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## Review of Transsexual Marriage Under Indonesian Civil Law (Tinjauan Perkawinan Transeksual Berdasarkan Hukum Perdata Indonesia)

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### Abstract

This research was conducted to find out about the position of transsexual marriage according to state law and the legal consequences of transsexual marriage in Indonesian civil law. This research is a doctrinal/normative legal research. The types of approaches used are statute, case, and conceptual approaches. Based on this research, it is concluded that marriages conducted by transsexuals are declared valid because they have obtained a court decision regarding changes in gender status and have changed population administration data at the Population and Civil Registration Office (Disdukcapil) so that they can marry legally according to the provisions of positive law in Indonesia. So, it has legal consequences for legal relations between husband and wife, the formation of marital property, the position and status of children, and inheritance relations.

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## INTRODUCTION

With the development of technology, humans can change their gender according to their will. Individuals with the desire to change their gender are referred to as transsexuals. In Indonesia, transsexuals began to gain recognition after the case of Iwan Rubianto Iskandar in 1973. He underwent a sex reassignment procedure and changed from male to female. After experiencing the procedure at a hospital in Singapore, he changed his name to Vivian Rubianti Iskandar.

Over the past few years, the term transsexual has often been heard in

various media. Transsexuals have a significant influence on a person's life, including in the aspect of Marriage. Marriage is the nature of all living creatures created by Allah SWT. However, over time, Marriage is no longer carried out in accordance with the religious guidance of its adherents. One of them is a marriage performed by a transsexual. On the one hand, Article 28B of the 1945 Constitution states that: 'Every person has the right to form a family and continue their descendants through legal marriage'.

Indonesian positive law itself still does not regulate regulations related to the legal position of transsexuals, especially in relation to Marriage. Given that Law N0.16 of 2019 concerning Amendments to Law N0.1 of 1974 concerning Marriage (from now on referred to as the Marriage Law) does not provide a detailed explanation of the legality of transsexual Marriage, this raises questions from the public about the validity of transsexual Marriage. Religion and law cannot be separated in terms of the validity of Marriage. This is stated in Article 2 of the Marriage Law: 'Marriage is valid if performed according to the laws of each religion and belief'.

From the perspective of Indonesian Civil Law, there are no detailed rules regarding transsexual Marriage. This then raises a problem and controversy among the community when a transsexual marries, especially regarding the position of transsexual Marriage in civil law and the legal consequences of transsexual Marriage. Therefore, the author conducts research with the title 'Review of Transsexual Marriage Under Indonesian Civil Law'.

## **RESEARCH METHODOLOGY**

The research conducted is doctrinal/normative legal research using a statute *approach*, *case approach*, and conceptual approach. The *statute approach* is carried out by examining all laws and regulations related to the legal issues being addressed (Peter Mahmud, 2021). This approach is used to analyse laws and regulations which, in their implementation, still need to improve or improve. The *case approach* is carried out by examining cases with permanent legal force (*inkracht*) related to the legal issues being addressed (Peter Mahmud, 2021).

Which is being handled (Peter Mahmud, 2021). The conceptual approach departs from the views and doctrines that have developed in legal science. To produce a scientific formulation to answer the problem formulation in this study, the primary legal material that has been collected is connected with secondary legal material in this section and further analysed using existing legal theories.

## RESULTS AND DISCUSSION

### 1. The Position of Transsexual Marriages under State Law

#### a. Legal Status of Transsexuals in Indonesia

According to the provisions of Article 1 of the Marriage Law, marriage is an inward and outward bond between a man and a woman as husband and wife with the aim of forming a happy and lasting family (household) based on God Almighty. Based on this definition, several elements of marriage can be concluded, namely the bond between a man and a woman to form a family based on God Almighty. The aspect between a man and a woman means that a marriage recognised in Indonesia is a marriage between a man and a woman. This element prohibits same-sex marriages, namely homosexual (man and man) and lesbian (woman and woman) marriages.

However, in practice, there are certain cases where one of the bride and groom has a unique condition that confuses their gender. This condition usually makes a person have disorders in their genital organs, such as having multiple genitalia (*Intersex*), *ambiguous genitalia*, which causes the genitals to be indistinguishable clearly between male or female sex and the effect of Abnormalities in hormones or chromosomes that cause the development of the genitals are not optimal.

The legal status of transsexuals who have undergone gender reassignment procedures is still not explicitly regulated in Indonesian laws and regulations. From a health perspective, sex reassignment surgery is equated with plastic surgery. This is controlled in Article 137 of Law No.17 of 2023 concerning Health. Article 137, paragraph (2) provides clarification regarding the prohibition of reconstructive and cosmetic plastic surgery that is contrary to community norms.

In the explanation of Article 137, instead of changing one's identity, sex reassignment surgery is performed to adjust the genitals to the actual gender. Surgery to change sex can only be performed with the approval of a judge.

The opinion of Islamic scholars regarding transsexuals is regulated in MUI Fatwa Number 03/Munas/VIII/2010 on Sex Change and Enhancement. Intentionally changing one's sex (through sex reassignment surgery) is prohibited by law. The legal status of the sex of the person who has been operated on remains unchanged from the status before the operation. However, the law of changing sex becomes permissible if a person has abnormalities in their genitals. The legal status of the operated person will change accordingly from the status after the surgery, even when he/she has not obtained a court judgment.

In the Christian view, changing one's sex out of selfishness and pleasure is equated with deliberate mutilation of the body and is considered a great humiliation. However, based on the interpretation of Matthew 19:12, Jesus Christ recognised that there are people who are born with abnormalities in their genitals. People with this condition are not able to marry typically. However, the act of sex change or sexual perversion is still not justified.

#### a) Sex Reassignment and Legal Status Registration

*A sex reassignment surgery procedure* is an action taken by individuals to change their physical and sexual characteristics to align with their perceived gender identity. Before undergoing a surgical procedure, several steps need to be taken by the patient, namely (Alodokter, 2024):

##### 1) Assessment

Mental health professionals, such as psychologists or psychiatrists, conduct mental health assessments. This stage will also determine whether individuals experience gender identity disorder or not. The doctor will explain in detail about the procedure and potential risks associated with sex reassignment surgery.

##### 2) Hormone Treatment

Hormone treatment is necessary prior to the surgical procedure. This therapy is useful for helping the body adapt to changes toward the specific gender. During this therapy, secondary sexual characteristics, such as voice changes, body

hair growth, and breast size, will develop. Men who wish to become women must take the hormone estrogen. Meanwhile, women who wish to transition into men need to receive the hormone testosterone. In general, hormonal treatment is usually carried out for a year or more before the patient undergoes the sex reassignment surgery procedure. Hormone treatment can be continued after the sex reassignment procedure is performed. Then, the stages of the sex reassignment surgery procedure are as follows (Healthy Link, 2024):

#### 1. Male-to-female sex reassignment surgery

##### a) Preoperative phase

- Mental health assessment. It is true that surgery can affect the patient's mental state and is an assessment to assess the patient's readiness to deal with changes in physical and mental stress after surgery.
- Real-world' test: The doctor asks the patient to try to live her life as a woman on a daily basis, both socially and professionally. This testing is done through laboratory tests or medical evaluation.
- Two referral letters from two therapists regarding the diagnosis of gender dysphoria.
- Taking certain medications.
- Stop smoking
- Avoid taking medications that can increase bleeding, such as aspirin, anti-inflammatory drugs, and herbal supplements.

##### b) Surgical measures

- *Bilateral orchiectomy*, specifically the removal of both testicles.
  - *Neurovascular* preparation of the glans or head of the penis.
2. Preparation of the urethra
  3. Excision or *excision of the corpus cavernosum* (shaft of the penis) and *corpus spongiosum* (urethral covering tissue)
  4. *Vaginoplasty*, usually performed with inversion of the penis inversion. The procedure is performed with the following steps:
    - Creating a vaginal cavity between the rectum (the end of the large intestine leading to the anus) and the urethra, then the walls of the vagina are made

of penile skin.

- The outer lips of the vagina consist of the scrotum (the pouch of skin covering the testicles), and the clitoris consists of the glans penis. The incision (cut) in the vagina is usually made at a depth of 15 cm, with a range of 12 to 16 cm.
  - The prostate, specifically the gland below the male bladder, is not removed to avoid complications such as urinary incontinence (difficulty holding urine) and stress. Urinary incontinence (difficulty holding urine) and urethral strictures (obstructive narrowing of the urethral urine flow). In addition, this part of the prostate also has parts that are sensitive to sexual stimulation.
5. If there is not enough skin between the penis and scrotum to create vaginal lips, the doctor will take skin from the pelvis, lower abdomen or upper thighs.
  6. It should be noted that since this method does not produce vaginal fluid naturally, patients need to use external lubricants for intercourse.
  7. The scrotum has many hair follicles, so your doctor may perform electrolysis. This procedure destroys the hair follicles with an electric current to prevent the hair from growing back at least three times for 8 to 12 weeks.

#### c) Postoperative period

The postoperative wound healing period varies depending on the surgical procedure the patient underwent. Swelling from facial surgery can last up to 2 weeks, while buttock surgery can last up to 4 months. It is recommended that patients have regular check-ups with a urologist (urinary tract specialist) or gynaecologist (female fertility specialist).

### 2) Female-to-male sex reassignment surgery

#### a) Preoperative phase

1. Mental preparation. This is important as sex reassignment surgery will result in significant lifestyle changes and require long-term adjustment.
2. Conduct a medical assessment to ensure that the patient is in the optimal condition to undergo the procedure.

- Surgical steps

- Breast structure, mainly mastectomy and contouring, and nipple repositioning to create the appearance of male breasts.

a) Genital structure, including the following procedures:

- *Hysterectomy*, which is the removal of the uterus;
- *Oophorectomy*, which is the removal of the ovaries;
- *Metoidioplasty*, which is the process of creating a new penis. The procedure begins by removing the clitoris (the slight bulge between the vaginal lips) from the labia (vaginal lips) to extend the new penis. Tissue from the labia minora (vaginal lips near the vagina) is then taken and used as the skin over the shaft of the penis located within the clitoris.

Formation of the penis, specifically penile training. The process of penis formation consists of several stages, namely:

- *Vaginectomy*, which involves the removal of the vaginal walls and closure of the vagina and perineum (the muscles, skin and tissues between the genitals and anus). Vaginal tissue is used to form a new urethra in the lower skin layer, including the use of additional tissue from other parts of the body to cover the existing penile lining.
- *Urethroplasty*, which focuses on creating the urethral canal by cutting muscle tissue from the new penis until it reaches the urethra
- In the second stage of *phalloplasty*, several procedures are performed, namely:
  - Free tissue transfer, which is a microvascular (tiny blood vessels) procedure that connects arteries and veins so that blood continues to flow to the underside of the new penis.
  - *Scrotumoplasty*, which is the creation of the scrotum usually done after *phalloplasty* and tissue transfer. This It is done by creating a scrotal sac from the labia major (outer vaginal lips).
  - *Glanslasty*, which is a procedure to form a new head of the penis.

(3) Facial masculinisation procedures consist of:

- Cheekbone surgery, which uses implants to make the cheeks look more

square;

- Chin or jaw surgery, which utilises bone grafts, implants or fat to achieve a wider chin or sharper jawline;
- Forehead surgery, which can flatten the brow area and widen the distance between the eyebrows and the hairline;
- Hair transplantation, which means taking hair from other parts of the body and transferring it to the face;
- Nose surgery, a cartilage or bone graft to enlarge and widen the nose;
- Throat surgery utilises cartilage taken from other parts of the body to create an artificial Adam's apple.
- Vocal cord surgery (type III thyroid) aims to reduce the frequency of the voice by reducing the tension of the vocal cords.

#### c) Postoperative period

The postoperative wound healing period varies depending on the surgical procedure undergone by the patient. For female-to-male sex reassignment surgery procedures, the doctor will usually advise the following:

1. Limit physical activities, such as sports, work, and household chores;
2. Drainage through a thin tube inserted into the penis (Foley catheter) or through the skin of the abdomen (Foley catheter) or through the skin of the lower abdomen (suprapubic catheter);
3. Keep the incision clean and dry;
4. Change of surgical wound dressing in the early stage of wound healing;
5. Use painkillers and anti-infective drugs and relieve constipation.

Post-surgery, patients still need to monitor hormone therapy. Patients who have not undergone surgical removal of their reproductive organs and are sexually active require contraception.

For individuals with ambiguous genitalia, the possible methods are hormone therapy and surgery (adjustment/reconstruction). Suppose the patient chooses to transform into a male. In that case, the goal of endocrine treatment is to stimulate the development of masculine traits and reduce the growth of feminine traits by administering testosterone. If the progression is towards



female, then the focus of treatment is to encourage feminine sexual characteristics and suppress masculine development simultaneously. Therapy should be given throughout life to maintain these characteristics (Bambang, 2013).

In surgical treatment, the meaning of reconstruction for women is to have feminine-looking external genitalia with form and function as close to normal as possible. The procedure is usually done in stages where the first stage is to correct an oversized clitoris, and the second stage focuses on improving the shape of the vagina. In men, the goal of correction is to improve the shape of the penis and urethra, which can generally be done in one stage of surgery, except in complex cases (Bambang, 2013).

Transsexuals who choose to perform sex reassignment or sex adjustment surgery procedures will be given counselling both before and after the surgery. This aims to mentally prepare the patient and his/her family because this surgery is permanent. Moreover, their families, because this operation is permanent. Changes in gender status not only affect medical issues but also psychological, social and even legal issues. Counselling will involve a team of various experts, such as psychologists, psychiatrists, paediatricians with endocrine subspecialists, urologists, geneticists, gynaecologists, nurses and social workers, depending on the type of disorder suffered.

According to the explanatory provisions of Article 56 of Law No. 24 of 2013 on the Amendment to Law No. 23 of 2006 on Population Administration (from now on referred to as Adminduk Law), gender reassignment is included in 'Other Important Events'. It must be registered at the Population and Civil Registration Office (Disdukcapil).

Transsexuals who undergo sex reassignment surgery must report their surgery to the District Court in order to be registered at the District/City Population Office, in accordance with the provisions of the Population Administration Law. Birth certificates, family cards (KK), identity cards (KTP), and name changes are examples of population identity data that will change as a consequence of a change in gender status. Specifically on the Birth Certificate, a change in sex will be made a marginal note. The procedure for Registering and

Recording Gender Change is regulated in Article 58 of Presidential Regulation No.96/2018 on Requirements and Procedures for Population Registration and Civil Registration.

### **C. Transsexual Marriage According to Indonesian Civil Law**

Transsexuals who have obtained a sex change determination from the Court can marry like normal people. Both the procedure and the registration are no different from ordinary marriages. But it needs to be underlined that before marrying, this transsexual has received a determination from the Court and changed all his population administration data such as KTP, Birth Certificate and KK.

If these transsexuals do not get a court ruling and take care of changing their civil registration data, then the marriage will be considered a same-sex marriage. At the same time, the marriage will be regarded as a same-sex marriage.

Marriage will be considered a same-sex marriage, while Indonesian law and religion prohibit same-sex marriage. Transsexual marriage cases that have occurred in Indonesia are:

#### 1) Dorce Gamalama

Dorce Gamalama is known to have had a Siri marriage with Asep Maskar bin Abdul Rozak in 2009. The marriage was conducted virtually because, at that time, Dorce was in Bulgaria while Asep was in Jakarta. However, the marriage relationship only lasted for two years. It is known that they divorced around June 2011 for reasons of incompatibility.

Dorce Gamalama was born a man with the actual name Dedi Dedi Ashadi. In 1983, she had a sex change operation in Surabaya. A plastic surgeon from RSUD, Dr. Soetomo, and Prof. Dr. dr, handled the operation. Djohansjah Marzoeki Sp.BP. After the surgery, Dorce applied for a change of sex status to the Surabaya District Court. In 1988, Dorce was officially declared a woman (Detik News, 2024).

#### 2) Aprillio Perkasa Manganang

Aprillio is known to be officially married to a woman named Claudia Cvanrhyn on 10 December 2022. Their wedding was held at a hotel in Manado. Aprillio himself has a unique life story because he previously lived as a woman. He

is known to have a medical disorder called Hypospadias, which causes his male genitalia not to grow ideally. After undergoing sex reassignment surgery, he officially became a man with the issuance of a Stipulation Number. 98/Pdt.P/2021/PN Tnn at a hearing held at the Tondano District Court in March 2021 (CNN Indonesia, 2024).

#### **b) Legal Effects of Transsexual Marriage in Indonesia Civil Law**

Based on the provisions of the KUHPer/BW, the regulation of marriage does not mix religious elements. Marriage is valid if it follows the legal requirements of KUHPer/BW. In addition to spiritual factors, the marriage law in KUHPer/BW also does not look at biological aspects or the motives for carrying out marriage. In contrast, the Marriage Law emphasises the factor that determines whether a marriage is valid or not, namely that the marriage must be carried out in accordance with the requirements and procedures stipulated by state law and religious law. In the context of state administration, the government has the authority to oversee marriage administration procedures, including marriage registration. Transsexual marriages that do not receive legality/sex reassignment court judgement will result in:

- a. The marriage cannot be officially recorded. Evidence of marriage registration is the Marriage Book issued by the KUA for Muslims or the Marriage Certificate issued by Disdukcapil for non-Muslims.
- b. The status of gender in the division of inheritance in the District Court Determination will be the same as before the operation.

In addition to affecting administrative and recording issues, transsexual marriage itself will lead to legal relationships between husband and wife, marital property issues regarding the position and status of children and inheritance legal relationships.

Marriage, including transsexual marriage, is closely related to customary law. In Soepomo's opinion, customary law is an unwritten law originating from beliefs, habits, and values considered by the community to be a rule. Society. Soepomo believes that customary law is not written in such a way by the state

legislature. Nevertheless, the state respects customary law's existence and recognises its validity so that it has permanent legal force (Clarissa Ayang Jelita 2024).

An example of customary law that is still in force is the rule of law of the Minangkabau indigenous community. Minangkabau society is essentially an Islamic society influenced by two forces: custom and religion. These two forces form laws that require Minangkabau people to be loyal to both, obedient to their faith as Muslims and obedient to their customs as Minangkabau people. This is the meaning of the Minangkabau philosophy of life, called 'Adat Basandi Syarak' or 'Adat Basandi Kitabullah', which means that existing customary laws must be based on Sharia, which is Islamic law derived from the Quran and Sunnah as Kitabullah. Thus, every rule in Minangkabau must be in accordance with Islamic Sharia, which is then determined through customary law. Every customary rule must not deviate from Islamic Sharia, even in law (Clarissa Ayang Jelita, 2024). Based on this, the law of transsexual marriage for Minangkabau indigenous people is permissible. This is based on the MUI Fatwa, which legalises sex change if there is a medical condition such as an abnormality. However, in practice, transsexuals themselves are still not entirely accepted in the society of the Minangkabau indigenous people, including transsexuals who have received a court decision. If the Indigenous community still cannot take the court's decision, then an agreement needs to be reached to adjust one's new status to the customs of the local community. The saying 'Buang Jauh-jauh di Gantuang Tinggi' means to be expelled from the community, emphasising the adverse impact of actions that go against the norms of society. This expulsion applies not only in the nagari (village) but also within the family or clan, particularly in the Ranji lineage, where a person deviates from the prevailing.

Norms can be ostracised, thus having their name removed from the community. This proverb also underscores the adverse consequences for individuals who deviate from the norm, breaking tribal and communal conventions (Clarissa Ayang Jelita, 2024). In the context of inheritance rights in Minangkabau custom, a transsexual is not eligible to be an heir. Therefore,

transsexuals will lose their inheritance rights and are not eligible to receive any inheritance (Clarissa Ayang Jelita, 2024).

With Islam as the majority religion in Indonesia, most customs in various regions have been influenced by Islamic teachings. However, if we look back in time, long before the introduction of Islam and the influence of Dutch colonialism, Indigenous communities in Indonesia recognised gender diversity.

For example, the Bugis in South Sulawesi in the pre-Islamic era recognised five genders: *butane* (male), *Sakurai* (female), *Calabar* (male who looks like a woman), *called* (female who looks like a man) and *tissue* (neither male nor female). Among these five categories, it was the people known as *tissue* who later played an essential role in the pre-Islamic royal order. The word *issue* comes from the word *best*, which in Bugis means clean or holy. The term *bissu'* is also found in the Bugis epic known as La Galigo. As a sacred person, *issues* are considered intermediaries between ancestral gods and humans (Nurul Azizah, 2022).

However, after the entry of Islam in South Sulawesi, the position of *tissue* began to be replaced by Ulama until finally, *the issue* was considered incompatible with Islamic teachings. In the Toraja Indigenous community, they recognise a third gender called *to break gambling*. Anthropologist Hetty Nooy-Palm states that Torajans believe that the most important religious leaders in their culture are a woman, or *burake tattiku*, and a man dressed as a woman, or *burake tambolang*. They lead spiritual ceremonies or harvest rituals in the villages. People admire and honour a town that has a *to brake*. Just like in Bugis society, the Dutch colonisers reorganised this gender diversity during colonialism according to Christian values. The brake lost its position as the influence of Dutch colonialism increased.

## CONCLUSION

Based on this research, the author concludes that marriages conducted by transsexuals are legal because they are conducted in accordance with the provisions of religious and state law in Indonesia. Before marrying, transsexuals must first take care of the determination of their gender change in the District Court because gender change results in changes in population administration data. If they do not get a court decision, then the population administration data cannot

be changed so that when they marry, they will be equated with same-sex marriage, which is prohibited by both religious and state law. Sex change itself is not something that can be done at will. There are restrictions that must be adhered to by people who intend to change their gender. In the explanation of Article 137 of the Health Law, sex change is carried out to perfect gender, not to change one's identity. Changing sex can only be done with a court order. In Islam itself, the matter of sex change is regulated in MUI Fatwa Number 03/Munas/VIII/2010 on Sex Change and Perfection. Changing sex because of lust is haram, and the legal position is in accordance with the original sex. However, if changing the sex due to health factors such as having multiple sexes, then the law of changing sex becomes permissible, and the legal position is in accordance with the new sex. In Christianity, similar to the Islamic view, changing sex because of lust is haram and is a cursed act.

Only after obtaining a determination and changing the population administration data can transsexuals legally marry. In accordance with Article 2 of the Marriage Law, only marriages conducted in accordance with the provisions of religion and belief are declared valid. A legal marriage will have legal consequences in the form of legal relations between husband and wife, marital property issues, regarding the position and status of children and legal inheritance relations.

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