

Non-Binary Gender in Siyasa Syar'iyah Perspective: Study at Religious Universities in South Sulawesi

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Non-Binary Gender in *Siyasah Syar'iyah* Perspective: Study at Religious Universities in South Sulawesi

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Abstract: Non-binary gender is a legally recognized phenomenon that is present within global civilization, including the nation of Indonesia. The primary objective of this article is to analyze the concept of non-binary individuals within the context of religious universities, specifically from the standpoint of *siyasah syar'iyah*. This study employs a combination of qualitative and quantitative research methods, adopting a *siyasah syar'iyah* framework. Data was acquired utilizing two methods, including in-depth interviews, literature reviews, and surveys. The research study involved conducting interviews with informants who were specifically selected from the academic and religious communities in South Sulawesi. The literature under consideration comprises scholarly journal articles, books, and legal rules. Concurrently, a survey research study was undertaken at five Religious Universities located in the region of South Sulawesi. This study posits that under the framework of gender, non-binary is identified as a distinct category alongside men and women. Nevertheless, the Islamic law refutes the notion of gender and sexuality diversity, asserting that it contradicts *sharia* law, deviates from the inherent character of humanity, and raises legal issues such as inheritance and marriage. In addition to promoting non-discriminatory attitudes towards individuals, Islamic law also emphasizes the need of satisfying the rights of Non-Binary Gender individuals, provided that such fulfillment does not impede the realization of other human rights. According to *siyasah syar'iyah*, it is the responsibility of the state, as mandated by legislative rules, to ensure the provision of protection, guidance, and counseling to individuals, with the aim of fostering a life that promotes virtue and harmony within society.

Keywords: Non-binary gender, *khunsa*, religious universities, Islamic law, *siyasah syar'iyah*

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Abstrak: *Non-binary gender merupakan suatu realitas hukum yang ada dalam masyarakat dunia, termasuk Indonesia. Artikel ini bertujuan untuk mengkaji tentang non-binary di perguruan tinggi keagamaan dalam perspektif siyasah syar'iyah. Penelitian tersebut menggunakan dua metode kualitatif dan kuantitatif dengan menggunakan pendekatan siyasah syar'iyah. Data dikumpulkan dengan menggunakan dua acara yaitu wawancara mendalam, studi literatur dan angket. Wawancara dilakukan pada informan yaitu akademisi dan tokoh agama di Sulawesi Selatan. Literatur yang dimaksud adalah artikel jurnal, buku dan aturan hukum. Sedangkan penelitian survey dilakukan pada lima perguruan Tinggi Keagamaan di Sulawesi Selatan. Penelitian ini menyimpulkan bahwa dalam konteks gender, non-binary merupakan jenis ketiga selain laki-laki dan perempuan. Namun hukum Islam menolak keragaman gender dan seksualitas dengan alasan bahwa ia bertentangan dengan syariat, fitrah manusia dan menimbulkan masalah hukum seperti kewarisan dan perkawinan. Meskipun pada akhirnya hukum Islam juga mengajarkan untuk menghindari sikap diskriminatif terhadap sesama manusia, dan pemenuhan hak hak Non-Binary Gender sebagai manusia sebaiknya dipenuhi selama tidak menghalangi pemenuhan hak manusia lainnya. Kemudian, secara siyasah syar'iyah negara melalui aturan hukum wajib memberikan perlindungan kepada mereka yang diikuti dengan bimbingan dan konseling agar kehidupan mereka mengarah kepada kebaikan dan kedamaian dalam masyarakat.*

Kata Kunci: *Non-binary gender, khunsa, perguruan tinggi keagamaan, hukum Islam, siyasah syar'iyah.*

Introduction

Contemporary gender variety extends beyond the binary categorizations of male and female. An individual who perceives themselves as diverging from these two inclinations or expressing indifference for the gender that receives societal acknowledgment. From a medical standpoint, this particular disorder is referred to as non-binary gender or genderqueer.¹ Non-binary gender, often known as non-binary, is a conceptual framework used to explain individuals whose gender identity does not align with the traditional binary categorizations of male or female. This word is commonly employed in the Indonesian context as well. From a physical standpoint, individuals can be classified as either male or female; yet, they do not outwardly acknowledge or disclose their gender identity as male or female. Individuals may also perceive themselves as simultaneously embodying two genders. Despite the fact that individuals may possess a single gender or even two genders (intersex).

¹ Lena Herrmann, et.al., "Binary and Non-binary Gender Identities, Internalizing Problems, and Treatment Wishes Among Adolescents Referred to a Gender Identity Clinic in Germany," *Archives of Sexual Behavior* (2023). Fernando Salinas-Quiroz and Noah Sweder, "Authentic Gender Development in Non-Binary Children," *Frontiers in Sociology* 8 (2023).

¹ <http://jurnal.ar-raniry.ac.id/index.php/samarah>

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During the middle of 2022, an occurrence pertaining to matters of gender arose within the context of higher education at Hasanuddin University, located in the region of South Sulawesi. The expulsion of a university student from an association due to their self-identification as gender neutral or non-binary was captured in viral video clips that garnered significant attention across numerous media platforms.² The aforementioned phenomenon also elicits advantages and disadvantages, leading to debates throughout society concerning the validity of this gender category.

Non-binary identities might skew transgender, as many non-binary people identify with a gender different from their assigned gender.³ Hence, the appropriate pronouns to refer to those identifying as genderqueer or non-binary, as opposed to specific gender categories such as male or female, are "they" or "they/them" in the third person or plural form. Non-binary gender is not inherently linked to any one manifestation of gender expression. Non-binary individuals collectively exhibit a diverse range of gender expressions, with certain individuals choosing to completely disassociate themselves from any gender "identity". Hence, it is not commonplace for individuals to categorize non-binary gender identities within the LGBT classification, a group that has faced challenges in gaining recognition in Indonesia a country with a primarily muslim population.

Hazim and Nazari argue that the emergence of non-binary identities inside Islamic society is perceived as having a detrimental influence on the Islamic community.⁴ Non-binary individuals possess a multifaceted gender identification that does not conform to the traditional binary categorizations of male or female. In the realm of Islamic law, it is understood that Allah has inherently designed human beings, with men and women being interconnected and complementary to one another.⁴

The recognition of non-binary gender in European countries occurred in 2013, with Germany being the first nation to acknowledge it as a distinct gender identity alongside men and women,⁵ Italy also demonstrated a similar recognition of non-binary gender inside the public sphere.⁶ In Australia, non-binary gender is

² Suci Ri³⁴ Rachmatia, "Dikaitkan Dengan Kasus Viral Maba Unhas, Apa Sih Arti Non-Bin⁸," *Detik Health*, 2022, <https://health.detik.com/berita-detikhealth/d-6247274/dikaitkan-dengan-kasus-viral-maba-unhas-apa-sih-arti-non-biner>. Accessed on March 16, 2023.

³ Rosalina Rosalina, et.al., "Pemaknaan Dan Pengalaman Sebagai Transgender," *Prosiding SENAPENMAS*, 202⁶ 1361–70.

⁴ Mahbobullah Hazim and Abdulaziz Nazari, "The Negative Consequences of Gender Mixing and Its Rulings in Islamic Shariah," *Integrated Journal for Research in Arts and Humanity*¹⁹, No. 4 (2023), p. 6-19.

⁵ Fae Garland and Mitchell Travis, "Non-Binary Embodiment: Intersex and Third-Gender Markers, in book: *Intersex Embodiment*⁴, 2023. p. 51-77.

⁶ Marta Mirabella, et.al., "Exploring Gender Diversity in Transgender and Non-Binary Adults Accessing a Specialized Service in Italy," *Healthcare* 11, No. 15 (2023), p. 2150.

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recognized and valued as a distinct gender identity, alongside the traditional binary categorizations of male and female. This recognition is a response to the historical dominance of male and female gender categories within societal frameworks. Despite the prevailing circumstances, Australia continues to make efforts towards granting legal recognition.⁷

In the context of Indonesia, non-binary gender is regarded as being comparable to *khunsa*, which refers to those who possess dual genders, as per the perspectives of Imam Nawawi and Wahbah al-Zuhaily.⁸⁹ Consequently, due to its status as a nation with a Muslim majority, both legal and social conventions in this country are significantly shaped by Islamic principles. The *khunsa's* status gives rise to a range of legal issues, including the matter of inheritance distribution. In the religious court of Magelang, located in East Java, a case involving an heir who identified as *khunsa* presented a challenge for the presiding judge in determining the appropriate amount of inheritance. To address this matter, medical intervention was sought, leading to the finding that the heir was biologically male.

Despite its divergence from ancient Islamic law, contemporary fiqh allows for this possibility with careful analysis. One of the factors taken into account is the Islamic principle of damage, which presents a compelling argument in support of the significance of establishing a clear position for *khunsa*. In contemporary society, the term "*khunsa*" is recognized as a potential genital anomaly that may manifest in some individuals. Nevertheless, the position of *khunsa* still poses legal challenges.¹⁰

Similarly, among the Muslim community, it is argued that *khunsa* lacks a legal foundation within the framework of Indonesian marital law. Therefore, it is imperative to establish legal regulations that recognize and legalize marriages in line with Islamic law, thereby integrating them within the framework of the state legislation. The current marriage restrictions primarily pertain to the Marriage Law, as well as a compilation of Islamic law that exclusively governs marriages between individuals of opposite genders.¹¹

Hence, conducting research on non-binary gender is crucial in order to offer a comprehensive understanding of this phenomenon. Furthermore, it is pertinent to note that this phenomenon is closely linked to religious educational

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⁷ Dylan Amy Davis, "The Normativity of Recognition: Non-Binary Gender Markers in Australian Law and Policy," *Advances in Gender Research* 24 (2017). p. 227-250.

⁸ Wahbah Az-Zuhaily, *Al-Fiqhu Al-Islami Wa Adilatuhu, II* (Beirut: Daar Al-Fikr, 1985).

⁹ Imam Nawawi, *Kasyifatu As-Saja Fi Syarh Safinat an-Naja* (Al-Rasyid Li al-Tauzi' wa Al-Nasy) (2019).

¹⁰ Ni Luh Tanzila Yuliasri, "Kedudukan Ahli Waris *Khunsa* Dalam Hukum Waris Islam," *Mimbar keadilan* 24 (2018).

¹¹ Pepe Puad Muslim. "Perkawinan *Khunsa* Dalam Filsafat Hukum Islam Dan Penerapannya di Indonesia," Disertasi: Universitas Islam Negeri Bandung, 2017.

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institutions when examined from the standpoint of *siyasah syar'iyah*.¹² This study employs a combination of qualitative and quantitative research methods. Qualitative research employs a range of classical and modern literature sources to explore the concept of non-binary gender, including articles, novels, and texts pertaining to Islamic law. The survey or quantitative research method was selected due to its suitability for the goal and scope of this study, which is to ascertain the response of Religious Universities in South Sulawesi. The *siyasah syar'iyah* technique is employed to examine the governmental policies pertaining to the establishment of legal frameworks for non-binary gender identities within the Islamic community of Indonesia.¹³

The Phenomenon of Gender and Sex

In the majority of cases, individuals from the general population tend to conflate the concepts of gender and sex. The distinction between gender and sex is evident. The concept of gender pertains to the societal roles assumed by individuals based on their sex, encompassing the distinctive attributes and behaviors associated with men and women. These roles are shaped by familial, cultural, and religious beliefs that influence individuals' experiences within their respective environments. The contemporary understanding of gender in the present day diverges from the conceptualization of gender in antiquity. During ancient times, it was customary for women to be accompanied by a male companion when venturing out at night. This practice stemmed from the prevailing belief that men have the ability to safeguard women.¹⁴

Presently, there is a discernible emergence of women engaging in activities traditionally associated with men, so enabling them to achieve self-fulfillment via the pursuit of similar endeavors. From a biological standpoint, it is evident that there are inherent distinctions between males and females in relation to their gender identity and physical characteristics. Specifically, it is notable that women possess reproductive systems capable of generating offspring, a capability that is exclusive to their gender when compared to men. Gender is a biologically determined characteristic that remains constant regardless of an individual's male or female designation.¹⁵ The physiological distinctions between males and females confer upon males the capacity to engage in physically demanding labor, while females are more inclined to exhibit traits associated with a more delicate

¹² Suharsismi Arikunto, *Prosedur Penelitian: Suatu Pendekatan Praktek* (Jakarta: Rineka Cipta, 1992).⁴⁹

¹³ Fred N. Kerlinger and Howard B. Lee, *Foundations of Behavioral Research: Quantitative Methods in Psychology Series* (Australia: Wadsworth, 2000).

¹⁴ Theresia Marditama et al., *Women Empowerment* (Yogyakarta: Zahir Publishing, 2021).⁷

¹⁵ Susan P. Phillips, "Defining and Measuring Gender: A Social Determinant of Health Whose Time Has Come," *International Journal for Equity in Health* 4, no. 1 (2005), p. 1-4.

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disposition. Gender refers to the inherent qualities and roles that are attributed to individuals based on their biological sex, which in turn influences their ability to interchange occupational positions with those of the opposite sex. This phenomenon has a significant impact on the social, cultural, and communal dynamics surrounding women and men.

There is often a conflation between gender roles and sex roles. These two terms possess distinct connotations. Sex roles refer to the behavioral patterns that are influenced by an individual's biological sex. These roles encompass several aspects, such as menstruation in women and erection and ejaculation in men, which are common to both sexes. In the realm of societal constructs, gender roles pertain to the prescribed behavioral norms associated with masculinity and femininity, which are primarily shaped by social factors.¹⁶ These expectations are established and sustained through the institutions and cultural norms of a specific culture. Within this particular context, it is noteworthy that the acts of giving birth and breastfeeding are commonly linked to feminine sex roles, whilst the responsibility of raising children is often associated with gender roles. The responsibility of child-rearing, along with its associated aspects, is contingent upon the cultural norms and power dynamics prevalent within a given society.

Gender is a distinguishing attribute employed to delineate disparities between males and females in relation to societal and cultural circumstances, values, conduct, mindset, emotions, and other non-biological elements. In order to gain insight into and address gender issues, an examination of diverse gender theories might be undertaken. Gender theories incorporate various sociological and psychological perspectives. The psychoanalytic theory was initially proposed by Sigmund Freud (1856-1939). This idea posits that the behavior and personality traits exhibited by individuals of both genders are influenced from an early stage by the progression of their sexual development. According to Freud's psychoanalytic theory, an individual's personality is comprised of three distinct structures: the *id*, *ego*, and *superego*.¹⁷

The *id* refers to an individual's inherent biological and physical features, encompassing factors such as sexual desire and instinctual tendencies that often exhibit aggression. The *id* functions as a reservoir of energy, imparting vitality to the subsequent two constructs. The *id* operates outside the confines of the rational system, consistently motivating individuals to pursue pleasure and fulfill biological needs. Furthermore, the *ego* operates within the realm of reason and endeavors to regulate the instinctual and violent impulses originating from the *id*. The *ego* endeavors to govern the interplay between an individual's subjective desires and the objective influence of social reality. The *ego* serves as a

¹⁶ Marie Richmond-Abbott, *Masculine and Feminine: Gender Roles over the Life Cycle* (McGraw-Hill Humanities, Social Sciences & World Languages, 1992).

¹⁷ Sigmund Freud, "The Ego and the Id (1923)," *TACD Journal* 17, no. 1 (1989), p. 5-22.

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mechanism for individuals to navigate and overcome subjective challenges, while also ensuring their survival within the realm of objective reality. The third superego serves as a moral component of the individual's identity, striving to actualize the ideal state of existence, surpassing the pursuit of pleasure and gratification. The *superego* consistently prompts the ego to diligently fulfill its regulatory role.¹⁸

According to Freud, an individual is considered to be in a state of normalcy when the three structures above operate in a balanced and harmonious manner. If an individual exhibits a higher level of dominance, they may face difficulties. If the prominence of the *id* structure increases, there is a higher likelihood that the self will exhibit hedonistic tendencies. Conversely, when the superego assumes a more dominant role, individuals may encounter challenges in their own growth as they are consistently burdened by apprehension and preoccupied with self-reflection. An individual's personality development is impacted by one of the five psychosexual stages as described by Freud. Freud posited that sexual satisfaction, pertaining to the gratification of the sexual drive, is present at various developmental stages and is linked to specific anatomical regions.^{19,20}

Furthermore, feminist philosophy serves to explicitly emphasize the societal status of women. Feminist activists aim to critique and contest the prevailing dominance of patriarchy, as well as the emergence of diverse gender stereotypes within societal constructs.²¹ Feminist perspectives on gender role disparities between men and women can broadly be classified into three distinct categories, namely: The initial theoretical framework, known as liberal feminism, promotes a range of societal transformations, including the establishment of legal parity between genders, equitable remuneration for comparable work, and the provision of equal opportunity for employment. However, they persist in refuting the notion that achieving absolute equality necessitates fundamental transformations in foundational institutions.²² The second theoretical framework, known as socialist feminism, aims to address the gender-based class hierarchy in society by highlighting the argument that the unequal distribution of roles between genders is predominantly influenced by cultural causes rather than inherent biological differences.²³

¹⁸ Sigmund Freud, *The Ego and the Id*.

¹⁹ Marzuki Marzuki, "Kajian Tentang Teori-Teori Gender," *Jurnal Civics: Media Kajian Kewarganegaraan* 4, no. 2 (2007).

²⁰ Karen Horney, *The Unknown Karen Horney: Essays on Gender, Culture, and Psychoanalysis* (Yale University Press, 2000).

²¹ Megawangi Ratna, *Membiarkan Berbeda: Sudut Pandang Baru Tentang Relasi Gender*, Bandung: Mizan, 1996.

²² Mansour Fakih, "Posisi Kaum Perempuan Dalam Islam: Tinjauan Analisis Gender," *Tarjih: Jurnal Tarjih Dan Pengembangan Pemikiran Islam* 1, no. 1 (1996), p. 22–37.

²³ Nurhasnah Abbas, "Dampak Feminisme Pada Perempuan," *Al-Wardah: Jurnal Kajian Perempuan, Gender Dan Agama* 14, no. 2 (2020), p. 187–98.

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The emergence of radical feminism as a prominent theoretical framework in the early 19th century was marked by its critical examination of many societal institutions that were perceived as having a negative impact on women. Notably, patriarchal institutions were singled out as particularly detrimental to women due to their perceived bias in favor of males. Furthermore, within the radical feminist movement, there exists a subset of individuals who hold more extreme views. These individuals not only advocate for gender equality, but also argue for the concept of "sex" equality, which encompasses the idea that sexual gratification may be derived from same-sex relationships, hence endorsing the acceptance of lesbian activities. Furthermore, radical feminism is characterized by the conviction that men are the root cause of societal issues, and as a result, they should be either shunned or actively opposed. Several labels associated with the feminist movement that might be classified into this category include feminist revolutionaries, redstockings, firestone, and cultural feminists, among other.²⁴

The third hypothesis under consideration is the socio-biological theory, which was formulated by Piere Van den Berghe, Lionel Tiger, and Robin Fox. This theory posits that the fundamental "biogram" inherited by current humans from their ancestors serves as a reflection of all sex role configurations. The degree of male dominance is influenced by a combination of biological and societal factors when examining gender dynamics.²⁵

In essence, the prevailing dominance of men in positions of power within many social institutions results in the heightened valuation of masculine features and occupations, hence engendering a construct of masculinity that is associated with societal success. If individuals are taught to conform to masculine norms, they may develop traits such as independence, aggression, and competitiveness, which are often associated with success and the perpetuation of power dynamics favoring young men. The socialization of women towards femininity, characterized by passive and dependent traits, poses challenges for their ability to acquire power and effect transformative change within prevailing systems of values and institutions.²⁶

Gender is a social construct that delineates the allocation of tasks and obligations amongst individuals based on their identification as either women or men. The content of gender does not pertain to the inherent character of God. Nevertheless, it is important to acknowledge that gender is a complex construct that is shaped and influenced by socialization processes that have evolved over an extensive period of time. The allocation of gender roles might exhibit variability

²⁴ Jacqueline Rhodes, *Radical Feminism, Writing, and Critical Agency: From Manifesto to Modem* (USA: State University of New York Press, 2012).

²⁵ Ikhlasiah Dalimoenthe, *Sosiologi Gender* (Jakarta: Bumi Aksara, 2021).

²⁶ Sunarto Benedictus, et. al., *Beyond Borders: Communication Modernity & History*. London School, 2010.

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or undergo modification throughout time.²⁷ Gender is a sociocultural phenomenon that serves to delineate between attributes associated with masculinity and femininity. The concepts of masculinity and femininity are subjective and contingent upon the socio-cultural environment of the specific society under consideration. The emergence of the notion of gender can be attributed to social scientists who saw the prevalent and enduring subordination of women, which had been advantageous to men over an extended period of time.²⁸

Gender and sex have distinct definitions. The concept of gender has been a subject of discourse that has elicited both positive and negative perspectives across several domains, encompassing society, academia, and governance, both historically and presently. Generally, there are those who continue to experience a sense of "foreignness" or exhibit hesitancy towards embracing the notion of gender due to its Western origins. The concept of gender emerged as a symbol of women's resistance, serving as a means to advocate for their entitlement to equal status as men. Certain communities exhibit a highly inflexible and traditional attitude, wherein a predetermined allocation of responsibilities between males and females is upheld.²⁹

In Islamic law, the concept of gender does not establish a distinction between males and females. Islam is a religious belief system that espouses the principle of gender equality, affording both men and women equal positions within its teachings. The advent of Islam resulted in an elevation of women's dignity through equitable treatment and the fulfillment of their rights, comparable to those enjoyed by males.

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The Concept of Non-Binary Gender from an Islamic Law Perspective

Based on historical accounts within the Islamic tradition, there exist individuals who exhibit traits that align with non-binary gender identities. These entities are commonly referred to as *khuntsa*. The term "*khuntsa*" is derived from the Arabic word "*khanasa*," which translates to "soft" or "softened."³⁰ In accordance with Islamic law, a *khuntsa* refers to an individual whose gender is characterized by uncertainty, as they possess both male and female genitalia simultaneously or lack genitalia altogether.³¹ In the *Jahiliyah* era, there existed a

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²⁷ Hilary M. Lips, *Sex and Gender: An Introduction, Seventh Edition* (USA: Waveland Press, 2020).

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²⁸ Kay Deaux and Mary E Kite, "Gender Stereotypes: Some Thoughts on the Cognitive Organization of Gender-Related Information.," *Academic Psychology Bulletin* 7 (1985), p. 123–44.

⁴⁸ Dalimoenthe, *Sosiologi Gender*.

³⁰ Ahmad Warson Munawwir, "Kamus Al-Munawwir Arab-Indonesia Terlengkap," *Kamus Al-Munawwir*, Surabaya: Pustaka Progresif, 1997).

³¹ Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, Jakarta: Ichtiar Baru Van Hoeve, 1996.

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notable scholar named Amir bin Adz-Dzarb. It is said that he was approached with a query concerning a woman who had given birth to offspring of both male and female genders. In recent times, there has been a growing discourse surrounding the intricacies and complexities associated with the phenomenon of *khunsa*. This discourse has been particularly pronounced in light of global challenges pertaining to human rights and the advancement of gender roles throughout society.

According to Sheikh Wahbah az-Zuhaili, the term "*khuntsa*" refers to an individual who possesses either male or female genitalia, or alternatively, an individual who lacks both male and female genitalia.³² In the book of *Sunnah fiqh*, Sayyid Syabiq and Ibnu Qudamah, among other *Fiqh* scholars, assert that *khuntsa* refers to an individual whose credibility is questioned, rendering them unreliable. The ambiguity surrounding the gender of such an individual further complicates their identification as either male or female³³

Many scholars, including Imam An-Nawawi, classify *khuntsa* into two distinct categories: abstruse *ghairu khuntsa* and abstruse *khunsa*. A *khuntsa*, which is not easily discernible in terms of gender based on prominent physical attributes, might be considered as an obscure entity. For instance, in cases when an individual possesses both male and female reproductive organs, namely a penis and a vagina, and predominantly urinates through the penis, exhibits prominent facial hair in the form of a bushy mustache and beard, and possesses a robust and sturdy physique, it may be reasonably inferred that their gender aligns with the male category. Conversely, the same reasoning can be applied to identify gender in reverse circumstances. In the realm of *Khuntsa*, there exists a variant known as *Khuntsa* abstruse, which poses a challenge in determining its gender because to the absence of discernible physical traits that would typically identify a specific gender. Despite much investigation, the gender classification of this variant remains elusive.³⁴

According to Muslich Maruzi, the aforementioned *khuntsa* can be categorized into various categories, as outlined below:

1. Individuals with double genitalia refer to those who possess both male and female genitalia.
2. Individuals who lack reproductive organs entirely.
3. Individuals possessing male genitalia but exhibiting a higher concentration of female hormones, resulting in the manifestation of feminine characteristics and behaviors.
4. Individuals who possess female genitalia but exhibit higher levels of male hormones, resulting in the manifestation of masculine characteristics and

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³² Wahbah Az-Zuhaili, *Al-Fiqhu Al-Islami Wa Adilatuhu*, II (Beirut: Daar Al-Fikr, 1985).

³³ As-Sayyid Sabiq, *Fiqh Al-Sunnah* (Dār al-Rayān lil-Turāth, 1990).

³⁴ Imam Nawawi, *Kasyifatu As-Saja Fi Syarh Safiinat an-Naja* (Al-Rasyid Li al-Tauzi' wa Al-Nasyr, 2019).

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behaviors.

There are instances of individuals known as *khuntsa* who undergo developmental changes wherein their appearance transitions from mostly masculine to feminine or vice versa. During their early stages of growth, these individuals may exhibit a more masculine appearance, but as they mature, their physical characteristics become more feminine. Conversely, some *khuntsa* may initially display feminine traits during their early stages of development, but as they progress into adulthood, their appearance becomes more masculine.³⁵

In recent times, there has been a notable surge in media coverage and scholarly investigation surrounding Non Binary Gender (non-binary) identities. This has coincided with an observed rise in the number of individuals identifying as non-binary. A noteworthy incident took place at a prominent university in South Sulawesi, wherein one of their newly enrolled students publicly disclosed their non-binary identity,³⁶ Although there seems to be a growing public awareness of non-binary gender identities, there is a noticeable dearth of research pertaining to the lived experiences of those who identify as non-binary. There is a dearth of scholarly study that specifically examines the linguistic strategies employed by individuals who identify as non-binary in order to express their gender identities. In what manner are pronouns, titles, and gender neutrality for maum elucidated throughout various societal strata.³⁷

In accordance with prevailing societal and conventional beliefs, it is commonly accepted that God is attributed with the creation of human beings, who are classified into two distinct genders, specifically male and female. From the moment of birth, individuals are bound by the laws of nature that govern their existence. It is crucial to have in mind that the development of male and female individuals is not subject to manipulation based on the desires of one's parents or oneself. Rather, it is determined by a divine decree and controlled by scientifically established dominant hormones. The gender disparity also serves the purpose of facilitating the perpetuation of the human species through the establishment of a biological connection between males and females. Nevertheless, there are individuals who do not fully embrace the inherent characteristics they possess from birth. Occasionally, individuals may experience a misalignment between their assigned gender at birth and their personal gender identity. This can manifest in cases when an individual assigned male at birth identifies as female, or conversely, where an individual assigned female at birth identifies as male. One category of individuals who may struggle with accepting their inherent characteristics is shown by the occurrence of women who exhibit masculine traits.

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³⁵ Muslich Iqbal, *Pokok Pokok Ilmu Waris* (Semarang: Pustaka Amani, 1981).

³⁶ Christina Richards et al., "Non-Binary or Genderqueer Genders," *International Review of Psychiatry* 28, no. 13 (2016), p. 95–102.

³⁷ Natalie Barker-Ruchti, et al., "Shifting, Crossing and Transforming Gender Boundaries in Physical Cultures," *Sport in Society* 19, no. 5 (2016), p. 615–25.

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Women who exhibit masculine traits are often referred to as tomboyish women. Masculine women are individuals who have a tendency to engage in activities traditionally associated with men, as opposed to conforming to societal expectations of feminine activities often associated with women. In addition, it is noteworthy that women who exhibit masculine traits often derive pleasure from engaging in athletics as a recreational pursuit, and furthermore, their social network predominantly comprises individuals of the male gender. One notable aspect is that when individuals establish friendships with women, they tend to adopt a masculine role characterized by qualities such as protectiveness and gentleness. Inherent inside each human, regardless of gender, are both masculine and feminine tendencies. Nevertheless, there exist hormones that exhibit greater dominance in each individual, resulting in the manifestation of distinct physical characteristics and behavioral traits. In general, masculine/tomboy women exhibit certain characteristics, such as a preference for wearing pants, particularly jeans, a lack of interest in applying make-up, and a general indifference towards their physical appearance.

The concept of macho women is intricately linked to the sociological aspects of family and gender. The family holds significant importance as it is commonly seen that individuals with positive attributes often emerge from a cohesive familial environment. If all members of a family are able to effectively fulfill their respective responsibilities and roles, they will have the capacity to regulate individual behavior in order to prevent deviation. The occurrence of various social deviant behaviors can be attributed to familial disorder in reality. One example of aberrations pertaining to gender is the occurrence of women exhibiting masculine traits. Several prior research have suggested that family parenting has a significant role in shaping the development of femininity in women. One factor to consider is the influence of parenting style within a dysfunctional or toxic family environment, characterized by instances of verbal and non-verbal harm inflicted among family members. This detrimental dynamic can significantly impact an individual's behavioral patterns and their ability to effectively express oneself.

Gender is a societally constructed perspective or belief regarding the expected behaviors and thoughts associated with individuals identifying as either female or male. As an illustration, one prevalent perspective posits that the archetypal woman should possess proficiency in culinary arts, adeptness in self-care, and have a soft demeanor. Additionally, there exists a concept that women are inherently sensitive and emotional beings, consistently relying on their emotions as a primary mode of engagement. Conversely, males are frequently characterized as possessing qualities associated with leadership, protection, headship within the family unit, rationality, and firmness, among others. In summary, gender is a socially constructed concept that is not inherently grounded in objective reality. In Surah al-Isra, specifically in verse 70:

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وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

³ Meaning: *Indeed, We have dignified the children of Adam, carried them on land and sea, granted them good and lawful provisions, and privileged them far above many of Our creatures. (QS. Al-Isra: 70).*

QS. Al-Hujurat: 13 also conveys similar message:

يَا أَيُّهَا النَّاسُ إِنَّا خَلَقْنَاكُمْ مِنْ ذَكَرٍ وَأُنْثَىٰ وَجَعَلْنَاكُمْ شُعُوبًا وَقَبَائِلَ لِتَعَارَفُوا

³ Meaning: *O humanity! Indeed, We created you from a male and a female and made you into peoples and tribes so that you may get to know one another. Surely the most noble of you in the sight of Allah is the most righteous among you. Allah is truly All-Knowing, All-Aware. (QS. Al-Hujurat: 13).*

Men and women have been created by Allah in a manner that embodies excellence and confers upon them a position of utmost respect. Humans possess inherent nobility through the faculties of reason, emotions, and the capacity to receive direction. Hence, ²⁸ Qur'an does not acknowledge any differentiation between genders, as both men and women are regarded as equal in the eyes of Allah. In contemporary society, both men and women hold equivalent ranks and positions, with the primary distinction between the genders being their biological characteristics.

The Islamic viewpoint has traditionally adopted a binary framework when considering gender, limiting it to the categories of men and women. Islamic beliefs uphold traditional gender roles and view non-binary gender as incompatible with sharia, as it is believed to contradict God's divine plan and deviate from the natural order. The manifestation of Islam's disapproval of gender and sexuality variety can be observed across multiple dimensions, encompassing the prevalence of theological interpretations, fatwas issued by religious authorities, governmental legislation, and the exclusion of gender non-binary groups by social organizations.

Fathurrahman, a professor affiliated with the Bone State Islamic Institute, elucidated that within Islamic law, there is recognition ⁴ of solely two genders, specifically male and female. If an individual identifies as non-binary, meaning they do not identify as exclusively male or female, it might be argued that such identification is in conflict with Islamic legal principles. In some medical scenarios, it is possible for an individual to exhibit the presence of dual genitalia.

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Islamic law addresses this matter by persistently assessing the individual's gender identity based on the prevailing functionality of their genitalia.³⁸

Abdul Syatar, a scholar at UIN Alauddin, underscores the notion that Islamic law consistently evaluates an individual in accordance with their biological attributes rather than their conduct. In cases when an individual identifies as non-binary and seeks to exercise inheritance rights, it is imperative to establish a definite gender classification, either male or female, in order to determine the applicability of Islamic legal requirements pertaining to inheritance. Similarly, this principle can be applied to various other matters including marriage and prayer.³⁹

Based on the aforementioned argument, it may be inferred that within Islamic law, the convergence of two distinct genders within an individual is an unavoidable circumstance. Legal status requirements are necessary for individuals, regardless of their gender classification, as certain circumstances warrant differential treatment under the law for men and women. These circumstances encompass aspects such as religious practices, marriage, inheritance, and leadership roles.

According to Islamic law, the individual who is subject to punishment is determined based on the strength of their propensity towards the prohibited act, regardless of their gender. In order to ascertain the gender of a *khuntsa*, the predominant method typically involves examining the clarity of their genitalia. Nevertheless, in cases when ascertaining this is challenging, the consensus among the ulama is that physical indications should be given precedence over psychological symptoms for assessing legal status.

Non-Binary Gender within the Context of Religious Higher Education: A *Siyasah Syar'iyah* Perspective

The topic of non-binary gender has garnered significant attention and debate in recent years, particularly within Western societies. However, it is undeniable that there are organizations advocating for a positive stance on non-binary gender, with the intention of promoting this awareness globally, including within the context of Indonesia. The research focuses on several articles, including UIN Alauddin Makassar, Bone State Islamic Institute, Palopo State Islamic Institute, Parepare State Islamic Institute, and Toraja State Christian Institute.

This discourse will elucidate the approaches adopted by religious universities in addressing non-binary gender identities. The topic of interest pertains to the correlation between the degree of understanding, the presence of

³⁸Interviewed with Fathurrahman, an academician at Institut Agama Islam Negeri Bone, South Sulawesi, September 17, 2023.

³⁹Interviewed with Abdul Syatar, an academician at Universitas Islam Negeri Alauddin, Makassar, South Sulawesi, September 3, 2023.

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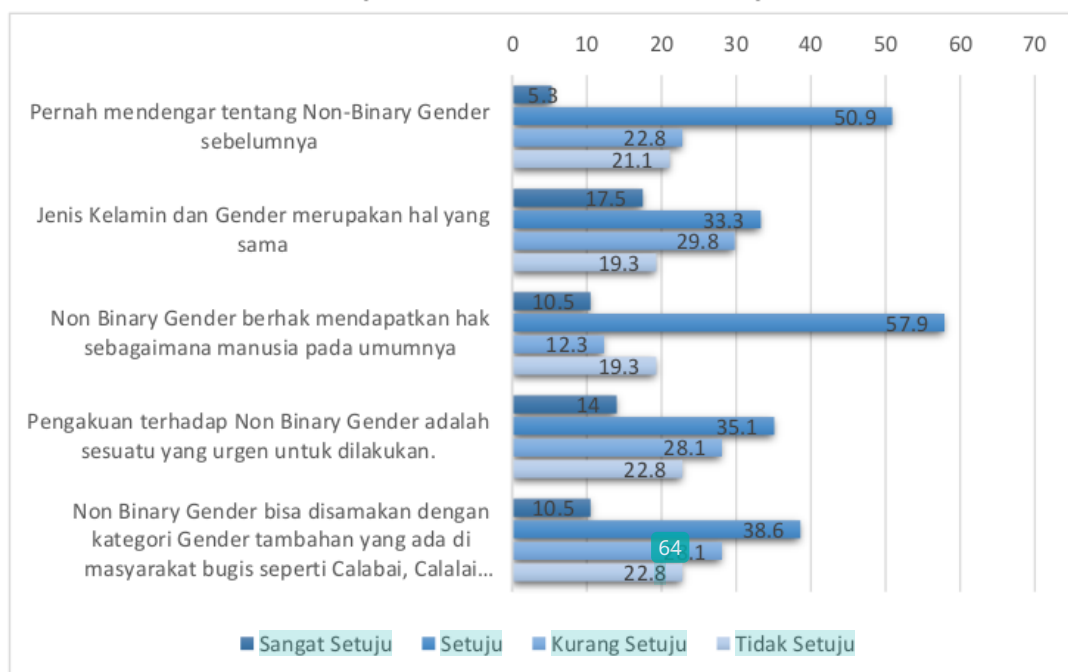
non-binary gender identities, and the policies implemented by educational institutions.

1. Degree of Understanding Regarding Non-Binary Gender Identity

A significant proportion of participants demonstrated awareness of the concept of Non-Binary Gender; yet, they maintained a perception that sex and gender are synonymous. Upon closer examination of the definitions of these two concepts, it can be deduced that gender and sex are distinct entities. The process of gender classification arises as a result of social influences, whereas gender itself is biologically defined at birth and is inherent.

The subsequent indication elucidates the extent to which Non-Binary Gender rights are realized, akin to the broader human population. In this part the majority of correspondents agreed with a percentage level of 57.9%. This demonstrates the importance of approaching the realization of Non-Binary Gender rights with caution, ensuring that it does not impede the realization of other fundamental human rights. Similarly, the imperative to acknowledge Non-Binary Gender is of utmost importance and requires prompt realization. Based on the data presented in the table, it is evident that 35.1% of respondents expressed agreement with the aforementioned statement. The recognition of non-binary gender does not imply endorsement of this atypical gender identity, but rather signifies an acknowledgment of non-binary individuals and a demonstration of respect and acceptance towards their self-determined gender identities.

Table 1: Survey on the nature of Non Binary Gender



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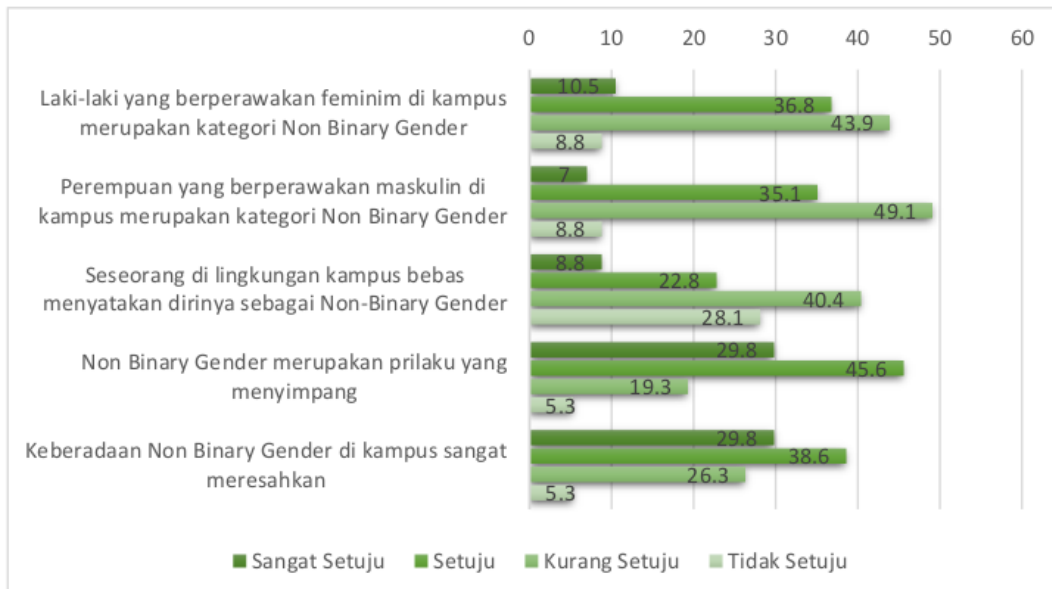
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Given that gender is a social construct, it is not uncommon for individuals to draw parallels between the concept of Non-Binary Gender and the gender categories of calabai, calalalai, and bissu observed in South Sulawesi. The phenomenon of gender emergence in South Sulawesi has been recognized for a significant period of time. However, it is noteworthy that this development has not resulted in any substantial conflicts. Consequently, it can be argued that the coexistence of gender identities in South Sulawesi has been characterized by amicable relations with the local population.

2. The Non-Binary Gender Phenomenon within the Context of Religious Higher Education Environments

A Non-Binary individual has the capacity to embody feminine traits, masculine traits, or a combination thereof. The findings derived from the administered questionnaire indicate that a significant proportion of the academic community, serving as respondents, expressed disagreement over the association of non-binary gender with individuals possessing feminine characteristics who identify as men, or those possessing masculine characteristics who identify as women. The comprehensibility of the survey findings can be attributed to the intricate and non-conventional association between non-binary gender and masculine and feminine constructs. This complexity arises from the fact that individuals may possess diverse experiences and interpretations of gender.

Table 2: Gender Phenomenon in Islamic Higher Education in South Sulawesi



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The provided data illustrates that among religious universities, 40.4% of individuals support the notion of granting individuals the opportunity to express themselves as non-binary in terms of gender. The act of self-identifying as a non-binary gender within religious educational institutions may be undertaken with the intention of garnering acceptance from fellow individuals. Nevertheless, it is imperative to acknowledge that the freedom to articulate one's thoughts is undeniably a fundamental human right as stipulated by the Constitution of 1945. The aforementioned liberty grants each individual within a society the ability to openly and conscientiously articulate their viewpoints, cogitations, and concepts. Nevertheless, it is crucial to bear in mind that freedom of expression is subject to certain constraints. It is imperative for every individual to assume responsibility for their verbal expressions and conscientiously evaluate the potential ramifications of their viewpoints on others.

Yohannes Krismantyo, a scholar affiliated with the Toraja State Christian Institute, underscores the need of upholding the rights of those who identify as non-binary gender within the specific setting of a religious university. According to legal provisions, education is unequivocally designated as a universal entitlement. The presence of individuals is not a matter of concern as it is a deliberate decision. The aforementioned group, being a minority²¹ warrants safeguarding, provided they do not contravene relevant legal statutes. **Individuals who do not identify with the gender binary** may face societal stigmatization due to their perceived deviation from cultural norms. However, it is worth considering that the concept of binary gender itself is a social construct that posits the existence of only two genders. The concept of gender should be distinguished from that of sex, as sex is primarily determined by biological factors, while gender is predominantly shaped by societal norms and constructs.⁴⁰

Hence, the attitudes of those surveyed with respect to non-binary gender are either considered abnormal and upsetting or not aligned with the prevailing norms within the higher education setting. Given the fact that Religious Universities in South Sulawesi undoubtedly impart religious comprehension through various courses and activities, it is inevitable that a significant number of participants perceive non-binary gender as deviant conduct and believe it to be incongruent with Islamic principles. The survey table indicates that a majority, exceeding 65%, voiced their approval. In this regard, it can be inferred that religious dogma remains robust and exerts influence within the academic community while addressing phenomena that deviate from religious norms.

Based on the findings of the questionnaire, as stated by Idris Rasyid, the secretary of the Indonesian Ulema Council in Bone Regency, non-binary gender

⁴⁰Interview with Yohannes Krismantyo, an Academician of Institut Agama Kristen Negeri Toraja, South Sulawesi, 27 July 2023.

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is regarded as a lifestyle choice that has a higher propensity to result in mental disorders. Consequently, if this phenomenon is not adequately addressed, it will undoubtedly have adverse consequences not only for the individuals involved but also for their immediate social circles.⁴¹ According to Subekti Masri, a scholar affiliated with the Palopo State Islamic Institute, the presence of individuals identifying as non-binary in terms of gender can potentially result in behaviors that deviate from religious doctrines. Consequently, it is imperative to consistently provide them with reminders and guidance.⁴²

3. The Policy Pertaining to Non-Binary Gender at Religious Higher Education Institutions

Typically, the formulation of policies in higher education is shaped by the perceptions and reactions of policy makers to the evolving social, political, and cultural dynamics within the society. This policy is a component of the endeavors undertaken by policy makers to regulate the execution of higher education functions by means of legislation, a bureaucratic framework, and the enforcement of duties. In Indonesia, existing rules have been established to facilitate the establishment of an inclusive and supportive environment that encompasses all gender identities.⁴³ This policy is commonly referred to as a gender-responsive campus initiative. The concept of a gender-friendly campus refers to the designation of universities that foster an inclusive and supportive atmosphere for individuals of all gender identities. Gender-inclusive campuses strive to ensure equitable opportunities and rights for all persons, irrespective of their biological sex or gender identity.

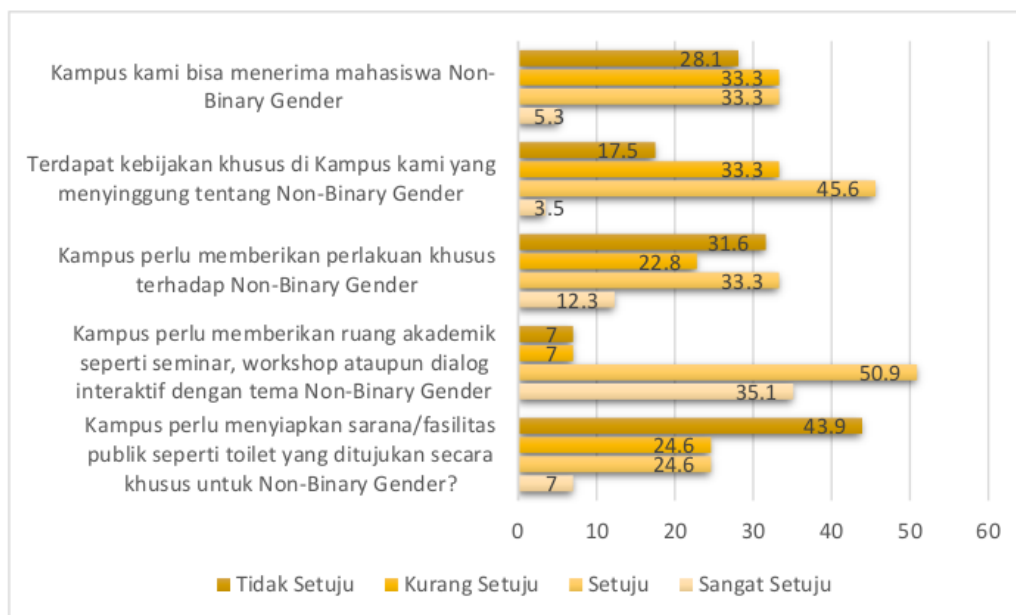
A number of Indonesian colleges have adopted rules with the objective of fostering an open and amicable atmosphere that accommodates individuals of various gender identities, including those who identify as non-binary. An instance of this can be observed at Gajah Mada University (UGM), where a gender-inclusive curriculum has been developed within the university premises, with the endorsement of the campus community and the chancellor. Several policies have been established in Indonesian universities, such as the use of inclusive terminology and the provision of gender-neutral living accommodations.

⁴¹ Interview with Idris Rasyid, the Secretary of the Indonesian Ulama Council, Bone Region, South Sulawesi, 1 September 2023.

⁴² Interview with Muhammad Haramain, an Academician of Institut Agama Islam Negeri, Pare, South Sulawesi, 16 July 2023. 12

⁴³ Ika Arinia Indriyany, et.al., "Gender Dan Pendidikan Tinggi: Studi Tentang Urgensitas Kampus Berperspektif Gender," *JIP: Jurnal Ilmiah Ilmu Pemerintahan* 6, no. 1 (2021): 55–72.

Tabel 3: Higher Education Policies on Non-Binary Gender



Based on the findings derived from the aforementioned questionnaire, it is evident that a significant proportion of participants express agreement and endorsement towards the provision of acceptance, special policy areas, and academic spaces catering to individuals identifying as non-binary gender within the realm of higher education. In relation to the allocation of specialized amenities for individuals identifying as non-binary, a significant majority of respondents, specifically 68%, indicated a lack of support. The lack of laws mandating institutions to offer specialized facilities for those identifying as non-binary genders contributes to the comprehensibility of this situation.

The current state of higher education policies in Indonesia pertaining to those who identify as non-binary gender is characterized by ongoing development and progress. Multiple studies have indicated that the issue of gender equality in higher education in Indonesia is a matter of significant concern.⁴⁴ Broadly speaking, the higher education regulations in Indonesia pertaining to gender strive to establish an open and amicable atmosphere that accommodates individuals of various gender identities, including those who identify as non-binary. A number of policies have been introduced in Indonesian universities, one of which pertains to the adoption of inclusive language. This policy is designed to promote the use of language that avoids reinforcing binary gender divisions or heteronormative

⁴⁴ Erma Millati Faizah, "Manajemen Kepemimpinan Di Perguruan Tinggi Islam (Studi Analisis Potret Kesetaraan Gender Di STAIN Ponorogo)," *El-Wasathiya: Jurnal Studi Agama* 1, no. 2 (2013).

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assumptions. Furthermore, it is worth noting that a number of colleges offer gender neutral housing options to cater to the needs of both male and female students. Furthermore, students have the ability to modify their gender designation without necessitating a corresponding alteration in their legal gender designation.⁴⁵

Thus, it should be mentioned that the understanding and implementation of non-binary gender policy in higher education in Indonesia is still in its early phases. Additional endeavors are required to augment consciousness and comprehension pertaining to non-binary gender matters, as well as to ⁴¹ster the implementation of more comprehensive policies within the realm of higher education in Indonesia. While it is true that all individuals possess the inherent right to freely articulate their thoughts and opinions, it is important to acknowledge that this freedom is not without constraints. The freedom that we experience is characterized by a sense of responsibility. The extent of an individual's freedom is constrained by the freedoms of others, as well as the prevailing societal, national, and state values and conventions. Arabic poetry asserts the principle that the freedom of an individual is constrained by the freedom of others. "*Hurriyatul-mar'i mahdudatun bi hurriyati ghairihi*" (people's freedom, is restricted by other people's freedom).

However, in accordance with *syar'iyah*, state universities are institutions that fall under the jurisdiction of the state. Abdul Syatar, a scholar affiliated with UIN Alauddin, asserts that it is fundamentally incumbent upon the state to en⁶³re the provision and safeguarding of the rights of all individuals, even those who identify as non-binary.⁴⁶

According to the Secretary of the MUI, it is imperative for the state to ensure the provision of protection to individuals, thereby upholding their rights as citizens. In addition, it is worth noting that the government plays a crucial role in offering advice and direction to community members, a fundamental aspect that is intertwined with both legal and religious frameworks.⁴⁷

According to Abdul Syatar, it is the responsibility of the state to enforce discipline and regulation among its citizens, particu³⁸y when their lifestyles are perceived as deviant. This enforcement should be in accordance with the principles of Islamic law, which emphasize that government policies must prioritize the welfare of the people. Consequently, individuals who identify as non-binary gender should be provided with appropriate advice and

⁴⁵ Esther Kuntjara, *Gender, Bahasa, Dan Kekuasaan* (Jakarta: BPK Gunung Mulia, 2003).

⁴⁶ Interview with Abdul Syatar, an academician of Universitas Islam Negeri Alauddin, Makassar, South Sulawesi, 3 September, 2023.

⁴⁷ Interview with Idris Rasyid, the Secretary of Indonesian Ulama Council, Bone Distric, South Sulawesi Selatan, September 1, 2023.

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comprehension to enable them to authentically express their gender identity and live in accordance with their inherent human nature.⁴⁸

According to Amrullah Harun, an academician from the Palopo State Islamic Institute, it is imperative for the state to uphold the rights of all individuals. Consequently, individuals who identify with non-binary gender beliefs should be provided with mental counseling aimed at aligning their self-perception with their biological sexual characteristics, to some extent.⁴⁹ According to Wahyuni, an academician at UIN Alauddin, it is worth noting that while there is presently no explicit policy addressing Non-Binary Gender, UIN Alauddin Makassar College has made efforts to ensure the safety of its students by implementing measures to prevent sexual harassment. It is imperative for individuals to comprehend that sexual harassment constitutes a reprehensible and highly abhorrent behavior. Consequently, it is incumbent upon us to exhibit mutual regard and esteem towards one another, irrespective of one's status, rank, age, or even gender.⁵⁰

From the standpoint of *siyasah syar'iyah*, it is incumbent upon the state to establish legal frameworks concerning matters pertaining to these concerns, as one of the objectives of the state is to generate societal advantages. However, it is imperative for the state to ensure the safeguarding of non-binary gender communities, while simultaneously offering appropriate guidance and counseling to foster their understanding of their gender identity, in accordance with the principle of "government policies must be based on the welfare of the populace" as stipulated in Islamic law. This responsibility extends to educational institutions and all aspects of societal existence.⁵¹

Hence, within the framework of Islamic law, it is considered that non-binary gender identities deviate from the norm and are deemed to be in conflict with the inherent characteristics of human beings. This situation presents several legal challenges, such as complications related to inheritance and marriage. These concerns arise due to the legal framework that exclusively recognizes two genders, namely male and female, which might impact individuals who identify outside of this binary classification. However, in accordance with *syar'iyah* (Islamic law), it is the responsibility of the state to offer protection to individuals through legal laws. This protection should be accompanied with guidance and

⁴⁸ Interview with Abdul Syatar, an Academician of Universitas Islam Negeri Alauddin, Makassar, South Sulawesi, September 3, 2023.

⁴⁹ Interview with Amrullah Harun, an Academician at Institut Agama Islam Negeri Palopo, South Sulawesi, September 10, 2023.

⁵⁰ Interview with Wahyuni, an academician of Universitas Islam Negeri Alauddin, Makassar, South Sulawesi, September 3, 2023.

⁵¹ Lukman Arake, "Otoritas Kepala Negara dalam Perspektif *Siyasah Syar'iyah*," *Jurnal Al-Bayyinah* 3, No. 2 (2019). Hudzaifah Achmad, "Analysis on Fatwa of Majelis Permusyawaratan Ulama Aceh (MPU) on Against Prohibition of PUBG: A Legal View Based on Maslahah and Mafsadah," *Jurnal Ilmiah Islam Futura* 22, No. 2 (2020).

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counseling, with the aim of fostering a life that promotes virtue and harmony within society.

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Conclusion

In conclusion, it can be inferred that the aforementioned points lead to the logical conclusion that non-binary gender is a broad concept encompassing gender identities that extend beyond the traditional male and female categories. Non-binary individuals typically self-identify with a gender that differs from their assigned sex at birth, although it is important to note that not all individuals within this group necessarily identify as transgender. The Islamic perspective has traditionally adopted a binary framework when considering gender, limiting it to the categorization of individuals as either male or female. Islamic theology asserts that gender and sexuality diversity is not accepted because to the belief that non-binary gender is inconsistent with *sharia*, and does not align with the laws prescribed by Allah. The emergence of non-binary gender as a phenomenon has elicited a range of reactions from Religious Universities in South Sulawesi. According to the findings of the study, a significant proportion of participants expressed their dissent towards the presence and empowerment of specialized facilities catering to those who identify as non-binary in terms of gender. On the contrary, it is widely acknowledged by the majority of participants that Religious Universities have implemented a distinct policy pertaining to Non-Binary Gender, so ensuring their entitlement to fundamental human rights. According to Islamic law, non-binary gender is regarded as a departure from the norm and is deemed inconsistent with the inherent character of human beings. Consequently, this perspective produces legal complexities concerning matters such as inheritance and marriage. The receipt of an inheritance and the occurrence of marriage are contingent upon the legal recognition of two genders, namely male and female. Nevertheless, in accordance with *siyasah syar'iyah* (Islamic law), it is incumbent upon the state to offer protection to individuals through legal frameworks. This protection should be accompanied with guidance and counseling, with the ultimate goal of fostering a life that promotes virtue and harmony within the society.

References

Journals and Books

15

Abbas, Nurhasnah. "Dampak Feminisme Pada Perempuan." *Al-Wardah: Jurnal Kajian Perempuan, Gender Dan Agama* 14, no. 2 (2020).

Achmad, Hudzaifah, "Analysis on Fatwa of Majelis Permusyawaratan Ulama Aceh (MPU) on Against Prohibition of PUBG: A Legal View Based on Masalah and Mafsadah," *Jurnal Ilmiah Islam Futura* 22, No. 2 (2020). DOI: <http://dx.doi.org/10.22373/jiif.v0i0.5788>.

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

Non-Binary Gender in *Siyasah Syar'iyah* Perspective

Lukman Arake, et.al.,

DOI:

Arake, Lukman, "Otoritas Kepala Negara dalam Perspektif *Siyasah Syar'iyah*,"

32 *Jurnal Al-Bayyinah* 3, No. 2 (2019).

Arikunto, Suharsimi. *Prosedur Penelitian: Suatu Pendekatan Praktek*. Jakarta:

Rineka Cipta, 1992.

Az-Zuhaily, Wahbah, *Al-Fiqhu Al-Islami Wa Adilatuhu*. II. Beirut: Daar Al-Fikr,

13 1985.

Barker-Ruchti, Natalie, et.al., "Shifting, Crossing and Transforming Gender Boundaries in Physical Cultures." *Sport in Society* 19, no. 5 (2016).

Benedictus, Sunarto, et. al. *Beyond Borders: Communication Modernity & History*. London School, 2010.

4 Couillard, Ellyn, and Jeanne L Higbee. "Expanding the Scope of Universal Design: Implications for Gender Identity and Sexual Orientation."

9 *Education Sciences* 8, no. 3 (2018): 147.

Dahlan, Abdul Aziz. "Ensiklopedi Hukum Islam." *Jakarta: Ichtisar Bru Van Hoeve*, 1996.

21 limoenthe, Ikhlasiyah. *Sosiologi Gender*, Jakarta: Bumi Aksara, 2021.

Davis, Dylan Amy, "The Normativity of Recognition: Non-Binary Gender Markers in Australian Law and Policy," *Advances in Gender Research* 24 (2017). DOI:10.1108/S1529-212620170000024014

10 Deaux, Kay, and Mary E Kite. "Gender Stereotypes: Some Thoughts on the Cognitive Organization of Gender-Related Information." *Academic Psychology Bull* 11, no. 7 (1985).

Faizah, Erma Millati. "Manajemen Kepemimpinan Di Perguruan Tinggi Islam (Studi Analisis Potret Kesetaraan Gender Di STAIN Ponorogo)." *El-Wasathiya: Jurnal Studi Agama* 1, no. 2 (2013).

16 Fakhri, Mansour. "Posisi Kaum Perempuan Dalam Islam: Tinjauan Analisis Gender." *Tarjih: Jurnal Tarjih Dan Pengembangan Pemikiran Islam* 1, no. 1 (1996).

47 Freud, Sigmund (19) "The Ego and the Id (1923)." *TACD Journal* 17, no. 1 (1989).

Garland, Fae, and Mitchell Travis, "Non-Binary Embodiment: Intersex and Third-Gender Markers, in book: *Intersex Embodiment*, 2023. DOI:10.1332/policypress/9781529217377.003.0003.

6 Hazim, Mahbobullah, and Abdulaziz Nazari, "The Negative Consequences of Gender Mixing and Its Rulings in Islamic Shariah," *Integrated Journal for Research in Arts and Humanities* 3, No. 4 (2023). DOI:10.5544/ijrah.3.4.2

Hermann, Lena, et.al., "Binary and Non-binary Gender Identities, Internalizing Problems, and Treatment Wishes Among Adolescents Referred to a Gender Identity Clinic in Germany," *Archives of Sexual Behavior* (2023). DOI:10.1007/s10508-023-02674-8

17 Horney, Karen. *The Unknown Karen Horney: Essays on Gender, Culture, and Psychoanalysis*. Yale University Press, 2000.

<http://jurnal.ar-raniry.ac.id/index.php/samarah>

Non-Binary Gender in *Siyasah Syar'iyah* Perspective

Lukman Arake, et.al.,

DOI:

- Indriyany, Ika Arinia, et.al., “Gender Dan Pendidikan Tinggi: Studi Tentang Urgentitas Kampus Berperspektif Gender.” *JHIP: Jurnal Ilmiah Ilmu Pemerintahan* 6, no. 1 (20¹²): 55–72.
- Kerlinger, Fred N, and Howard B. Lee. *Foundations of Behavioral Research*. PSY 200 (300) Quantitative Methods in Psychology Series. Harcourt College Publishers, 2000.
- Kuntjara, Esther. *Gender, Bahasa, Dan Kekuasaan*, Jakarta: BPK Gunung Mulia, 2003.
- Lips, Hilary M. *Sex and Gender: An Introduction, Seventh Edition*, USA: Waveland Press, 2020.
- Marditama, Theresia, et.al., *Women Empowerment*, Yogyakarta: Zahir Publishing, 2021.
- Marzuki, Muslich, *Pokok Pokok Ilmu Waris*. Semarang: Pustaka Amani, 1981.
- Marzuki, Marzuki. “Kajian Tentang Teori-Teori Gender.” *Jurnal Civics: Media Kajian Kewarganegaraan* 4, no. 2 (2007).
- Mirabella, Marta, et.al., “Exploring Gender Diversity in Transgender and Non-Binary Adults Accessing a Specialized Service in Italy,” *Healthcare* 11, No. 15 (2023), p. 2150. DOI:10.3390/healthcare11152150.
- Muslim, Pepep Puad, “Perkawinan Khuntsa Dalam Filsafat Hukum Islam dan Penerapannya di Indonesia,” Disertasi: Universitas Islam Negeri Bandung, 2017.
- Nawawi, Imam. *Kasyifatu As-Saja Fi Syarh Safiinat an-Naja*. Al-Rasyid Li al-Tauzi' wa Al-Nasyr, 2019.
- Phillips, Susan P. “Defining and Measuring Gender: A Social Determinant of Health Whose Time Has Come.” *International Journal for Equity in Health* 4, no. 1 (20⁰⁸).
- Rachmatia, Suci Risanti. “Dikaitkan Dengan Kasus Viral Maba Unhas, Apa Sih Arti Non-Biner?” *Detik Health*, 2022. <https://health.detik.com/berita-detikhealth/d-6247274/dikaitkan-dengan-kasus-viral-maba-unhas-apa-sih-arti-non-biner>
- Rahim, Abdul. “Gender Dalam Perspektif Islam.” *Sosioireligius: Jurnal Ilmiah Sosiologi Agama* 3, no. 1 (2018).
- Ratna, Megawangi. “Membiarkan Berbeda: Sudut Pandang Baru Tentang Relasi Gender.” *Bandung: Mizan*, 1999.
- Rhodes, Jacqueline. *Radical Feminism, Writing, and Critical Agency: From Manifesto to Modem*, USA: State University of New York Press, 2012.
- Richards, Christina, Walter Pierre Bouman, Leighton Seal, Meg John Barker, Timo O Nieder, and Guy T'Sjoen. “Non-Binary or Genderqueer Genders.” *International Review of Psychiatry* 28, no. 1 (2016).
- Richmond-Abbott, Marie. *Masculine and Feminine: Gender Roles over the Life Cycle*. McGraw-Hill Humanities, Social Sciences & World Languages, 1992.

Non-Binary Gender in *Siyasah Syar'iyah* Perspective

Lukman Arake, et.al.,

DOI:

Rosalina, Rosalina, et.al., "Pemaknaan Dan Pengalaman Sebagai Transgender."

³⁰ *Prosiding SENAPENMAS*, 2021.

Sabiq, As-Sayyid, Nor Hasanuddin, Aisyah Saipuddin, and Johari al-Yamani.

Fiqh Al-Sunnah. Dār al-Rayān lil-Turā⁴⁵ 1990.

Salinas-Quiroz, Fernando, and Noah Sweder, "Authentic Gender Development in Non-Binary Children," *Frontiers in Sociology* 8 (2023).

²⁷ DOI:10.3389/fsoc.2023.1177766.

Solekhan, Ilham Ghoffar and Maulidi Dhuha Yaum Mubarak, "Khuntsa dan Penetapan Statusnya dalam Pandang⁶⁸ Fiqh Kontemporer," *al-Hurriyah: Jurnal Hukum Islam* 5, No. 2 (2020). DOI: 10.30983/alhurriyah.v5i2.3324

⁵² Warson Munawwir, Ahmad. "Kamus Al-Munawwir Arab-Indonesia

²² Terlengkap." *Kamus Al-Munawwir*, Surabaya: Pustaka Progresif, 1997).

Yuliasri, Ni Luh Tanzila, "Kedudukan Ahli Waris Khuntsa Dalam Hukum Waris⁵⁹ am," *Mimbar Keadilan* 24 (2018).

⁵³ DOI: <https://doi.org/10.30996/mk.v0i0.1781>.

Yusuf, A Muri. *Metode Penelitian Kuantitatif, Kualitatif & Penelitian Gabungan*, Jakarta: Prenada Media, 2016.

Interviews

Interview with Abdul Syatar, an Academician at Universitas Islam Negeri Alauddin, Makassar, South Sulawesi, September 3, 2023.

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Interviewed with Wahyuni, an Academician of Universitas Islam Negeri Alauddin, Makassar, South Sulawesi, September 3, 2023.

Interviewed with Yohannes Krismantyo, an Academician of Institut Agama Kristen Negeri Toraja, South Sulawesi, July 27, 2023.

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