

# The Quest for Third Gender Equality: Challenges and Implications for Islamic Law and Muslim Women's Sustainability in Malaysia

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## Abstract

Fundamentally, men and women constitute the two primary gender binaries in the construction of human society. *Khunthā*, however, refers to individuals with anomalies. There are no specific exemptions regarding this group in the discourse of Islamic law. Recently, the third gender group has been advocating for equal rights with the binary gender group. Although the third gender is not recognized in Islam, efforts to acknowledge them have been increasing in certain Islamic nations, including Malaysia. They argue that they are assigned to an incorrect gender. Consequently, individuals transition to a different gender identity, such as trans-women or trans-men. The universalism of Western human rights serves as inspiration for the demand for third-gender rights, which opposes local religious and cultural norms. Additionally, this paper explores the implications of third-gender recognition on Muslim women and the sustainability of Islamic law in Malaysia. This qualitative study employs the library research process to collect relevant documentation to achieve the objective. Content analysis of the gathered material was conducted inductively to assess the implications of the third gender claim on Islamic law and women. According to the study's findings, recognizing the third gender's ambition for equality would lead to modifications in laws and the diminishment of women's rights as they would have to share resources and benefits with biological males.

## Abstrak

Secara fundamental, laki-laki dan perempuan membentuk dua biner gender utama dalam konstruksi masyarakat manusia. *Khunthā*, bagaimanapun, merujuk pada individu dengan anomali. Dalam diskursus hukum Islam, tidak ada pengecualian khusus mengenai kelompok ini. Baru-baru ini, kelompok gender ketiga telah mulai memperjuangkan kesetaraan hak dengan kelompok gender biner. Meskipun gender ketiga tidak diakui dalam Islam, upaya untuk mengakui mereka semakin meningkat di beberapa negara Islam termasuk Malaysia. Mereka berargumen bahwa mereka ditetapkan pada gender yang tidak sesuai. Akibatnya, individu bertransisi ke identitas gender yang berbeda, seperti trans-wanita atau trans-pria. Universalitas hak asasi manusia Barat menjadi inspirasi bagi tuntutan hak kelompok gender ketiga ini, yang bertentangan dengan norma-norma agama dan budaya lokal. Artikel ini mengeksplorasi implikasi pengakuan gender ketiga terhadap perempuan Muslim dan keberlanjutan hukum Islam di Malaysia. Penelitian kualitatif ini menggunakan proses penelitian kepustakaan secara menyeluruh untuk mengumpulkan dokumentasi yang relevan guna mencapai tujuan tersebut. Analisis konten terhadap bahan yang dikumpulkan dilakukan secara induktif untuk menilai implikasi tuntutan gender ketiga terhadap hukum Islam dan perempuan. Berdasarkan temuan penelitian, pengakuan terhadap ambisi kesetaraan gender ketiga akan menyebabkan modifikasi dalam hukum dan pengurangan hak-hak perempuan karena mereka harus berbagi sumber daya dan manfaat dengan laki-laki biologis.

## Keywords:

*Equality; Gender; Islamic jurisprudence; Islamic law; Rectify*

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## Introduction

The pursuit of gender equality has long been a complex and multifaceted struggle worldwide, with advocates navigating the intersections of religion, culture, and law to promote equitable rights across diverse populations (Osella & Rubio-Marín, 2023). In Malaysia, achieving gender equality for individuals identifying as the third gender presents unique challenges, particularly due to the constraints of Islamic law, which traditionally upholds a binary understanding of gender (Arif et al., 2018). Historically grounded in the distinction between male and female, Islamic legal frameworks do not explicitly recognize or address non-binary identities (Alipour, 2017). Consequently, advocates face significant barriers as they challenge deeply rooted societal and religious norms, seek broader legal recognition, and push for the integration of a third gender within Malaysia's cultural and religious landscape.

The traditional binary concept of gender, reinforced by both religious interpretation and societal norms, has been central to Islamic law for centuries (Abizar, 2020). This dichotomy, acknowledging only male and female categories, is the foundation for religious practices, legal prescriptions, and cultural expectations (Aboim, 2020). Introducing a third gender into this binary framework presents theological and cultural tensions, as there is limited guidance within Islamic texts on addressing gender identities outside the male-female paradigm (Etengoff & Rodriguez, 2022). This lack of explicit religious direction leads to contentious debates among scholars, with concerns about preserving traditional interpretations of Islamic law and maintaining societal harmony (Haniff et al., 2021).

Despite these constraints, several initiatives have emerged in Malaysia to promote public understanding and acceptance of the third gender. Various campaigns and programs aim to increase awareness of the challenges faced by third-gender individuals, striving for a more inclusive community that values respect for all genders (Abd Rahim et al., 2020; Narendran et al., 2021). These efforts often draw inspiration from universal human rights frameworks, challenging local norms and advocating for a society that acknowledges and integrates diverse gender identities (Ramalingam et al., 2024). This movement reflects the influence of Western human rights principles, which emphasize individual autonomy and equality, contrasting with Malaysia's conservative religious and cultural values.

From a legal perspective, the status of third-gender individuals in Malaysia remains ambiguous. There is currently no comprehensive law addressing the rights and protections for both Muslims and non-Muslims within this demographic. Instead, existing legal provisions often target cross-dressing or behaviors perceived as inconsistent with one's biological sex, with penalties that include fines up to RM1,000 or imprisonment for up to six months. These relatively minimal penalties have had limited deterrent effects, as many within the third-gender community receive support from independent organizations that assist them in navigating social and legal challenges (Sharifuddin & Ramli, 2023). As the demand for gender rights grows, so does the call for legal clarity that addresses non-binary identities without undermining the cultural and religious values enshrined in Islamic law.

Anthropologically, the concept of gender extends beyond the binary framework, with studies identifying a broad spectrum of gender identities worldwide. Traditional societies in various parts of the world, including South Asia, the Middle East, and Southeast Asia, have historically acknowledged non-binary categories, though these groups have often faced marginalization and social exclusion (Herdt, 2020; Khan et al., 2009). For example, the term *khunthā* in Islamic scholarship has been used to refer to individuals with ambiguous physical characteristics, such as intersex individuals, but does not fully encompass the modern understanding of third-gender identities (Alipour, 2017). While the acknowledgment of gender

ambiguity exists within Islamic societies, formal recognition of a third gender remains limited, as it challenges long-standing religious doctrines and traditional norms.

In recent years, several countries have begun legally recognizing non-binary gender identities. Nations such as Germany, France, Australia, and Nepal have enacted policies that offer gender options beyond male and female in official documents, highlighting a growing trend toward inclusivity (Sharifuddin & Ramli, 2023). These developments have influenced human rights discussions in Malaysia, where advocates call for similar legislative reforms. Legal recognition would not only address the social and legal challenges faced by the third gender but also establish a foundation for a more equitable society. However, these proposals often encounter resistance from conservative groups who argue that such reforms could disrupt traditional family structures and societal values.

Physiologically, men and women exhibit distinctions in chromosomes, hormones, and reproductive systems, differences historically understood as divinely ordained in Islamic teachings (Anees, 1993; Kaplan & Rogers, 1990). These biological distinctions reinforce the male-female binary in Islamic jurisprudence, complicating efforts to incorporate non-binary identities. The traditional view holds that men and women, while different, men and women are complementary, each fulfilling specific societal roles (Ramli et al., 2024). This perspective is deeply rooted in the teachings of Islam, which views these distinctions as fundamental to societal harmony. As such, the introduction of a third gender is seen by some as a potential source of discord within the Muslim community.

The increasing visibility of third-gender individuals on global platforms, including social media, has amplified discussions on gender identity and inclusivity. Gender identification options on social media platforms such as Facebook have expanded to include approximately 60 categories (Facebook, 2015), while Tinder offers 37 choices, including "agender" (Castañeda & Pfeffer, 2018). By 2023, 107 gender identities will be listed (Sexual Diversity, 2023). This spectrum extends beyond the conventional gender categories of male and female to encompass terms like transgender, transsexual, agender, cisgender, neutrois, pangender, and more (Kapusta, 2013). Castañeda and Pfeffer (2018) note that the non-binary gender spectrum is fluid and continues to evolve. Meanwhile, terms such as *Mak nyah*, *pondan*, *bapak*, *darai*, *lelaki lembut*, *sotong*, and *adik* for transgender males are some of the labels used in Malay society to refer to unclear gender identities (Azid et al., 2020; Mohamed et al., 2019; Mohd Yusof & Timmiati, 2011). Transgender women, on the other hand, are frequently called *abang*, *pengkid*, and *tomboy*. Furthermore, several additional terms are employed by various nations to represent this group; they include *jogappas*, *jogtas*, or *shiv-shaktis* in South Asia; *bakla* in the Philippines; *xanith* in Oman; *kathoe*y in Thailand; *waria* and *banci* in Indonesia; and *Pokot* in Kenya (Khan et al., 2009; Stief, 2017). This shift toward a more fluid conception of gender challenges traditional beliefs and has sparked debates within Islamic societies about the implications of accepting non-binary identities. For many conservative Muslims, embracing non-binary identities poses risks to the cultural and religious fabric of society, prompting calls for the preservation of binary gender norms to maintain social and religious cohesion (Azid et al., 2020).

While the concept of a third gender is not new, its integration into legal and social frameworks is relatively recent. The notion of "gender" gained prominence in the 1970s, evolving from earlier discussions centered on women's rights into broader gender studies. The feminist movement initially expanded to include gender as a central theme, with later discourse incorporating the rights of transgender and third-gender individuals (Hikmah et al., 2022). The concept of a third gender has been present in several communities worldwide, often facing marginalisation. These distinctions prevent them from being considered as legitimate members

of society. Disruptions and abuse (Khan et al., 2009; Stief, 2017; Zaharin & Pallotta-Chiarolli, 2020), violence, negative social reactions, mocking, accessibility challenges, and human rights limits (Castañed & Pfeffer, 2018) are common experiences for these individuals. Exposure to a gender identity that differs from the mainstream gender current frequently leads to defamation, bullying, and catastrophic consequences since it does not fit into the anticipated gender categories set by a certain cultural environment (Goh & Kananatu, 2019). As a result, individuals suffer from internal tension, sadness, and health difficulties (Al Mamun, 2016; Diehl et al., 2017; Tan et al., 2021), as well as transphobia and hate crimes (Yudah, 2017). Many policies and laws target non-heterosexual groups, labeling them "against nature's laws." Several countries in Africa, Asia, and the Middle East impose harsh penalties on individuals with alternative sexual orientations, including the death penalty (Jain & Rana, 2021), challenging the accepted sexual categorization (i.e., male and female) and revealing that binary categories are culturally constructed (Hyde et al., 2019).

Efforts to uphold the Universal Declaration of Human Rights respond to various forms of discrimination and oppression targeting this third group, as human rights have become a modern battleground for equal rights (Merlan, 2018). Legalizing third-gender or genderless markers, which are not widely recognized in many countries, has sparked debate (Osella & Rubio-Marín, 2023). The push for a post-gender or genderless society faces resistance. However, legal recognition of non-binary gender by countries like Australia, Denmark, Germany, India, and Nepal is seen as a victory for the rights campaign of this group. Today, over 14 countries officially recognize the third gender, marking a significant shift in the global approach to gender identity (Equaldex, 2024). These legislative advancements have encouraged advocates in Malaysia to push for similar reforms despite the cultural and religious challenges they face.

The implications of recognizing third-gender rights in Malaysia are far-reaching, particularly for Muslim women and the sustainability of Islamic law. Advocates argue that legal recognition of the third gender would promote social equity. At the same time, critics warn of potential disruptions to the traditional roles of men and women within an Islamic framework. Legalizing third-gender rights may also raise concerns about the preservation of family structures, societal values, and cultural norms long upheld within the Islamic tradition (Luhur et al., 2020).

Thus, carefully evaluating the consequences of altering existing gender norms is essential to balancing inclusivity with Islamic law's religious and cultural integrity in Malaysia. In this context, this article will explore the position of the third gender in Islamic law, the debate over their demand for equal rights, and its potential impact on the sustainability of Islamic law and Muslim women in Malaysia.

## Method

This study utilized a qualitative methodology, employing a thorough library-based approach for data collection. The documentation method was used to gather a broad spectrum of sources, including scholarly articles, case studies, and pertinent legal documents. After data compilation, we conducted an inductive content analysis outlined by Kondracki et al. (2002), focusing on recognising the third gender within Islamic jurisprudence and its consequences. Following the methodological guidance of Lindgren et al. (2020), our analysis specifically delved into the discussions on third-gender issues from the perspective of Islamic legal theory, examining in detail their claims for acknowledgment as a distinct gender category. The findings were then deduced inductively, spotlighting the ramifications of third-gender recognition for the perpetuation of Islamic law and its impact on women.

## The Status of the Third Gender in Islamic Jurisprudence

Each community establishes its rules and guidelines around sexuality and gender, aligning with its traditions and religious beliefs. Many communities disapprove of individuals identifying as gay, bisexual, or transgender, viewing them as violating moral standards or suffering from mental or physical disorders (Manhas, 2021). Moreover, various cultures impose penalties on such individuals, with same-sex relationships and individuals identifying as gay, bisexual, or transgender deemed to contravene religious doctrines and societal norms (Jain & Rana, 2021).

Contrastingly, the World Health Organization (WHO, 2019) has removed the classification of "transgender" as a mental disorder in its 11th revision of the International Classification of Diseases (ICD-11), acknowledging a more nuanced understanding that being transgender is not a mental health condition and recognizing the societal stigmatization it has caused. Recent research has begun to explore the connections between sociocultural constructs influencing gender identity and biological factors (Hyde et al., 2019). Diamond (2021) suggests that sexual and gender diversity arises from the complex interplay of genetic variables and environmental influences, noting that attractions, behaviors, and sexual identities can change throughout an individual's life, including during stages of development like adolescence (Campbell et al., 2021).

However, recognizing the third gender directly challenges many regions' prevailing religious and cultural norms. It is critical to assess the compatibility of Western concepts of universal human rights with the universalism of Islamic sharia and local cultural relativism. Imposing Western human rights concepts can impact social cohesion and disrupt established social structures. Recognizing behavior that deviates from the norm as typical starkly opposes conventional rationality.

Gender, as a social construct, is subjective and varies based on specific circumstances and the environment. Western and Eastern civilizations view gender differently, and even within Malay groups, understandings and practices of gender can vary. This variation is directly influenced by social and cultural norms, which shape diverse gender identities and expressions. However, this disparity does not lead to gender-based discrimination within local communities. Instead, both men and women are afforded equal care and educational opportunities.

Gender, rooted in socio-cultural constructs, plays a critical role in shaping patterns of relationships between men and women in society. It emphasizes both genders' active role in forming their identities, including their decisions to accept, reject, or modify societal norms and expectations. Belief systems, attitudes, customs, behaviors, and practices defined by societal gender roles are social factors that affect the development of relationship patterns between men and women. It is rare to find two communities that structure gender relations in exactly the same way.

Individuals are not born with inherent cultural memberships or predetermined lifestyles. Rather, people are born devoid of cultural influences and become integrated into society through primary and secondary socialization processes (Berger & Luckmann, 1966). Perceptions of gender, cognitive frameworks, social roles, and behaviors are learned through socialization, starting within the family and extending to community institutions and schools. These concepts are further reinforced by other social institutions, including religious entities (mosques, prayer halls), workplaces, and the mass media.

Therefore, the act of normalizing the atypical by recognizing the existence of a third gender conflicts with societal norms. Despite individuals experiencing a sense of being trapped in the wrong gender, this particular group, referred to as the third gender, undergoes sex

reassignment surgery as a means to align their physical body with their inner identity (Hamdan, et al., 2021). This could legitimize certain forms of sexual relationships that are deemed severe offenses in Islam, thus compromising the sanctity of the institution of family and posing a risk to the well-being of Islamic society.

However, the situation concerning hermaphrodites is distinct due to its inherent nature rather than the result of ambiguous factors. In Islamic jurisprudence, hermaphrodites are categorized into two distinct groups. The first group includes clear hermaphrodites (*wāḍih*), who have either both sexual organs or none at all, yet their gender is unambiguous as either male or female. Suppose the sexual organs display clear and prominent male characteristics. In that case, the individual is classified as male, and similarly, if they display clear and prominent female characteristics, the individual is classified as female. Additionally, there are ambiguous hermaphrodites (*mushkil*) whose gender identity remains indeterminate, as their primary or secondary sexual organs are unclear or conflicting.

This group also includes individuals who lack both male and female reproductive organs. Scholars of Islamic law in this field allow sex reassignment surgery based on the individual's gender identity under the strict supervision of qualified experts (Haneef, 2011; Ishak & Haneef, 2014). For example, individuals with Congenital Adrenal Hyperplasia (CAH) and Testicular Feminization Syndrome (TFS) are affected by these conditions (Rosman et al., 2019). Under sharia law, surgery is permissible and does not constitute a transgression of the prohibition against alterations. In contrast, sex reassignment surgery, which involves changing a person's gender from male to female, female to male, or any other gender identity, is expressly forbidden due to the act of altering Allah's creation (Hamdan et al., 2021). The claim of being confined to a male or female body does not provide sufficient justification for altering one's physical form.

In Islamic jurisprudence, no specific term is designated for individuals considered part of the third gender. Biological variances are not recognized as a distinct classification, let alone psychological differences or social constructs among transgender individuals or *mukhannath*. Although there might be additional categories, these exceptional groups do not form a separate category but instead align with the gender corresponding to their biological and reproductive anatomy since birth. The notion of a third gender is neither relevant nor applicable. Islamic scholars predominantly address two unique categories, hermaphrodites and *mamsūh*, due to their ambiguous sexual characteristics. These groups are distinct from the third gender category, which might be further divided into *mukhannath* for trans women and *mutarajjilāt* for trans men. Scholars engage in discussions about hermaphrodites owing to the ambiguity of their gender, necessitating the determination of their gender for legal reasons. These debates cover various topics, including purification, prayer, awrah (the parts of the body that should be covered), Hajj and Umrah (pilgrimage to Mecca), marriage, inheritance, and the enforcement of punishments for crimes (Majid et al., 2020).

### **Claiming for Third Gender Recognition: Reforming Regulations and Public Facilities**

The advocacy for equal rights for the third gender has raised numerous issues related to law and the right to access public amenities. In terms of legislative demands, there are several requests. Initially, there is a call for the modification of official personal identification documents to represent those identifying as a third gender accurately. Individuals now have the option to select a third gender category on their ID cards, passports, or other official identity documents. This advancement necessitates changes in regulations and the country's registration system regarding the authentication of individual identities (Sharifuddin & Ramli, 2023).

The difficulty in altering one's identity on identification documents and the prohibition against dressing as the opposite gender exacerbate this situation. Moreover, anti-discrimination claims aim to protect third-gender individuals from discriminatory practices in various areas such as employment, education, housing, healthcare, and other essential services. They demand the freedom to express their feelings and thoughts without fear or danger (Goh, 2023). Additionally, third-gender individuals assert their rights to choose partners, marry, and start families, thereby safeguarding their rights. This arises from their inability to enter into same-sex marriages, limited rights to adopt and raise children, and restricted access to divorce, exposing them to the risks of criminal activities like sodomy and *musāḥaqah*.

Furthermore, they also claim their right to use public facilities equally. Firstly, concerning restroom and changing room facilities. Individuals advocate for providing restrooms and changing rooms inclusive of the third gender, ensuring equal access and privacy while actively avoiding discriminatory or exclusionary practices in the realm of public transportation services and community facilities. It is crucial to establish medical and health centre facilities that offer comprehensive healthcare services specifically designed to meet the unique needs of third-gender individuals, thus ensuring they are not subjected to any form of prejudice. Additionally, the right to obtain education on an equal footing with individuals of all genders. These individuals insist that the education system recognise the existence of the third gender and integrate comprehensive sex education that includes the third gender into the school curriculum. This aims to promote understanding and acceptance of gender diversity while reducing its negative social stigma.

Therefore, to protect the rights of individuals identifying as the third gender, it is essential to implement a holistic approach that prevents their marginalization, mistreatment, and discrimination. The repercussions of these claims will bring about numerous changes in society, whether in legal aspects or public facilities, as well as creating injustices toward women who are increasingly pressured due to their demands to use the same facilities provided to women.

### **Implications of Third Gender Equality Claims on the Sustainability of Islamic Law**

Criminal regulations concerning offenses related to the third gender in Islamic law, or sharia, tend to be complex and vary according to the interpretation of Islamic law in specific regions or states in Malaysia. Generally, sharia law does not explicitly mention the concept of a third gender. However, certain behaviors associated with individuals identifying as a third gender could be classified as specific offenses under sharia law interpretations. These behaviors include engaging in sexual relations outside of marriage, impersonating the opposite sex, and engaging in homosexual relationships (Ab Rahman et al., 2020).

The demands of the third gender group will result in the following implications. Firstly, there is the annulment of transgressions related to impersonation of the opposite gender or men assuming feminine roles and vice versa. This includes adopting the attire or conduct associated with the gender opposite to one's own (Ibakarim & Muhamad, 2017; Kambol, 2020; Ibakarim et al., 2021). The state sharia criminal enactments contain several laws that pertain to the states, such as:

*The Criminal Offences Enactment (State of Melaka) 1991, also known as Enactment 6, was implemented in Melaka on January 1, 1992. According to Section 72 of this law, any man who wears women's clothing and exhibits feminine behaviour in a public place without a valid reason is committing an offence. If found guilty, the individual can be fined up to one thousand ringgit, imprisoned for a maximum of six months, or both.*

*The text refers to Part IV of the Sharia Criminal Offences Act (Federal Territories) 1997, which specifically deals with offences related to morality. Section 28 states that any individual who wears women's attire and exhibits feminine behaviour in a public setting to engage in immoral activities is committing a crime. Upon being found guilty, the person may be subject to a fine of up to one thousand ringgit, imprisonment for a maximum of one year, or both penalties.*

*According to Section 7 of the Criminal Enactment 1985 in Kelantan, it is considered a violation for a man to dress and behave as a woman in public areas. The penalty for this offence may include a fine of up to one thousand ringgit, imprisonment for a maximum of four months, or both.*

*According to Section 92 of the sharia Criminal Offences Enactment Negeri Sembilan 1995, it is considered a criminal offence to wear clothing typically associated with the opposite gender or to exhibit behaviour associated with the opposite gender in a public place. If convicted, the offender may face a fine of up to one thousand ringgit, imprisonment for a maximum of one year, or both.*

Furthermore, the act of nullifying the criminality of sodomy or consensual same-sex interactions among males (Rahman, 1999; Wook et al., 2023). The state sharia criminal enactments contain several laws that affect the states, such as:

*The Federal Territory criminalises the act of sodomy in the following manner: any male who engages in sodomy is committing an offence and, if found guilty, may be subject to a fine of up to five thousand ringgit, imprisonment for a maximum of three years, whipping of up to six strokes, or any combination of these penalties.*

*Section 2 (I) of the Act defines sodomy as "sexual relations between men".*

*The state of Melaka offers the following: 24. "Engaging in intentional sodomy is considered a criminal offence, and upon being found guilty, individuals can face a maximum penalty of a fine up to five thousand ringgit, imprisonment for a duration not exceeding thirty-six months, or both."*

*Section 57 of the aforementioned Enactment introduces the crime of attempted sodomy, which is defined as the intentional act of trying to engage in sodomy. If found guilty, the offender can be penalised with a fine of up to five thousand ringgit, imprisonment for a maximum of thirty-six months, or both.*

*Section 2(1) defines sodomy as the act of engaging in homosexual relations between males or attempting to engage in such acts.*

*Homosexual interactions are the result of sexual activity between males.*

*In Sarawak, engaging in sodomy between two males is considered a criminal offence. If convicted, the offender may face a fine of up to five thousand ringgit, imprisonment for a maximum of three years, or both.*

*Section 2 of the aforementioned Ordinance defines sodomy as consensual sexual intercourse between two adult males.*

*Several states also include the crime of sodomy in their sharia criminal laws, which have similar provisions throughout various states.*



Moreover, the nullification of the offence of *musāḥaqah*, pertains to same-sex encounters between women (Junaidi & Samudin, 2022). The state sharia criminal enactments have several laws that affect the states, such as:

*Engaging in lesbian acts, also known as musāḥaqah, is considered a criminal offence under Section 26 of the Sharia Criminal Offences Act (Federal Territories) 1997. The law stipulates that individuals found guilty may face a fine of up to five thousand ringgit, imprisonment for a maximum of three years, whipping up to six times, or a combination of these penalties.*

*Section 30 of the Sharia Criminal Offences (Takzir) Enactment Terengganu 2001 also stipulates the same offence and corresponding penalty. Section 77 of the Sharia Criminal Offences Enactment (State of Sabah) 1996 [No. 3 of 1995] stipulates that a maximum fine of one thousand ringgit or a maximum imprisonment of six months, or both, might be imposed.*

The push for equal rights by individuals identifying as the third gender could significantly impact the integrity and continuity of sharia criminal law. Varied perspectives stem from the value disparity when categorizing entities under different paradigms. Western human rights advocates consider the third gender a standard and acceptable identity, embracing all related behaviors as positive. On the other hand, from the Islamic perspective, the third gender is not recognized, and their actions are deemed abnormal and subject to legal repercussions and penalties. However, individuals within the third gender category are entitled to the same basic human rights and legal protections as provided under Islamic law.

### **Implications of Third Gender Equality Claims on Women's Sustainability**

Recognizing the third gender presents considerable challenges, as it could potentially legitimize same-sex marriages, same-sex sexual relations, and gender misrepresentation and might undermine the family structure while violating Allah SWT's decrees. Western countries have recognized the existence of the third gender and LGBT communities, drawing from their own experiences. Trans men are categorized as male, while trans women are categorized as female, granting them rights similar to their biological counterparts. For instance, transgender men transitioning from a female to a male identity or transgender women transitioning from a male to a female identity are afforded rights equivalent to those of actual males and females.

Despite efforts to designate them as a third gender, transgender women frequently self-identify as women. Observations from women in Western cultures who find themselves competing with transgender women highlight several risks that could potentially compromise the long-term viability of women in the community.

Among the concerns, the most significant is the right to privacy in gender-specific public facilities. For example, transgender women exercising their right to use changing rooms and restrooms designated for women. Access to public restrooms is essential for social interactions in various environments, such as workplaces, educational institutions, and public spaces (Bagagli et al., 2021). There has been an effort in Western countries to restrict transgender women's access to women's changing rooms and restrooms. Women may feel discomfort and anxiety sharing these facilities with transgender women due to concerns about modesty around individuals assigned male at birth (Callahan & Zukowski, 2019), as restrooms are viewed as places of privacy and seclusion.

Secondly, women's rights are compromised when individuals assigned male at birth are placed in women's detention facilities by identifying as transgender women. Housing transgender women in women's prison cells can create unease among female inmates due to

their biological masculine features related to physical and sexual capabilities (Sharpe, 2020), including the potential for sexual aggression towards female inmates.

Thirdly, there is the entitlement to utilize gender-specific public transportation. The implementation of women-only carriages restricts women's personal space as they are compelled to contend with the presence of trans-women. Moreover, women are at risk of experiencing sexual harassment in these environments (Ding et al., 2020; King et al., 2021). Including transgender individuals in these spaces can compromise women's sense of safety, even in areas specifically designated for them.

Fourthly, the entitlement to engage in sports exclusively assigned to a particular gender. Recent data indicates a growing phenomenon of trans-women participating in sports intended explicitly for women and achieving remarkable success in those endeavours (Burke, 2022). Trans women have some advantages over cisgender women, including disparities in physical dimensions, stamina, and energy levels (Sailors, 2020). In addition, males often exhibit elevated testosterone levels, possess greater body weight and height compared to women, have larger hearts and lungs, lower levels of body fat, denser bones, a higher concentration of red blood cells responsible for oxygen transport, a sturdier skeletal structure facilitating increased muscle mass, and narrower hips that contribute to swifter movements (Hilton & Lundberg, 2021). Therefore, allowing biologically male athletes to compete in events meant for biologically female athletes can lead to unfair disadvantages for women. This situation disadvantages genuine women athletes. Notable examples of transgender athletes' success include Lia Thomas, who won the NCAA women's swimming championship (Shermer, 2022); CeCe Telfer, who clinched the NCAA Division II national championship in the 400-meter women's hurdles (Lenskyj, 2020); and Laurel Hubbard, the first transgender weightlifter to compete at the Tokyo 2021 Olympics from New Zealand (Scovel et al., 2022).

Fifthly, there is the right to exclusive worship. Worship spaces are sacred areas ensuring each group's peaceful and legitimate observance of religious practices. Integrating transgender women into women's worship areas or transgender men into men's prayer gatherings could affect the authenticity of the worship performed and cause discomfort among worshippers.

Thus, addressing the deviation and imbalance regarding the third gender must align with Islamic requirements without altering Islamic laws to fit their preferences or to align with Western human rights standards. The challenge of recognizing the third gender is considerable. The downsides are apparent as it could legitimize same-sex marriages, sexual activities between people of the same sex, gender misrepresentation, and potentially weaken family structures while violating the commands of Allah SWT. Consequently, individuals identified with the third gender should undergo rehabilitation and reintegration into society to meet the norms of a healthy society. Effective management is needed to navigate the conflict between Western human rights ideologies and Malay-Islamic traditions.

A true human rights movement should safeguard the rights of men and women and foster gender equality without adding burdens or creating competition among women. Therefore, rational and sensible individuals ought to oppose any efforts to recognize the third gender. Muslims identified with the third gender must return to the *fitrah* and the original state of creation, as Allah SWT has created humanity in the most perfect form. This return to the original path can also sustain human existence under the guidance of Islamic sharia.

## Conclusion

Current societal trends reveal efforts to advocate for multiple human gender classifications. However, at the core of human creation, there are unmistakably only two human

gender categories aligned with gender identity: men and women, distinguished by biological differences. Although Allah SWT created all humans from the same origin, clear physical differences exist between men and women, including chromosomal configurations, skull shapes, brain sizes, bone structures, and hormonal compositions consistent with their respective physiological roles. While acknowledging the presence of a minority born with gender anomalies, such as the ambiguous intersex group, this does not alter the established binary framework of gender and sex.

However, the push for third-gender recognition and rights has posed challenges to the sustainability of Islamic law and the status of women. Women's experiences in the West have become increasingly complex as their limited advantages are diminished due to the emergence of trans women. This observation is not meant to sound transphobic. However, it reflects a reality where equipped with a more robust physical presence, trans women have managed to excel in various domains traditionally occupied by cisgender women. Consequently, women's positions are increasingly jeopardized by the campaign to legitimize this group. Women must vocalize their concerns to safeguard their rights and promote societal roles.

In Malaysia, the movement to recognize the third gender starkly contrasts with local religious and cultural values. The universality of Western human rights concepts must be scrutinized for compatibility with Islamic sharia principles and local cultural norms to ensure that Islamic law remains unimpacted and women's rights are adequately safeguarded.

## References

- Ab Rahman, A., Zakaria, M.A., Yeap, M.J. M. F., & Ab Ghani, N. A. (2020). Lesbian, Gay, Biseksual Dan Transgender (LGBT) Menurut Perspektif Undang-Undang Syariah Dan Undang-Undang Sivil Di Malaysia: Suatu Perbandingan. *Perdana: International Journal of Academic Research*, 8(1), 31-45.
- Abd Rahim, S.A.A., Rahman, H.A., & Yusof, F.M. (2020). Transgender Di Malaysia. *UMRAN-International Journal of Islamic and Civilizational Studies*, 6(3-2), 67-77.
- Abizar, M. H. (2020). Inheritance Distribution for Khuntha Mushkil in Islam. *Shakhsiyah Burhaniyah: Jurnal Penelitian Hukum Islam*, 5(2), 189 – 206.
- Aboim, S. (2020). Gender in a box? The paradoxes of recognition beyond the gender binary. *Politics and Governance*, 8(3), 231-241.
- Al Mamun, A., Heyden, M.L., & Yasser, Q.R. (2016). Transgender individuals in Asian Islamic countries: An overview of workplace diversity and inclusion issues in Pakistan, Bangladesh, and Malaysia. *Sexual orientation and transgender issues in organizations*, 167-180.
- Alipour, M. (2017). Transgender Identity, The Sex-Reassignment Surgery Fatwās and Islāmīc Theology of a Third Gender. *Religion And Gender*, 7(2), 164-179.
- Anees, M.A. (1993). *Islam and Biological Futures: Ethics, Gender and Technology*. (terj.) Rahmani Astauti, *Islam dan Masa Depan Biologis Umat Manusia: Etika, Gender dan Teknologi*. c. 3, Bandung: Mizan.
- Arif, M.I.A. M., Shafie, M.S., Hanapi, H., & Mohd, F. (2018). Salah Laku LGBT Dalam Perundangan Malaysia: Undang-Undang Sebagai Mekanisme Pembantaranan dan Kawalan. *Journal of Advanced Research in Social and Behavioural Sciences*, 13(1), 19-34.
- Azid, M.A.A., Ariffin, M.F.M., & Ramli, M.A. (2020). Revolusi Hukum Islam Pascamodenisme: Analisis Terhadap Isu-Isu Gender. *RABBANICA-Journal of Revealed Knowledge*, 1(1), 173-194.

- Bagagli, B.P. et al., (2021). "Trans Women and Public Restrooms: The Legal Discourse and Its Violence." *Frontiers in sociology* vol. 6 652777. doi:10.3389/fsoc.2021.652777
- Berger, P.L. & Luckmann, T. (1966), *The Social Construction of Reality*. London: Penguin Books.
- Burke, M. (2022). Trans women participation in sport: a commentary on the conservatism of gender critical feminism. *International Journal of Sport Policy and Politics*, 14(4), 689-696.
- Callahan, M.P. & Zukowski, K.T. (2019). "Reactions to Transgender Women and Men in Public Restrooms: Correlates and Gender Differences." *Journal of homosexuality* 66,(1): 117-138. doi:10.1080/00918369.2017.1395661
- Campbell, A., Perales, F., & Baxter, J. (2021). Changes in sexual identity labels in a contemporary cohort of emerging adult women: Patterns, prevalence, and a typology. *The Journal of Sex Research*, 58(5), 612-624.
- Castañeda, N.N., & Pfeffer, C.A. (2018). Gender identities. In *Handbook of the Sociology of Gender*. Springer, Cham.
- Diamond, L.M. (2021). The New Genetic Evidence on Same-Gender Sexuality: Implications for Sexual Fluidity and Multiple Forms of Sexual Diversity. *The Journal of Sex Research*, 1-20.
- Diehl, A., Vieira, D.L., Zaneti, M.M., Fanganiello, A., Sharan, P., Robles, R., & de Jesus Mari, J. (2017). Social stigma, legal and public health barriers faced by the third gender phenomena in Brazil, India and Mexico: Travestis, hijras and muxes. *International Journal of Social Psychiatry*, 63(5), 389–399. <https://doi.org/10.1177/0020764017706989>
- Ding, H., Loukaitou-Sideris, A., & Agrawal, A. W. (2020). Sexual harassment and assault in transit environments: A review of the English-language literature. *Journal of planning literature*, 35(3), 267-280.
- Equaldex. (2024). Non-Binary Gender Recognition. <https://www.equaldex.com/>, accessed on February 4, 2024.
- Etengoff, C., & Rodriguez, E. M. (2022). "At its core, Islam is about standing with the oppressed": Exploring transgender Muslims' religious resilience. *Psychology of Religion and Spirituality*, 14(4), 480.
- Facebook (2015). Facebook Diversity, <https://www.facebook.com/facebookdiversity/posts/last-year-we-were-proud-to-add-a-custom-gender-option-to-help-people-better-expr/774221582674346/>, accessed on February 4, 2024.
- Goh, J. N. (2023). Everyday precarity, oblique hostility and gendered liveability among Malaysian transgender men. *Journal of Gender Studies*, 1-12.
- Goh, J. N., & Kananatu, T. (2019). Mak nyahs and the dismantling of dehumanisation: Framing empowerment strategies of Malaysian male-to-female transsexuals in the 2000s.
- Hamdan, M.N., Ramli, M.A., Aminudin, H., AR, N.N.H., & Faiz, M. (2021). The Application of Maqasid-Oriented Approach in Islamic Bioethics: A Case Study on Fatwa Related to Cosmetic, Plastic and Reconstructive Surgery. *IJUM Medical Journal Malaysia*, 20(1).
- Haneef, S.S.S. (2011). Sex reassignment in Islamic law: The dilemma of transsexuals. *International Journal of Business, Humanities and Technology*, 1(1), 98-107.
- Haniff, W.A.A.W., Atan, S.M., Yusoff, R.M., Salleh, R.M., & Yusof, Z. (2021). Transgender Rights in Accordance with Civil & Sharia Law: Malaysia and Asean Perspectives. *International Journal of Academic Research in Business and Social Sciences*, 11(3), 1305-1320.

- Herd, G. (2020). Introduction: Third Sexes and Third Genders in Herdt, G. (Ed.). *Third sex, third gender: Beyond sexual dimorphism in culture and history*. United Kingdom: Princeton University Press.
- Hikmah, W. S., Bachtar, H., & Kurniawan, K. D. (2022). Bisexual Orientation, Divorce and Islamic Law in Indonesia: Legal Standing and Arguments. *AHKAM: Jurnal Ilmu Syariah*, 22(1).
- Hilton, E. N., & Lundberg, T. R. (2021). Transgender women in the female category of sport: perspectives on testosterone suppression and performance advantage. *Sports Medicine*, 51, 199-214.
- Hyde, J.S., Bigler, R.S., Joel, D., Tate, C.C., & van Anders, S.M. (2019). The future of sex and gender in psychology: Five challenges to the gender binary. *American Psychologist*, 74(2), 171.
- Ibakarim, M. A. H., & Muhamad, N. H. N. (2017). Kesalahan Lelaki Berlagak seperti Perempuan: Keberkesanan Undang-undang Jenayah Syariah di Johor. *Kanun: Jurnal Undang-undang Malaysia*, 29(1), 143-159.
- Ibakarim, M. A. H., Mazlan, I., Sanusi, M. R., Moideen, S. H., Kasman, M. H. K., & Sahab, M. S. (2021). Keperluan Hukuman Pemulihan Terhadap Kesalahan Lelaki Berlagak Seperti Perempuan: Satu Cadangan: The Need for Rehabilitative Punishment for the Offence of Man Posing as Woman: A Proposal. *Journal of Muwafaqat*, 4(2), 1-17.
- Ishak, M.S.B.H., & Haneef, S.S.S. (2014). Sex reassignment technology: the dilemma of transsexuals in Islam and Christianity. *Journal of religion and health*, 53(2), 520-537.
- Jain, S., & Rana, M. (2021). Alternative Sexual Orientation in Humans: What Is Known and What Needs to Be Known Further. *Journal of Homosexuality*, 1-26.
- Junaidi, A., & Samudin, S. A. (2022). Penetapan Hukuman bagi Kesalahan Jenayah Syariah di Malaysia: Analisis Perbandingan Mengikut Undang-undang dan Fiqh [Penalty for Syariah Criminal Offenses in Malaysia: A Comparative Analysis by Law and Fiqh]. *Jurnal Islam dan Masyarakat Kontemporari*, 23(2), 324-346.
- Kambol, R. (2020). Kesalahan lelaki berpakaian wanita atau menyerupai wanita (tasyabbuh): Isu dan cadangan penyelesaian. *Journal of Law and Governance*, 3(1), 113-126.
- Kaplan, G.T. & Rogers, L.J. (1990), "The Definition of Male and Female: Biological Reductionism and The Sanctions of Normality", dalam Sneja Marina Gunew (ed.), *Feminist Knowledge: Critique and Construct*. London: Routledge.
- Kapusta, S. (2013). Transgender Rights. *International Encyclopedia of Ethics*, 1-10.
- Khan, S.I., Hussain, M.I., Parveen, S., Bhuiyan, M.I., Gourab, G., Sarker, G.F., Arafat, S.M. & Sikder, J. (2009). Living on the extreme margin: social exclusion of the transgender population (hijra) in Bangladesh. *Journal of health, population, and nutrition*, 27(4), 441.
- King, J., King, M., Edwards, N., Carroll, J.-A., Watling, H., Anam, M., Bull, M., & Oviedo-Trespalacios, O. (2021). Exploring women's experiences of gender-based violence and other threats to safety on public transport in Bangladesh. *International journal for crime, justice and social democracy*, 10(4), 158-173.
- Kondracki, N. L., Wellman, N. S., & Amundson, D. R. (2002). Content analysis: Review of methods and their applications in nutrition education. *Journal of nutrition education and behavior*, 34(4), 224-230.
- Lenskyj, H. J. (2020). Gender Policies: Challenges and Responses. In *The Olympic Games: A Critical Approach*. Emerald Publishing Limited.
- Lindgren, B. M., Lundman, B., & Graneheim, U. H. (2020). Abstraction and interpretation during the qualitative content analysis process. *International journal of nursing studies*, 108, 103632.

- Luhur, W., Brown, T.N., & Goh, J.N. (2020). *Public Opinion of Transgender Rights in Malaysia*, UCLA.
- Majid, M.N.A., Subri, I.M., Mokhtar, R.H., Yusof, M.I.M., Silim, U.A., & Halil, N.F. (2020). Mukhannath Menurut Fiqh Dan Perubatan: Satu Kajian Literatur. *Perdana: International Journal of Academic Research*, 8(1), 10-20.
- Manhas, N.S. (2021). Sexual Orientation and Gender Identity Issues in the Contemporary Era. *WRP. Sci. J.* 4(1), 75-90.
- Merlan, F. (2018). Gender and Human Rights. *The International Encyclopedia of Anthropology*, 1-8.
- Mohamed, N.S., Othman, F.M., & Abd Majid, L. (2019). Gejala Mak Nyah: Sorotan Awal Kajian dari Sudut Perspektif Islam. *BITARA International Journal of Civilizational Studies and Human Sciences*, 2(3), 59-69.
- Mohd Yusof, F., & Timmiati, S.M. (2011). Lelaki Lembut: Faktor Dan Kesannya Kepada Pembentukan Sahsiah Mahasiswa. *Jurnal Teknologi*, 56(1), 113-150.
- Narendran, R., Reveley, J., & Almeida, S. (2021). Countering transphobic stigma: Identity work by self-employed Keralan transpeople. *Gender, Work & Organization*, 28(4), 1220-1236.
- Osella, S., & Rubio-Marín, R. (2023). Gender recognition at the crossroads: Four models and the compass of comparative law. *International Journal of Constitutional Law*, 21(2), 574-602.
- Rahman, N. A. (1999). Isu-isu Semasa Bidangkuasa Mahkamah Syariah: Satu Sorotan Dalam Kes Jenayah Syariah (Liwat). *Jurnal Syariah*, 7(2), 63-90.
- Ramalingam, C. L., Haque, R., Jumbulingam, K., binti Salehuddin, N., Manickam, L., & Devasia, S. N. (2024). Gender Impeded: The Lived Experiences of Transgenders at The Workplace. *International Journal of Religion*, 5(4), 150-162.
- Ramli, M. A., Jaafar, S. M. J. S., Ariffin, M. F. M., Kasa, A. R., Qotadah, H. A., Achmad, A. D., & Siswanto, S. (2024). Muslim-Malay Women in Political Leadership: Navigating Challenges and Shaping the Future. *Mazahib*, 23(1), 305-350.
- Rosman, A.S., Ahmad Fadzillah, N., Haron, Z., Ripin, M.N., Hehsan, A., Jandra, M., & Jamli, N.A.O. (2019). Fatwa & Sains Perubatan Moden Menurut Perspektif Maqasid Syariah. *UMRAN - International Journal of Islamic and Civilizational Studies*, 6(2-2).
- Sailors, P. R. (2020). Transgender and intersex athletes and the women's category in sport. *Sport, Ethics and Philosophy*, 14(4), 419-431.
- Scovel, S., Nelson, M., & Thorpe, H. (2022). Media Framings of the Transgender Athlete as "Legitimate Controversy": The Case of Laurel Hubbard at the Tokyo Olympics. *Communication & Sport*, doi.org/10.1177/21674795221116884
- Sexual Diversity (2023), "How Many Genders Are There? Gender Identity List", <https://www.sexualdiversity.org/edu/1111.php>, accessed on February 1, 2024.
- Sharifuddin, N. M., & Ramli, M. A. (2023). Gender ketiga di Malaysia: Suatu sorotan dari perspektif Islam. *International Journal of Law, Government and Communication*, 8(32), 412-421.
- Sharpe, A. (2020). Will Gender Self-Declaration Undermine Women's Rights and Lead to an Increase in Harms?. *The Modern Law Review*, 83(3), 539-557.
- Shermer, M. (2022). TRANS ATHLETES & CONFLICTING RIGHTS: Male-to-Female transgender swimmer Lia Thomas from the University of Pennsylvania is crushing the female competition. Is that her right? Is it right? No. Here's why. *Skeptic (Altadena, CA)*, 27(1), 23-29.
- Stief, M. (2017). The sexual orientation and gender presentation of hijra, kothi, and panthi in Mumbai, India. *Archives of Sexual Behavior*, 46(1), 73-85.

- Tan, K.K., Schmidt, J.M., Ellis, S.J., Veale, J.F., & Byrne, J.L. (2021). 'It's how the world around you treats you for being trans': mental health and wellbeing of transgender people in Aotearoa New Zealand. *Psychology & Sexuality*, 1-13.
- Wook, I., Khan, I. N. G., & Yusof, A. F. M. (2023). Iki Putra Bin Mubarrak v. Kerajaan Negeri Selangor [2021] 2 MLJ 323. *Kanun: Jurnal Undang-undang Malaysia*, 35(2), 379-388.
- World Health Organization (2019). Moving one step closer to better health and rights for transgender people. <https://www.euro.who.int/en/health-topics/health-determinants/gender/news/news/2019/5/moving-one-step-closer-to-better-health-and-rights-for-transgender-people>, accessed on February 4, 2024.
- Yudah, A.A.P. (2017). Representasi Transgender dan Transeksual dalam Pemberitaan di Media Massa: Sebuah Tinjauan Analisis Wacana Kritis. *Jurnal Kriminologi Indonesia*, 9(2).
- Zaharin, A.A.M., & Pallotta-Chiarolli, M. (2020). Countering Islamic conservatism on being transgender: Clarifying Tantawi's and Khomeini's fatwas from the progressive Muslim standpoint. *International Journal of Transgender Health*, 21:3, 235-241.

