

Gender Decision Dilemma of Disorders of Sex Development (*Khunsa*) in Islamic Law with Medical Approach

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ABSTRACT

Disorder of Sex Development defined as congenital conditions in which the development of chromosomal, gonadal, or anatomic sex is atypical. In Islam, gender decision of khunsa is difficult since it still relies on the traditional approach of observing how people urinate and observing the physical features that emerge, whereas gender identity must be determined early because it affects every day worship activities. The goal of this research is to use a medical method to examine the renewal of khunsa gender determination in Islam. The descriptive qualitative analysis method is used in this study. The findings of this study suggest that in Islam, determining khunsa gender through a medical approach is warranty. In Islam, the importance of gender identity is particularly significant in issues of worship, such as congregational prayers, inheritance, aurat limitations, and marriage. Understanding and adjustment of medical diagnosis issues, community culture, and religious law need to be synchronized to improve the quality of life for people with gender ambiguity that do not deviate from religious principles and can be accepted in society without discrimination. To the best of our knowledge this is the first study of combine Islamic law and modern medicine

Keywords: Gender decision, Khunsa, Islamic Law, Medical, Indonesia

The term of Disorders of Sexual Development (DSD) was published in 2006 to replace the old term of intersex and hermaphroditism (Hughes et. al. 2006: 554-563). In Indonesia, DSD is interpreted as "genital confusion", a congenital disorder in which babies are difficult to identify as male or female at birth due to ambiguous sexual organs, according to society (Faradz 2020: 1-6). Individuals with disorders of DSD may present with a wide range of phenotype; from ambiguous genitalia, absence of development of secondary sex characteristics, primary amenorrhea, hypospadias, clitoromegaly to a complex congenital genital malformation (Arboleda et. al. 2014: 603-615). The term *khunsa* has been used in Islam to refer to the discussion of DSD, but the topic is not covered in depth in Islamic law (*fiqh*). *Khunsa* is not the same as transvestites (*waria*). The term of transvestites is referred to a male who desires to act or dress like a lady.

Islam stipulates that men and women share the same responsibility in carrying out instructions and prohibitions, but men and women have different ways of praying (Chaim 2006: 69). Let us consider some daily actions to emphasize the necessity of assuring one's gender. When conducting worship or praying in a congregation, it must be done according to their gender group,

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male with male, as well as female with female, and the row of women must be behind the row of males. Then, there's the question of how *khunsa* do congregational prayers and whether they're judged as men or women. The solution to this question is undoubtedly an intellectual concern that must be addressed, as well as concerns about other aspects of worship, such as *aurat* restrictions, marriage, and *khunsa* inheritance distribution methods.

Meanwhile, Islamic law continues to employ the traditional method of determining gender, which is based on how one urinates. For instance, if a person urinates with his male genitals, he will be classified as a man, and if a person urinates with female genitals, then that person will be classified as a woman (Al-Zuhayli 1994: 416). From a medical standpoint, determining gender by urination is completely inaccurate. As a result, in Islam, gender determination in *khunsa* by an empirical medical approach is crucial.

The goal of this essay is to provide a medical update on the *khunsa* gender determination in Islam. As a result, traditional fiqh approaches for determining *khunsa* gender, such as seeing how people urinate, are no longer used. The gender determination of *khunsa*, on the other hand, is done using a medical approach that can be done early with the correct diagnostic and appropriate gender determination.

Disorders of Sexual Development (DSD) in a Medical Standpoint

DSD is a congenital defect that affects the development of sex chromosomes, sex glands (gonads), and sexual anatomy (Hutson et al 2012: 41-52). This is a circumstance in which the baby's genitals are ambiguous as to whether they are male or female. These patients exhibit a variety of symptoms, ranging from the appearance of an abnormal lady to the appearance of an aberrant man. The majority of cases include external genitalia, which can also be described as gender ambiguity (Fritz & Speroff 2012: 1456).

Ordinary people frequently mix up DSD patients with transgender (transgender or transvestite) perpetrators, even though DSD patients are not the same as transvestites. Transgender identity is a mental illness. Transsexual patients' genitals are not abnormally shaped, and their genitals can be readily identified as male or female, but their psyche is not appropriate or contrary to the gender they have. As a result, transgender performers act and behave under their emotions. Some even attempt to alter their physical form (sex change) to fit their emotions and desires (Hanifah et. al. 2020: 65-70). While DSD is a congenital disorder in which a person's gender is unknown from birth.

DSD has a wide range of medical applications. We will only discuss two sorts of instances that representative many different types of gender confusion: *Congenital Adrenal Hyperplasia* (CAH) and *Androgen Insensitivity Syndrome* (AIS). Both cases were patients from the gynecologist (BS) at Dr. Soetomo Hospital Surabaya.

The case of CAH occurred in Ms. FU, A 14-year-old girl from South Surabaya who was diagnosed with CAH. Ms. F.U. has perplexing genitals from birth because the genital that emerged at birth was the vagina, but she also has an enlarged clitoris that resembles a penis. Ms. F.U.'s gender identity was a source of consternation for the midwife and her family, who couldn't decide whether she is a girl or a male. Parents and midwives who oversaw the birth process agreed and determined that Ms. F.U. is a female based on numerous aspects and basic analysis. Ms. F.U, on the other hand, is more predisposed to the physical development of males, having a stocky physique, Adam's apple on the neck, and a deep voice, all of which are male developmental traits. In reality, Ms. F.U has had clitoral anomalies in her vagina from birth, which have grown longer and larger, resembling a penis in males. Ms. F.U. was not menstrual at the time of puberty, and her breasts has not grown.

When Ms. F. U's physical growth began to resemble like a man, friends, relatives, and society became perplexed and thought that it was strange. The discrimination she faced made her even more depressed. Her friends who had previously hung out with her abruptly drifted away, and even the house's neighbors were concerned when their children played with Ms. F.U. They are apprehensive that it will have a negative influence on their children. Relatives who are aware

of the changes appear to have a different attitude and keep their distance. This is why Ms. F. U is hesitant to interact with the community, and she is even afraid to leave the house. Not only was society perplexed, but Ms. FU herself also was undecided as to whether she is a male or a female. She has always thought of herself as a woman, but her physical physique has become more like a male. She is particularly puzzled as to whether she should conduct male or female worship rituals when performing worship.

What happened to Ms. FU is classified as Congenital Adrenal Hyperplasia (CAH). CAH is a hereditary condition caused by gene defects (autosomal recessive inheritance) that causes a lack of hormone production by the adrenal gland cortex, which has swollen or overgrown (hyperplasia) since conception (congenital). As a result, it produces alterations in the form of increased production of sex steroid hormones (testosterone), which leads women with karyotype 46, XX to develop male-like sexual traits (Ediati et. al. 2015: 1339-1361).

External genitalia indications and symptoms are unclear in patients suspected of having CAH. From the seventh week of pregnancy, women are exposed to significant amounts of systemic adrenal androgens. This results in atypical genitalia in newborn females who have an XX chromosome in their DNA. In the abdominal cavity (pelvis), the Wolffian duct will not develop, but the structures of the Mullerian ducts will develop normally, including the ovaries, uterus, fallopian tubes, upper vagina, and other structures formed from the Mullerian ducts, because they are not exposed to antimullerian hormone (AMH) and are not affected by sex steroid hormones (testosterone). High quantities of testosterone in the blood, on the other hand, can cause the phallus to expand. On the perineum, the vagina does not develop (the vaginal introitus closes completely or partially). The urogenital sinus is situated between the vagina and the urethra. The phallus' trunk and ends resemble like a man. Testosterone can thin the skin of the labia majora and give it rugae like the scrotum, but it does not have gonads (testes) (Nordenstrom & Falhammar 2019: 27; Mazen 2017: 369-372).

Mrs. S.W. was the subject of the second case. Mrs. S.W. has been recognized as a female from birth since she has a vagina, which indicates that she is a girl. Mrs. S.W. experienced puberty in the same way that many women do, with long hair and developing breasts. Mrs. S.W., on the other hand, had an anomaly until she was in high school: she has never had a period. Mrs. S.W. was discovered to be devoid of a uterus and to have a 46 XY karyotype as well as a positive SRY gene result after testing. This demonstrates that Mrs. S.W. is a man genetically, but a woman physically.

This case is classified as Androgen Insensitivity Syndrome (AIS). Androgen Insensitivity Syndrome (AIS) is a kind of sexual development disease in which the development of female or male external genitalia phenotypes is influenced by whole or partial gene mutations with a 46 XY karyotype genotype. This disorder is classified as 46 XY, DSD group. DSD develops when sex chromosomes (XX or XY), gonadal organs (testes or ovaries), the external genitalia (vulva, penis, and scrotum), and/or internal genital ducts (Mullerian or Wolffian) are aberrant from birth. The AIS disease can result in a new genetic mutation or be inherited recessively via the X-linked chromosome (Joseph et al 2017: 361-367).

In medicine, gender decision of DSD is based on an empirical technique. The diagnosis is made to investigate the anomalies that a person with ambiguous genitalia may suffer. The findings of patients with ambiguous genitalia in the medical review have consequences for the next treatment step because the objective of medicine is to understand the patient's condition so that it can give appropriate therapy and treatment in patients with gender ambiguity (Hutson et. al. 2012: 159-172). It is difficult to determine the gender of DSD patients. There are several factors to consider, including: The first factor is the chromosomal structure. Every healthy person has 46 chromosomes (23 pairs of chromosomes). A set of twenty-two pairs of chromosomes is autosomal chromosomes that code for both generic and specific human features such as eye color, hair form, and so on. One chromosomal pair is a sex chromosome, which is made up of two genetically distinct kinds. Men have one X chromosome and one Y chromosome (46, XY), whereas women have two X chromosomes (46, XX) (Sadler 2018: 432). The second factor is the gonad type (testes or ovaries). The gonads' sex, as well as whether the testes or ovaries develop, is determined by genetic sex. Under the influence of genetic information called

the testes determining factor (TDF) of the Y chromosome (sex-determining region of the Chromosome, SRY), the gonadal tissue in males begins to differentiate into testes, whilst the gonads in females grow into ovaries. The Muller ducts develop into the female reproductive system, which includes the fallopian tubes, uterus, and the upper part of the vaginal canal.

The third is the morphology of the internal and external genitalia. The Wolffian duct and the Mullerian duct are two basic ductal systems that develop in all male and female embryos. In males, if the reproductive tract develops from the Wolffian duct, the Müllerian duct degenerates, whereas in females, if the Müllerian duct develops into the reproductive tract, the Wolffian duct regresses. The Wolffian ducts then become the male reproductive tract, namely the epididymis, vas deferens, ejaculatory ducts, and seminal vesicles, whereas the Müllerian ducts develop into the female reproductive system, which includes the fallopian tubes, uterus, and the upper part of the vaginal canal. Men's external reproductive organs are the penis and scrotum, whereas women's external reproductive organs are all visible structures on the outside, from the pubis to the perineum. The mons pubis, labia majora, labia minora, clitoris, hymen, vestibule, urethral opening, and various glands and vasculature are all part of this structure.

The fourth is reproductive hormones. Testosterone is a male hormone that has a significant impact on spermatogenesis and secondary growth in males. Similarly, estrogen and progesterone are hormones that influence a woman's development.

The fifth is the DSD sufferers. It is critical to include DSD patients in the gender determination process. This is because it is necessary to be prepared to take medical activities for DSD patients to avoid undesired outcomes, such as mistakes in determining the patient's gender and being prepared to face all of the repercussions of the medical treatments performed. As a result, psychiatrists' advice can aid in the process of identifying gender in DSD patients. The patient's emotional and psychological anguish might be examined and noticed with this help (Hanifah et. al. 2020).

DSD in the View of Islam

In Islam, DSD is referred to as *khunsa*. According to the definition, *khunsa* refers to someone who has a man's face but female conduct or who has double genitals. Meanwhile, according to Islamic law, a *khunsa* is a person with two genitals, *zakar* and *farji*. The growth of the two genitals, whether they develop or not, causes anomalies in the body. As a result, determining whether he is a male or female is tough (Al-Jaziry 2004: 248).

Imam Suyuty, on the other hand, defined *khunsa* as a person's gender uncertainty. It might be a man or a woman with two genitals or no genitals at all. Wahbah Al-Zuhayli defines *khunsa* as a person who possesses two reproductive organs (genitals), male and female genitals, or persons who lack genitals, either penis or vagina. According to Ibn Qudamah, a *khunsa* is a person whose gender identity is in question. It's unclear if someone's a man or a woman. That person can have both *zakar* and *farji* or can be born without genitals or with simply a hole in the region where the genitals grow as a urine outlet first (Al-Suyuti 1979: 352; Al-Zuhayli 1998: 417; Qudamah 1984: 250).

The majority of *ulama* divide *khunsa* into two categories, namely: *khunsa ghairu mushkil* and *khunsa mushkil*. *Khunsa ghairu mushkil* is a *khunsa* where determining the sex of a male or female based on dominating physical traits is not difficult. Meanwhile, *khunsa mushkil* is a form of *khunsa* for whom it is still difficult to determine whether the gender is male or female after investigation since physical features do not suggest gender dominance (Sabiq 2011: 325).

Scholars use *ijtihad* to define a *khunsa's* gender identity as male or female based on the *khunsa's* physical features. When a kid is born in a unique condition, the attempt is made to see which of the two sexes has the upper hand in terms of form and function. After that, it is suggested to pay attention to how a *khunsa* urinates. If a *khunsa* urinates via a male organ, the *khunsa* is classified as a man; nevertheless, if the *khunsa* urinates through a female reproductive organ, the *khunsa* is classified as a female. Meanwhile, if the *khunsa* urinates with both reproductive organs at the same time, the next step is to examine the water-secreting reproductive organs. If the male or female in the *khunsa* cannot be determined using this method because when urinating through

the male and female reproductive organs simultaneously, it is unknown which one comes out first, then the male or female gender in the *khunsa* can be determined by looking at the last urinated reproductive organs (Al-Jaziry 2004: 317). During puberty, the *khunsa's* sex is determined by observing the growing sexual features. The *khunsa* can be considered as a man if the physical character grows like a man's, such as the growth of a beard, a muscular body, and Adam's apple on the neck. Meanwhile, if the *khunsa* has breast growth, menstruation, or pregnancy, she is called a woman (Zainuddin and Mahdy 2017: 353-360). Another technique provided by Ibn Qudamah is that the sex of the *khunsa* may be determined by counting the ribs, similar to how the *Quran* describes the creation of a man.

The Renewal of Gender Determination in DSD Patients in Islam: A Medical Perspective

The phrase "renewal" refers to the process, technique, or act of rejuvenating something. Modernization is a more common term for rejuvenation. The term "modernization" in Western civilization refers to concepts, institutions, movements, and endeavors to modify beliefs, practices, and ancient institutions, and so on. Thus, everything may be adjusted to new perspectives and circumstances given by contemporary science and technology (Fata 2013: 163-178; Hallaq 2011:1-31).

Renewal in Islam is an attempt to adapt Islamic religious thinking to scientific and technological advancements and their implications. Thus, in Islam, renewal does not imply modifying, decreasing, or adding to the text of the *Quran* and *Hadith*, but rather revising one's interpretation of both (Nasrulloh 2014: 20-32). This is done in line with the times since, no matter how brilliant the thought generated by scholars or professionals in the past, there are still flaws and are always impacted by tendencies, knowledge, circumstance, and so on. These thoughts for the present may still be relevant and useful, although certain legal products may need to be modified to suit the current realities. As a result, Islam will continue to be able to address a variety of societal issues as time progresses (Maftuhin 2016: 369-391).

If, for example, Islamic rules for determining gender in *khunsa* refer to urine, then we believe that other considerations from medical science are required, because new findings in solving *khunsa* problems can be handled more precisely and accurately by medical science as technology in the field of medicine advances. The range of diseases that individuals with ambiguous genitalia face is not as straightforward as it is in Islam, which simply distinguishes between *khunsa mushkil* and *ghair mushkil*. Patients with gender ambiguity are identified in a variety group of disorders by medical professionals. As a result, the *khunsa's* handling differs from one another, as does the *khunsa's* sex determination (Mustofa 2015: 255-270). The medical, social, and psychological aspects of determining the gender of DSD patients in Islam have not been addressed. In Islam, the methodology of gender determination still employs a normative deductive method that departs from the text. Reform in Islam is required for Islam to be capable of providing solutions to every social problem that develops in society (Mawardi 2015: 315-322). Gender determination in *khunsa* should not rely only on literary evidence, but also on medical evidence.

The medical world takes an empirical approach to DSD patients. The diagnosis is made to investigate the anomalies that a person with an ambiguous gender may suffer. Because the objective of medicine is to identify the patient's condition, the results of patients who have ambiguous gender in the medical review have implications for the next therapeutic step. As a result, it can give appropriate treatment for DSD patients. Medical science and Islamic law are two completely separated entities. Medical research is concerned with health, but Islamic law is concerned with the study of *amaliah* law based on comprehensive reasoning. As a Muslim, however, health-related issues can have an impact on the emergence of law. Furthermore, Islamic law considers the benefit to humanity. As a result, hard work via *ijtihad* is required to be able to respond to challenges that emerge in the community.

Ijtihad in today's world necessitates *ijtihad* not only in religious matters, but also in medical, economic, technical, and political matters where legal validation is required (Yasa 2015:

101-122). A religious expert does not mean that he understands the concerns of technology, economics, medicine, or politics. For example, in the case of human limb transplantation, this problem cannot be left solely to Islamic sciences scholars (Islamic law) but must also engage medical professionals. Furthermore, to determine if a medicinal product is *halal* or *haram*, a religious expert must do *ijtihad* and issue Islamic legal products in collaboration with pharmacists who are familiar with the contents of these pharmaceuticals. This is one of the inescapable realities of current multidisciplinary *ijtihad*.

Likewise, in determining gender in *khunsa*, an Islamic jurist must engage medical experts in giving fatwas when identifying gender in *khunsa* because medical professionals are empirically more aware of the sex problems that occur in *khunsa*, both types of sex diseases and remedies. The mechanism of medical experts' involvement in *ijtihad* is important for determining gender in the *khunsa* as the party performing the examination and concluding the factors for the occurrence of abnormalities in the *khunsa*'s reproductive organs, as well as identifying the *khunsa*'s sex and genitalia. The findings of medical professionals are then analyzed and considered by Islamic jurists in *ijtihad* to determine gender in *khunsa*.

Renewal of *khunsa*'s sex determination via a medical technique is a "must" at this time. The causes of anomalies in *khunsa*, whether abnormalities in the reproductive organs, hormone problems or chromosomal abnormalities, can be determined using a medical method. Laboratories, for example, can use medical technology to identify the kind of chromosome found in every human being's body, allowing the correct diagnosis to be followed by appropriate medical treatment. As a result, identifying the gender of the *khunsa* is possible. Meanwhile, Islamic law strives to identify the law of an actual situation, such as carrying out a legal summary (*istinbat*) based on medical specialists' conclusions, so that gender determination may be done swiftly and precisely.

Thus, Islamic law is capable of providing a solution to human life's issues in the context of society. Islamic law is necessary to be able to respond to challenges that arise as a result of societal developments and changes. As a result, medical technology plays an increasingly important role in Islamic law, particularly in resolving *khunsa* problems.

To conclude, according to the preceding description, the traditional technique of identifying the gender of *khunsa* in Islam is still to look at how they urinate. If an affected *khunsa* urinates with male genitals, he is considered a man, while if they urinate with female genitals, they are considered as a woman. If gender identity cannot be used to identify sex through urinate, physical features must be assessed early before adulthood. *Khunsa*'s gender determination in the medical world uses an empirical approach. The diagnosis is carried out to investigate *khunsa*'s abnormalities. Furthermore, treatment will be tailored to the anomalies seen in DSD patients. In medical view, the chromosomal arrangement, the kind of gonads (testes or ovaries), the shape of the internal and external genitalia, reproductive hormones of the affected DSD are all considered when identifying the *khunsa* sex.

Determining *khunsa* gender solely based on urine and external physical characteristics is thought to be less accurate, so it needs to be updated using a medical empirical approach, because technological advancements in the medical field, as well as new findings in solving *khunsa* problems, can be handled more precisely and accurately. The role of medical specialists in *ijtihad* is critical for detecting gender in the *khunsa* as the party performing the examination and establishing the causes of anomalies in the *khunsa*'s reproductive organs, as well as identifying the *khunsa*'s sex and genitalia. The findings of medical professionals are then analyzed and considered by Islamic jurists in *ijtihad* to determine sex in *khunsa*. Thus, the scientific justification for the renewal of *khunsa* gender determination by the collaboration between Islamic law and medical knowledge maybe found in the advantages derived from the Qur'an and Hadith.

As far as we know this is the first thorough research of DSD from the perspectives of Islamic law and medicine. The presence of this study has important consequences for resolving gender ambiguity in worship and allowing those with gender ambiguity to be accepted into society without prejudice.

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