speech styles are congenital or not artificial, whereas some are artificial or not congenital. The first group is without sin and sanctions because it is <i>'uzur</i> and natural. In contrast, the second group is reprehensible and condemned in the authentic hadiths.⁷⁷</p>
<p>6. al-'Asqalani (d. 1449 AD)</p>	<p>Prophet Muhammad's curse and reproach are for those who deliberately imitate the opposite gender. When it is an innate two sex for people, one of two is ordered to stop it gradually. Some scholars stated that natural <i>mukhannas</i> are not reprehensible or sinful. These are people who cannot stop speaking softly and with graceful movements. However, those who control though gradual are sinful when performed without <i>'uzur</i>.⁷⁸</p>
<p>7. al-Munawi (d. 1621 AD)</p>	<p>The wisdom of the cursed people who imitate the opposite gender changes</p>

⁷⁶ Al Zahabi, *Al-Kabā'ir*, n.d., p. 165.

⁷⁷ Al Iraqī, *Ṭarḥ Al-Tasrib Fī Syarḥ Al-Tarqīb* (Beirut: Dār Ihya' al-Turasi al-Arabi, n.d.), p. 14.

⁷⁸ Al Asqalani, *Fath Al-Barri Bi Syarḥ Ṣaḥīḥ Al-Bukhārī*, 10th ed. (Riyadh: Dār al-Ṭaibah, 2005), p. 332.

		the nature predetermined by the Most Wise (Allah Swt). ⁷⁹
8.	al-Syarwani	In the ablution case (<i>wudhu</i>), a man who changes the shape of such a woman has no legal consequences for touching a man. But, a woman who changes shape into such a man has legal implications in her ablution; her ablution was no longer valid. ⁸⁰
9.	al-Bahutī (d. 1641 AD)	It is haram for men to imitate women and vice versa, i.e., dressing, speaking, walking, and other behaviors. ⁸¹
10.	al-Haitamiy (d. 1566 AD)	The 107th major sin resembles a man with a woman's habits in dressing, speech, gestures, and vice versa. ⁸²

Table 1. Classical Scholars' Perspective on Transgender (*Mukhannas/Mutarajjilah*)

On *khunsa* legal status, classical and North Sulawesi scholars agreed on the standards and criteria for determining gender and legal status when classified as *khunsa musykil*. Therefore, the scholars had similar perspectives on determining legal status and related matters as clear even though *khunsa* is categorized as transgender. In contrast, classical and contemporary scholars have debated the legal status of *mukhannas* or *mutarajjilah*. The debate on the legal status determination for this category has implications in various aspects, including worship, specifically on Hajj rituals.

⁷⁹ Munawi, *Faid Al-Qadir Syarh Al-Jāmi' Al-Ṣagīr*, p. 271 & 332.

⁸⁰ Munawi, p. 332.

⁸¹ Al Bahutī, *Kasyf Al-Qanā'an Matan Al-Iqna'* (Riyadh: Dār 'Ālim al-Kitāb, 2003), p. 283.

⁸² Al Haitamiy, *Al-Zawājir 'an I'Tirāf Al-Kabāir* (Maṭba'ah Hijāzi bi al-Qāhirah, 1356), p. 161.

No	Scholars	Opinion
1.	Habib Muhsin Bilfaqih	<p>Based on al-Hujurat verse 13, Allah wants us to know who we are, who we are, who is <i>khunsa</i>, who is <i>mukhannas</i>, and who all of them are. Hence, this verse is closed with <i>lita'ārafu</i>, to communicate and interact with <i>mukhannas</i>. This is because males and females sometimes have another spirit, hence, one may be physically male with a female spirit or vice versa.</p> <p><i>Mutasabihat</i> (verses with vague meanings) should be <i>fatabayyana</i>, cross-checking whether <i>khunsa</i> is concrete because the <i>mutasyabihat</i> verses contain the secret meaning of humanity.</p> <p>In conclusion, viewing men and women with physical features is already <i>muhkamat</i> (obviously). Therefore, to assess whether a human is driven to a male or female spirit, one can refer to Ali Shariati's opinion on cross-checking <i>khunsa</i> personally and secretly on their lustful tendencies. Dominant males and females are given the law as men and women after they perform Hajj.</p> <p>For <i>mukhannas/mutarajjilah</i> who change their genitals, their legal status follows the court's decision after conducting <i>fatabayyanu</i> and medical proof. Therefore, this will clear doubts on transgender people with clear court rulings and changed gender. <i>Mukhannas/mutarajjilah</i> is a disease</p>

		experienced by sodomites during Prophet Noah AS time. ⁸³
2.	K.H. Abdul Wahab Abdul Ghafur	<i>Mukhannas/mutarajjilah</i> who experience sex reassignment surgery have their legal status returned to their original law. Therefore, the legal status is <i>haram</i> when a man experiences female sex reassignment surgery. However, after Hajj rituals, the law returns to his original gender. ⁸⁴
3.	Salma Mursyid	One of the transgender definitions is someone who identifies as a different gender. Based on the Director-General of Hajj, <i>waria</i> who are indeed transvestites are given the law as women. On the other side, <i>waria</i> , those who change their appearance periodically, are given the law as men. ⁸⁵
4.	K.H. Abdurrahman Mahrus	According to Al-Syaukani in the book <i>Nail al-Ausar</i> , <i>mukhannas</i> existence during Prophet Muhammad's time was intolerable. They were exiled from the community and only came regularly for necessities. In Islam, one becomes such them when associating with <i>mukhannas/mutarajjilah</i> for 40 days. Currently, there are men resembling women or vice versa, referred to as <i>mal'un</i> (cursed by the Prophet Muhammad).

⁸³ Habib Muhsin Bilfaqih (North Sulawesi Ulema), interview with the author, Manado City, Indonesia, 24 August 2019.

⁸⁴ K.H. Abdul Wahab Abdul Ghafur (Chairman of Indonesian Ulema Council (MUI) North Sulawesi), interview with the author, Manado City, Indonesia, 28 August 2019.

⁸⁵ Salma Mursyid (Dean of the Sharia Faculty, IAIN Manado), interview with the author, Manado City, Indonesia, 27 August 2019.

		Changing gender differently from <i>khunsa</i> is compared to changing God's creation, and the law is <i>haram</i> . Therefore, the law for <i>mukhannas/mutarajjilah</i> with sex reassignment surgery is <i>haram</i> , and their legal status remains regardless of the court ruling. When they perform Hajj, they retain their gender from birth. Therefore, according to religious rules, they should perform Hajj as a male. ⁸⁶
5.	K.H. Yaser Bachmid	<i>Mukhannas/mutarajjilah</i> are given the original law. For example, they are born male, but due to education influence, parents, family, or environment deviate from their innate gender. Hence, they are still given the original law of males even after surgery. In Hajj implementation, the transgender law is invalid when one uses a new status after surgery regardless of the court ruling. ⁸⁷
6.	K.H. Abdurrahman Latukau	In principle, when <i>mukhannas/mutarajjilah</i> assumed legal action and were declared valid by the court, their legal status was valid. Therefore, their Hajj rituals follow the law of the court. ⁸⁸
7.	K.H. Mashar Kinontoa	Hajj of <i>mukhannas/mutarajjilah</i> who have experienced sex reassignment

⁸⁶ K.H. Abdurrahman Mahrus (North Sulawesi Ulema), interview with the author, Manado City, Indonesia, 24 August 2019.

⁸⁷ K.H. Yaser Bachmid (Vice Chairman of MUI Manado City), interview with the author, Manado City, Indonesia, 24 August 2019.

⁸⁸ K.H. Abdurrahman Latukau (Vice Chairman of MUI North Sulawesi), interview with the author, Manado City, Indonesia, 24 August 2019.

surgery follows the court's decision, applying emergency law.⁸⁹

Table 2. North Sulawesi Scholars' Perspective on Transgender (*Mukhannas/Mutarajjilah*)

The task of the Scholars is to direct and foster Muslims in instilling the Islamic faith and enforcing Islamic law to create a quality society (*khayr ummah*).⁹⁰ Initially, all scholars forbade transgender behavior except those innate from birth, such as body movements and speech styles that are uncontrollable or *tabi'i* (talkative) in al-Iraqi's perspective.⁹¹ The dressing, sexual behavior, and others are excluded because they are controllable.

The 7 North Sulawesi scholars' perspectives on transgender mukhannas/mutarajjilah categories were divided into two groups. The first group, Habib Muhsin Bilfaqih, K.H. Abdurrahman Latukau, K.H. Mashar Kinontoa, and Salma Mursyid, considered the real *waria* (*min khalqin/min asli al-khilqah*) are given the law as women. In contrast, *waria* who is *bi takallufin/bi al-qasdi* are given the law as men. The second group, K.H. Abdul Wahab Abdul Ghafur, K.H. Abdurrahman Mahrus, and K.H. Yaser Bachmid, argued the legal status of *mukhannas* and *mutarajjilah* returns to the original law, namely, where urine comes out (genital). The second group forbade transgender people to perform sex reassignment surgery regardless of the court ruling.

No	Scholars	Legal Status Before Sex Reassignment Surgery	Legal Status After Sex Reassignment Surgery
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⁸⁹ K.H. Mashar Kinontoa (Chairman of MUI Manado), interview with the author, Manado City, Indonesia, 24 August 2019.

⁹⁰ Evra Willya, Ahmad B. Bintang Maronrong, and Sabil Mokodenseho, "The Enforcement of MUI Fatwa Number 1 of 2003 Concerning Copyright for Merchants Selling Pirated VCD and DVD in Manado City," *Al-Ahkam* 31, no. 2 (October 31, 2021): 183–202, <https://doi.org/10.21580/ahkam.2021.31.2.8638>.

⁹¹ Iraqi, *Tarh Al-Tasrib Fī Syarh Al-Tarqib*, p. 14.

	Return to Original Law	According to Spirit/Tendency	Return to Original Law	According to the new status
1. Habib Muhsin Bilfaqih		x		x
2. K.H. Abdul Wahab Abdul Ghafur	x		x	
3. Salma Mursyid		x		x
4. K.H. Abdurrahman Mahrus	x		x	
5. K.H. Yaser Bachmid	x		x	
6. K.H. Abdurrahman Latukau	x			x
7. K.H. Mashar Kinontoa	x			x

Table 3. North Sulawesi Scholars' Perspective on the Legal Status of Transgender

Some North Sulawesi scholars adhered to the classical scholars' opinion that transgender legal status in the *mukhannas/mutarajilah* category before surgery returns to the original law. However, the others considered that the legal status of *mukhannas/mutarajilah* with sex reassignment surgery follows the new status per the court.

Hajj Ritual Law for Transgender

Based on the scholars' opinions on the theoretical foundations of Hajj, the rituals for prospective male and female pilgrims are 90% similar. However, there are different rituals for

males and females. First, the female *muhrim* must be accompanied by her husband or *mahram*, while the male *muhrim* does not need a companion. One of the valid Hajj conditions for women is to be accompanied by the husband, a *mahram*, or a group based on the Prophet Muhammad's hadith narrated by Bukhārī.⁹² Therefore, the Shafi'i school obliges women to perform Hajj as a trusted group.⁹³ Second, male's *ihram* clothes are different from female's. One of the *ihram* obligations is to avoid sewn clothes. Men should not wear clothes, robes, coats, *Imamat*, head coverings, *khuf*/shoes (unless they do not find *khuf*).

In contrast, women should not wear face-covering (*niqab*) and gloves.⁹⁴ Third, the validity status of ablution for pilgrims. Shafi'i scholars in Indonesia tolerate skin-to-skin contact from the congregations crowd during *tawaf*.

Male and female congregations crowding during *tawaf* can be considered an emergency. Therefore, the Shafi'i school adherents in contact with non-mahram (*ajnabiyyah*) members of the opposite sex (*ajnabiyyah*) during *tawaf* can ignore it and continue without breaking wudu'. To determine the transgender position in Hajj rituals implementation similar to Sutika, Sutrisnawati, Ari bin Hadi, and Dorce Gamalama, it should consider the three discussed conditions based on the North Sulawesi scholars.

⁹² Bukhārī, *Al-Jāmi' Al-Ṣahīh*, p. 341.

⁹³ Zuhailī, *Al-Fiqh Al-Islam Wa 'Adillatuhu*, p. 31-32.

⁹⁴ Ṭayyar, *Fikih Ibadah Fatwa Ibadah Faḍilah Al-Syaikh Muhammad Bin Ṣalih Al-Usmani*, p. 467.

No.	Scholars	Case of Sutika, Sutrisnawati, Ari bin Hadi								Case of Dorce Gamalama							
		Mahram		Ihram		Broken Ablution		Hajj Law		Mahram		Ihram		Broken Ablution		Hajj Law	
		O	NO	M	F	M	F	V	I	O	NO	M	F	M	F	V	I
1.	Habib Muhsin Bilfaqih		x	x			x	x		x			x		x	x	
2.	K.H. Abd Wahab Abd. Ghafur		x	x			x	x			x			x			x
3.	Salma Mursyid	x				x	x			x	x			x	x		x
4.	K.H. Abdurrahman Mahrus		x	x			x	x		x			x		x		x
5.	K.H. Yaser Bachmid		x	x			x	x		x			x		x		x
6.	K.H. Abdurrahman Latukau,		x	x			x	x		x			x	x			x
7.	K.H. Mashar Kinontoa		x	x			x	x		x			x	x			x

Table 4. Hajj Rituals, Transgender
(Case: Sutika, Sutrisnawati, Ari bin Hadi, and Dorce Gamalama)

abbreviation: O=Obligated | NO=Not Obligated | M=Male | F=Female | V=Valid | I=Invalid

Most North Sulawesi scholars stated that Hajj rituals for Sutika bin Marwati, Sutrisnawati, and Ari bin Hadi were valid, including Dorce Gamalama.

The results showed that from a fiqh perspective, the transgender Hajj validity is being clean (fulfilling the conditions and in harmony) and green (sincere and solemn for the sake of Allah). One should not be hindered for the worship practices because "everyone acts according to their own circumstances."⁹⁵ Therefore, Allah knows best who has the correct way (QS. 17:84).⁹⁶ Through worship, a person is cleansed from sin or gets teaching that benefits them (QS. 80:1-4).⁹⁷

Conclusion

Based on the results and discussion, this article finds several views of North Sulawesi scholars on the concept of Hajj, especially for transgender actors. Most North Sulawesi scholars considered that transgender status (*mukhannas/mutarajilah*) without sex reassignment surgery have their legal status back to the original law and gender assigned at birth. They ruled that the legal status of those who had surgery following court decisions should return to their original law. Therefore, their new legal status was determined by the court. Most scholars agreed that Hajj ritual practices for those without surgery were valid because they had their original gender. The court determined the ritual validity for those who had surgery on their new status. The scholars ruled that those with sex reassignment surgery against the court ruling and who performed Hajj rituals with their new status were invalid.

⁹⁵ Muh Idris et al., "Peace Resolution in Education and Application on Information and Communication Technology," *International Journal of Advanced Science and Technology* 29, no. 6 (2020): 3349–58.

⁹⁶ Kementerian Agama RI, *Al-Qur'an Dan Terjemahnya*, p. 437.

⁹⁷ Kementerian Agama RI, p. 1024.

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