



## Protection of The Fulfillment of Transgender Rights That Has Permanent Legal Force

Muhamad Jalaludin<sup>1\*</sup>, Haidan Angga Kusumah<sup>2</sup>

<sup>1</sup> Legal Studies Program, Faculty of Law, Muhammadiyah University of Sukabumi, Email: [muhamadjalaludin@ummi.ac.id](mailto:muhamadjalaludin@ummi.ac.id)

<sup>2</sup> Legal Studies Program, Faculty of Law, Muhammadiyah University of Sukabumi, Email: [haidananggakusumah16@gmail.com](mailto:haidananggakusumah16@gmail.com)

\*Corresponding Author: [muhamadjalaludin@ummi.ac.id](mailto:muhamadjalaludin@ummi.ac.id)

**Abstract:** This study examines legal protection for the fulfillment of transgender rights that have obtained permanent legal status in Indonesia. The phenomenon of transgender individuals, as part of global social dynamics, faces complex challenges in legal recognition and human rights protection. With an estimated transgender population of 43,100 people in Indonesia, they continue to experience systematic discrimination in various aspects of life. This research employs a normative-empirical method to analyze the legal aspects that support transgender protection as well as the challenges in its implementation. The findings reveal that although there is a legal basis in the 1945 Constitution and Law No. 39/1999 on Human Rights, as well as court decisions such as the Rohmah case in Cibadak District Court, the implementation of legal protection still encounters structural obstacles in the form of social discrimination and the absence of specific regulations. This study provides recommendations for strengthening a more inclusive and comprehensive legal framework to protect the rights of transgender individuals in Indonesia.

**Keyword:** Transgender, Legal Protection, Human Rights, Permanent Legal Force, Discrimination.

## INTRODUCTION

The transgender phenomenon has now become an integral part of the global discourse on human rights and equality. In Indonesia, this issue reflects the complexity of the relationship between individual identity, social norms, and the prevailing legal system. As a country rich in cultural and religious diversity, Indonesia faces unique challenges in balancing traditional values with universal human rights principles.

The transgender community in Indonesia, estimated to number around 43,100 people or 0.015% of the total population, faces a paradoxical reality. On one hand, they are part of Indonesian society and entitled to fundamental rights as citizens. On the other hand, they experience systematic discrimination in various aspects of life, ranging from access to healthcare and education to decent employment opportunities.

Understanding transgender identity as a psychological and social phenomenon has developed significantly. According to Katie Koch and Richard Bales, "Transgender generally means that a person's physiological sex is at odds with his or her psychological view of his or her sex," indicating that being transgender is a condition in which a person's gender identity differs from their biological sex. This condition is not merely a choice but rather a deeply rooted and complex part of one's identity.

### **Social and Legal Dynamics**

In the Indonesian context, transgender issues cannot be separated from social dynamics involving religious, cultural, and modern values. In a predominantly Muslim society, transgender individuals are often viewed as deviating from natural law. This perception is exacerbated by a lack of understanding regarding the distinction between sexual orientation and gender identity, which contributes to deep-rooted stigma.

From a legal perspective, Indonesia has a strong foundation for protecting transgender rights. Articles 28A through 28J of the 1945 Constitution guarantee human rights for all citizens without discrimination. Similarly, Law No. 39/1999 on Human Rights explicitly prohibits discrimination on any grounds, including gender identity.

However, the implementation of these legal protections faces numerous challenges. The absence of specific regulations governing the recognition of gender identity creates a legal vacuum that disadvantages the transgender community. They must often go through the courts to obtain recognition of an identity that aligns with their true selves.

The 2023 case of Rohmah at the Cibadak District Court marked an important milestone in the legal development of transgender rights in Indonesia. The ruling, which granted the petition for a gender identity change from female to male along with a new name, Rohman, demonstrates that the Indonesian legal system is capable of delivering justice for transgender individuals. This decision not only provided legal legitimacy but also hope for other members of the transgender community. However, its implementation still faces practical challenges, including social resistance and limited understanding among state officials regarding transgender issues.

## **METHOD**

### **Research Approach**

This study employs a normative-empirical approach that combines doctrinal legal analysis with field research. This approach was chosen to provide a comprehensive overview of transgender legal protection, both from theoretical and practical perspectives.

### **Data Sources**

The research data were obtained from various sources, including:

1. **Primary Data:** In-depth interviews with transgender individuals who have obtained permanent legal status, human rights activists, and legal practitioners involved in transgender cases.
2. **Secondary Data:** Legislation, court decisions, scholarly journals, and reports from human rights organizations.
3. **Tertiary Data:** Mass media articles, video documentation, and credible internet sources.

### **Data Collection Techniques**

Data were collected through:

1. **Literature Review:** Analysis of legal literature, legislation, and relevant court rulings.
2. **Structured Interviews:** In-depth dialogues with key informants to understand their experiences and perspectives on transgender legal protection.

**3. Participant Observation:** Direct observation of the implementation of legal protections in daily practice.

### **Data Analysis**

The collected data were analyzed using qualitative analysis methods with an interpretive approach. The analysis was conducted systematically to identify patterns, themes, and meanings contained within the data.

## **RESULTS AND DISCUSSION**

### **Legal Aspects Supporting Transgender Protection**

#### **Constitutional Foundation**

The Indonesian Constitution provides a strong foundation for the protection of transgender rights. Article 28I paragraph (2) of the 1945 Constitution clearly states that “every person shall have the right to be free from discriminatory treatment on any basis and shall have the right to protection from such discriminatory treatment.” This provision offers a constitutional guarantee that transgender individuals, as citizens, have equal rights to all other citizens.

#### **Human Rights Law**

Law No. 39 of 1999 on Human Rights serves as a more operational legal instrument for protecting transgender rights. Article 3 paragraph (3) of this law affirms that “everyone has the right to the protection of human rights and fundamental freedoms without discrimination.” This provision offers comprehensive protection against all forms of discrimination, including those based on gender identity.

#### **Population Administration Regulation**

Law No. 24 of 2013 on Civil Administration provides a legal mechanism for changing gender identity in official civil records. Article 56 paragraph (1) states that “the registration of other important events shall be carried out by the Civil Registry Officer at the request of the concerned resident after a district court decision that has obtained permanent legal force.”

#### **Implementation of Legal Protection in Practice**

The Rohmah Case: A Case Study. The Rohmah case in Cibadak District Court, Sukabumi, serves as a concrete example of the implementation of transgender legal protection. Decision No. 32/Pdt.P/2023/PN.Cbd, which granted the petition for a gender identity change, demonstrates that the Indonesian legal system is capable of delivering justice for transgender individuals.

Key aspects of the decision include:

- 1. Recognition of Identity:** Acknowledges an individual’s right to have a gender identity that aligns with their true self.
- 2. Document Change:** Grants permission to amend civil documents in accordance with the new gender identity.
- 3. Legal Certainty:** Establishes legal certainty regarding the status of transgender individuals in Indonesian law.

#### **Public Response and Implementation Challenges**

Although court rulings provide legal legitimacy, their implementation still faces significant social challenges. Based on interviews with key informants, the following issues were identified:

1. **Social Stigma:** Society continues to view transgender individuals as deviating from accepted norms.
2. **Structural Discrimination:** Transgender people still face barriers in accessing public services, education, and employment.
3. **Religious Resistance:** Some religious groups reject the recognition of transgender identities, claiming it contradicts religious teachings.

### Challenges in the Implementation of Legal Protection

#### a. Absence of Specific Regulation

One major challenge is the lack of specific legislation addressing comprehensive transgender protection. Existing legal protections remain general and do not account for the unique needs of the transgender community.

#### b. Discrimination in Places of Worship

A particularly moving case involved a transgender individual who experienced discrimination while attempting to attend Friday prayers. In a video uploaded to the YouTube channel *Reyben Entertainment*, the individual recounted:

*"When I was about to perform Friday prayers, an older man spoke to me in a tone that felt like he was trying to drive me away."*

This experience illustrates that, despite having legal protections, transgender people still face discrimination when exercising fundamental rights, including the right to worship.

Furthermore, transgender individuals face unique challenges in accessing healthcare services that suit their needs. A lack of understanding among healthcare workers and the absence of specific protocols hinder the delivery of optimal care.

### Human Rights Perspective

#### a. Principle of Non-Discrimination

The principle of non-discrimination is a fundamental pillar of human rights protection. In the transgender context, this principle obliges the state to provide equal protection regardless of an individual's gender identity.

#### b. Right to Identity

The right to identity is a fundamental right recognized in various international human rights instruments. Transgender individuals have the same right to recognition and legal protection of their identity.

### Legal Analysis of Transgender Protection

#### a. Harmonization of National and International Law

As a state party to various international human rights instruments, Indonesia is obligated to align its national laws with international standards. This includes protections for transgender rights.

#### b. Progressive Legal Interpretation

The court ruling in the Rohmah case illustrates a progressive interpretation of existing law. The judge was able to interpret legal provisions in a way that ensured justice for a transgender individual, despite the absence of specific legislation.

### Comparative Perspective with Other Countries

#### a. Lessons from Thailand

Thailand is often cited as a progressive country in protecting transgender rights. Its Gender Equality Act of 2015 provides comprehensive protection against gender identity-based discrimination.

#### b. Developments in India

India, through the 2014 Supreme Court decision in *National Legal Services Authority v. Union of India*, officially recognized transgender individuals as a “third gender” and granted them legal protection equal to that of men and women.

### **Policy Recommendations**

#### **a. Drafting Specific Regulations**

There is a need to draft specific legislation that comprehensively regulates transgender protection. Such regulation should include identity recognition, anti-discrimination measures, and access to public services.

#### **b. Public Awareness and Education**

Widespread awareness and education programs are essential to improve public understanding of transgender issues. These initiatives are crucial to reducing ongoing stigma and discrimination.

#### **c. Training for State Officials**

State officials should receive specialized training on transgender issues to ensure they provide better and non-discriminatory public services.

### **CONCLUSION**

This study demonstrates that legal protection for transgender individuals in Indonesia has a strong foundation in the Constitution and statutory regulations. The court decision in the Rohmah case at the Cibadak District Court represents a significant breakthrough, offering hope to the transgender community for the recognition of their identities in alignment with their true selves.

However, the implementation of this legal protection still faces significant challenges. Social discrimination, the absence of specific regulations, and resistance from certain segments of society are major obstacles in the fulfillment of transgender rights. Experiences of discrimination, including in religious practices, highlight that formal legal protections have not yet been fully realized in everyday life.

To overcome these challenges, a holistic approach is needed—one that includes the drafting of specific regulations, public education programs, and capacity-building for state officials. Only through such comprehensive efforts can legal protection for transgender individuals be optimally implemented and true justice be achieved for the transgender community in Indonesia.

This study also affirms that the protection of transgender rights is not only a matter of law, but also a matter of humanity. Every individual, including transgender persons, has the right to live with dignity and to receive equal protection under the law. Therefore, protecting transgender individuals is an integral part of the effort to build a just and civilized Indonesia.

### **REFERENCES**

#### **Books and Journal**

- Abriyani, Eka. 2022. *Konsep Waris Transgender (Studi Komparatif Antara Fikih Mawaris dan Kitab Undang-Undang Hukum Perdata)*. Skripsi, Jurusan Hukum Keluarga Islam, Fakultas Syariah, Institut Agama Islam Negeri Ponorogo.
- Astuti, Yeni. 2020. "Penggantian Kelamin bagi Transeksual dan Akibat Hukumnya terhadap Keabsahan Perkawinan Ditinjau dari Undang-Undang Nomor 1 Tahun 1974 tentang Perkawinan". *Jurnal Privat Law*, Vol. 8, No. 2.
- Azahro, Salsa Amalia. 2023. "Transgender dalam Perspektif Hukum Hak Asasi Manusia Internasional dan Hukum Positif di Indonesia". *Jurnal Ilmu Hukum dan Tata Negara*, Vol. 1, No. 3.

- Hapsari, Nindra Wahyu. "Perlindungan Hukum terhadap Kelompok Minoritas Gender sebagai Implementasi Pemenuhan Hak Asasi Manusia (Perbandingan Kasus LGBT di Indonesia, India, dan Brunei Darussalam)".
- Koch, Katie & Bales, Richard. 2008. "Transgender Employment Discrimination". *UCLA Women's Law Journal*, 17(2), University of California.
- Marzuki, Yazid. "Studi Komparatif Perlindungan Hak Hukum bagi Transgender di Indonesia dan Thailand".
- Satrio, Dicky Adi. "Pemenuhan Hak Sipil dan Politik terhadap Warga Transgender Lembaga Swadaya Masyarakat di Yogyakarta". Skripsi, Universitas Islam Indonesia.
- Tsalis, Khodijah Nur, Bayu Prasetyo, & Eka Imbia Agus Diartika. "Terapi Hormon bagi Transgender dalam Perspektif Hukum Islam". Universitas Muhammadiyah Kalimantan Timur, Indonesia.
- Wati, Dyan Mardika dan Jadmiko Anom Husodo. "Perlindungan Hukum bagi Transgender Ditinjau dari Perspektif Hak Asasi Manusia".

### **Legislation**

- Undang-Undang Dasar Negara Republik Indonesia Tahun 1945.
- Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.
- Undang-Undang Republik Indonesia Nomor 24 Tahun 2013 tentang Perubahan Atas Undang-Undang Nomor 23 Tahun 2006 tentang Administrasi Kependudukan.
- Peraturan Presiden Republik Indonesia Nomor 25 Tahun 2008 tentang Persyaratan dan Tata Cara Pendaftaran Penduduk dan Pencatatan Sipil.

### **Court Ruling**

- Putusan Pengadilan Negeri Cibadak Sukabumi Nomor 32/Pdt.P/2023/PN.Cbd.

### **Online Source**

- Felix Siau. "Transgender Taubat". *Reyben Entertainment*. Diakses dari: <https://www.youtube.com/watch?v=HG71hkGdcvA&t=1741s>.
- Putusan Pengadilan Negeri Cibadak Sukabumi. Diakses dari: [https://sipp.pn-cibadak.go.id/index.php/detil\\_perkara](https://sipp.pn-cibadak.go.id/index.php/detil_perkara).
- Quora. "Menurutmu apa yang membuat orang memilih untuk menjadi transgender?". Diakses dari: <https://id.quora.com/Menurutmu-apa-yang-membuat-orang-memilih-untuk-menjadi-transgender>.