

## NAVIGATING FIQH CHALLENGES AMONG MUSLIMS WHO IDENTIFY AS TRANSGENDER: TOWARDS DEVELOPING A FIQH FRAMEWORK ON TRANSGENDERISM

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### Abstract

*The issue of transgenderism, particularly concerning transwomen (mak nyah) in Malaysia, has sparked significant societal concern due to its religious implications, raising complex fiqh-related questions on matters such as prayer, pilgrimage (umrah), inheritance (faraid), funeral management, and more. This study aims to explore the fiqh challenges and issues related to transgender individuals, providing clarity on the rulings in these areas. Utilizing interviews and document analysis, this qualitative research examines the fiqh issues surrounding transgenderism and determines the applicable rulings. Preliminary findings indicate that the transgenderism fiqh issues primarily fall into three key areas of Islamic jurisprudence: Fiqh 'Ibadat (worship obligations), Fiqh Mu'amalat (social interactions and dealings), and Fiqh Jinayat (criminal law). Through document analysis of both classical and contemporary fiqh scholars' works, the study develops a comprehensive fiqh framework for navigating fiqh challenges among Muslims who identify as transgender. The transgenderism fiqh framework is designed to offer essential guidance to the transgender community in fulfilling their religious obligations and returning to their fiṭrah (true nature). Additionally, this framework is intended to serve as a reference for religious authorities, as well as a valuable resource for the broader public.*

**Keywords:** *Fiqh, Challenges, Muslims, Transgender, Framework.*

### INTRODUCTION

According to the World Health Organization and the American Psychological Association (2014), “transgender” is an umbrella term encompassing individuals whose sense of gender does not align with the sex assigned to them at birth. This definition emphasizes that transgender applies to individuals whose gender identity, gender expression, or behavior deviates from societal norms associated with their assigned sex at birth.

Research by Wei et al. (2012) estimated that Malaysia had approximately 100,000 transgender individuals based on activist reports. Similarly, Mohd Izwan highlighted that the recorded number of transgender individuals in Malaysia rose from 10,000 in 1988 to 30,000 by 2018 (Audrey, 2018). In addition, Abdul Hadi et al. (2021) and Muhammad Adam et al. (2020) also noted an increase in transgender women, or *mak nyah*.

An incident in February 2020 shook Malaysia as it became known that a controversial entrepreneur and his associates, who identify as male and were born as such, dressed as women to undertake the umrah pilgrimage (Muhaamad Hafis, 2020). This incident triggered notable societal doubts concerning the legitimacy of their 'umrah performance. A few muftis have made statements that the act of transgender people performing 'umrah without following the rulings of their original gender is illegal and considered sinful (Latifah, 2020). Following this incident, societal questions emerged regarding various aspects of religious law related to Muslims identifying as transgender.

Hence, this study aims to explore the fiqh challenges and issues related to transgender individuals, addressing these concerns by analyzing the works of classical and contemporary scholars to provide relevant rulings. The subject of gender identity has been thoroughly discussed in our society for decades; *mukhannath* is a term used in Classical Arabic and Islamic literature to describe what is now known as the gender-variant group. *Mukhannath* has been typically referred to as effeminate men, who appear feminine and function sexually or socially in roles typically carried out by women. Past scholars such as Al-Nawawi (2008), Ibn Qudamah (1996), Al-Sarakhsi (1993), and Ibn 'Abd al-Barr (1990) have addressed the issue of *mukhannath* in their books of fiqh.

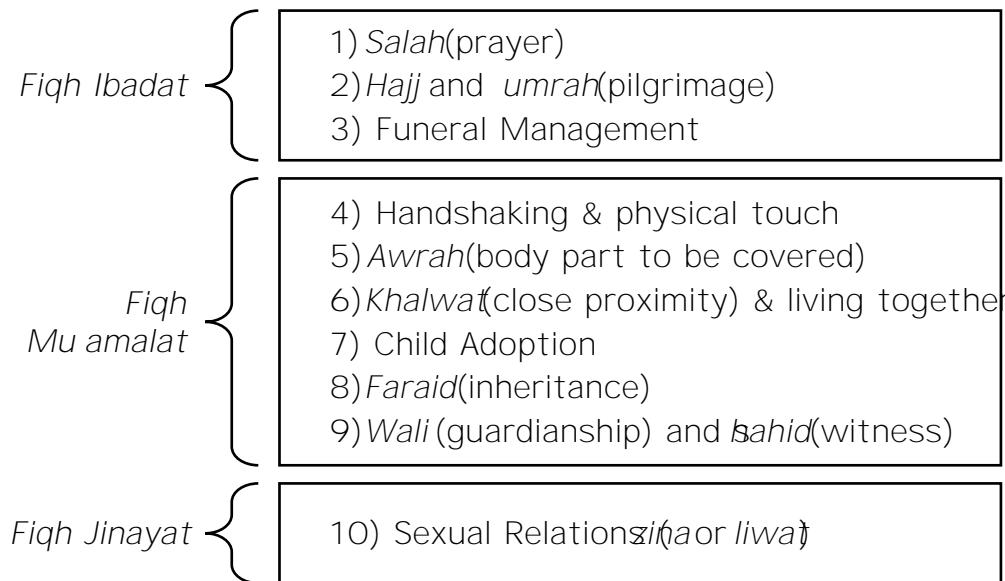
As a result, this study develops a comprehensive fiqh framework for navigating fiqh challenges among Muslims who identify as transgender. This transgenderism fiqh framework aims to provide clear, principled, and practical solutions to the religious and legal complexities faced by transgender individuals within an Islamic context. Moreover, addressing this issue is imperative to prevent continued breaches of religious laws and to deter emulation by other transgender individuals.

## METHODS

This study employs a qualitative methodology integrating interviews and content analysis. By conducting interviews with Shariah experts, transgender individuals, and their family members, the researcher identified the main fiqh challenges faced by transgender individuals, guided by the assumption that the meaning people assign to their experiences significantly influences how they navigate and live out those experiences (Blumer, 1969). Content analysis, or text document analysis as defined by Devi (2009), was employed to examine fiqh issues related to transgender individuals in both classical and contemporary fiqh literature.

## RESULTS AND DISCUSSION

Insights from interviews and content analysis revealed ten primary fiqh issues faced by the transgender community, categorized into three main areas or branches of fiqh: Fiqh 'Ibadat (worship obligations), Fiqh Mu'amalat (social interactions or dealings), and Fiqh Jinayat (criminal law). These categories form the foundation of the transgenderism fiqh framework, as shown in Figure 1.



**Figure 1:** Fiqh Challenges Among Transgender Individuals Across Main Areas of Fiqh

The analysis of fiqh challenges concerning Muslims who identify as transgender, particularly in the discussion of mukhannath individuals, typically offers general guidelines in

classical literature that refer to their original male gender. For instance, Al-Sharwani (2006) mentioned that if a man resembles a woman, his ablution (wudhu') remains valid if touched by another man. Conversely, if a woman resembles a man, the ablution is considered invalid, reflecting a focus on external appearance while maintaining the unchanged essence of gender identity.

Therefore, the fiqh ruling fundamentally adheres to the original gender, even if there has been a change in the physical appearance of the opposite gender. This finding is supported by al-Baltaji (2002), who believed Islamic law recognizes and treats mukhannath as males, regardless of physical appearance or behavior changes. For instance, they continue to get the part a male should receive when inheritance is divided. In the same way, even if they underwent sex reassignment surgery, their bodies after they pass away will be treated by their born gender. Their gender status remains as originally assigned even after undergoing gender reassignment surgery or procedures to alter physical attributes and hormone therapy (Mohd Kamarul Khaidzir & Mohd Rofaizal, 2018).

This is consistent with the findings of Vaid and Jensen (2020), in which Islam's treatment of gender is principally anchored in biological composition. Therefore, legal rulings concerning transgender individuals in Islamic jurisprudence are based on their assigned gender at birth. In the case of transwomen, they are recognized as men regardless of their outward appearance. Since neither sex reassignment surgery nor hormone therapy genuinely transforms a person into another sex, nor is such possible, a transwoman who undergoes either or both procedures remains the same sex, and the rulings of that original sex continue to apply.

Based on the analysis of classical and contemporary fiqh scholars' literature on transgender issues, the researcher summarizes the discussions and derivations of fiqh rulings on ten selected transgender topics, highlighting the most *rajih* (authoritative) views. This analysis serves as the foundation for developing a fiqh framework on transgenderism, offering guidance on the fiqh challenges faced by transgender individuals.

## CONCLUSIONS

The development of a fiqh framework on transgenderism aims to provide a comprehensive approach to navigating transgender issues within Islamic jurisprudence. By consolidating key fiqh-related concerns and challenges specific to transgenderism, the framework establishes foundational principles and guidance for Muslims who identify as transgender, helping them fulfill their religious obligations and return to their *fitrah* (true nature). Additionally, this fiqh framework serves as a reference for scholars, policymakers, and other stakeholders seeking to understand and address transgender issues in alignment with Islamic teachings.

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