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Implementation the Rules of *al-Darar al-Asyaddu Yuzālu bi al-Darar al-Asyaddu Yuzālu bi al-Darar al-Akhaf* at the Bathing Process Transgender Body

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Abstract

If the bodies of transgender people who have had genital surgery are carried out according to their original gender, it will cause harm to Muslims. For example, transgender women who are originally male are bathed by men, while their body condition has changed to that of a woman. If it is held according to the current gender it will cause harm to the Islamic religion, namely as if the act of changing gender is permissible. Both of these conditions cause harm. This research aims to analyze the rules *of al-darar al-ashaddu yuzālu bi al-darar al-akhaf* during the procession of washing the body of a transgender persons that solutions can be found to alleviate these disadvantages. This research is qualitative literature research with a normative juridical approach. The results of the research explain that in the process of washing, the lightest harm is to return the body to its original law. In order to further alleviate the harm that must be done, the washing procession is described in the condition of khunsa *musykil*, namely that the body can simply be placed in public without washing it, as agreed by the majority of ulama. This is done to protect the private parts and prevent Muslims from seeing and touching it and it is better if the person holding the body is from their own family. Heavy adversity can ultimately be eliminated by enduring lighter adversity and light adversity can still be alleviated by referring to the law of bathing khunsa *musykil*.

Keywords: rules, bathing, corpses, transgender

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1. INTRODUCTION

Rule of fiqh is the result of the creative thinking of scholars who are guided by the Quran and Sunnah in studying various fiqh issues. It is a solution to various legal

problems that always exist.¹ Fiqh scholars have agreed on the existence of harm rules, one of which is the rules of *al-darar al-ashaddu yuzālu bi al-darar al-akhaf* which is a branch of the principle of *lā darara wa lā dirara*. This rule can be implemented in solving contemporary problems today. One of them is the case of washing a transgender body.

Bathing a transgender corpse is controversial, because a transgender person has changed himself against his nature from male to female or vice versa. Their appearance changes according to the appearance of the opposite sex, both in terms of clothing or attributes, grooming, behavior and gender and changes that occur in other body parts that are characteristic of a different gender, for example surgery to remove the Adam's apple and so on.

The behavior reflected by transgender perpetrators is something that is condemned, cursed and prohibited in Islam, as in the hadith of the Prophet Muhammad,

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ:لَعَنَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُخَنَّثِينَ مِنَ الرِّجَالِ وَالْمُتَرَجِّلَاتِ مِنَ النِّسَاءِ، وَقَالَ: أَخْرِجُوهُمْ مِنْ بُيُوتِكُمْ، وَأَخْرَجَ فُلَانًا، وَأَخْرَجَ عُمَرُ فُلَاناً (رَوَاهُ البُخارِي)²

It means:

From Ibn Abbas ra. said, the Prophet saw. curse those who resemble women from men and those who resemble men from women. And he said: get them out of your house. Ibn Abbas said, then the Prophet saw. also brought out so and so and Umar ra. bring out so and so.

The hadith explains that Rasulullah saw. to curse or condemn *al-mukhannasīn* and *al-mutarajjilāt*. The order to expel these two groups from the homes of Muslims indicates the expulsion of everyone who is feared to bring slander or harm to the religion and lives of other people.³ *Al-mukhannasīn* and *al-mutarajjilāt* are terms in Islam to name men who resemble women or conversely women who resemble men who deliberately do so without due reason which is condoned by religion such as khunsa (predestined to be born like a woman).⁴ The highest peak of the changes carried out is changing gender by performing genital surgery. After changing gender, it is usually followed by changing other parts of the body to resemble the physique of the opposite sex so that the physical characteristics no longer appear as natural as they were when they were born.

The scholars have agreed regarding the prohibition of gender reassignment or surgery. MUI Fatwa No. 03/MUNAS-VIII/MUI/2010 concerning "Changes and Completion of Genitals" states that deliberate change of genitals from male to female or vice versa, such as gender reassignment through surgery is haram.⁵

Indonesia is one of the countries with a large number of waria (transgender). According to statistical data held by the Transgender Association of the Republic of Indonesia, the number of waria who are registered and have Resident Identification Cards

¹ Gushairi, "Sumber-Sumber Kaidah-Kaidah Fikih: al-Kitab, al-Sunnah, Atsar Sahabat dan Tabi'in, dan Ijtihad Fuqaha' pada Furû' dan Juz'iyyât," 25 Juni 2024, https://pa-rangkasbitung.go.id/pa-website/publikasi-artikel/arsip-artikel/420-sumber-sumber-kaidah-kaidah-fikih-al-kitab-al-sunnah-atsar-sahabat-dan-tabi-in-dan-ijtihad-fuqaha-pada-furu-dan-juz-iyyat.

² Muhammad bin Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī*, Cet. V, vol. 6 (Damaskus: Dār Ibnu Kašir, 1993), h. 2508.

³ Ibnu Batțāl, Syarh Ṣaḥiḥ al-Bukhāri, Cet. II, vol. 8 (Riyad: Maktabah al-Rusyd, 2003), h. 469.

⁴ Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, Cet. II, vol. 20 (Kuwait: Dār al-Salāsil, t.th), 20.

⁵ MUI, *Himpunan Fatwa MUI Sejak 1975*, t.t., h. 571.

Eka Syahriani, Supardin, Fatmawati, Sri Ujiana Putri

reached 3,887,000 people in 2007.⁶ Information obtained from data from the Indonesian Ministry of Health in 2014 showed that there was a significant increase in the number of transgender (waria) between 2002 and 2009, but there was no significant increase between 2009 and 2012.⁷

The number of transgender people in Indonesia will not be known for certain until 2023 and there is no data on the number of transgender people who are Muslim. However, of the 10 currently famous transgender artists in Indonesia,⁸ six of the 10 public figures are Muslim, including: Muhammad Fatah, known as Lucinta Luna⁹, Muhammad Millendaru Prakasa Samudro is known as Millen Cyrus¹⁰, Dedi Yuliardi Ashadi is known as Dorce Gamalama¹¹, transgender named Dinda Syarif until now his real name is not known¹², Dedi Ariyadi is known as Gebby Vesta¹³ and transgender Solena Chaniago whose real name is also unknown.¹⁴ Although this data cannot be used as a source to draw conclusions that the number of transgender Muslims in Indonesia is not small, especiallythe majority of the population is Muslim. A total of 241.7 million Indonesians embraced Islam by the end of 2022. This number is equivalent to 87.02% of the population in the country.¹⁵ That means only tens of percent of the population adhere to other religions.

When he dies, the body of a transgender Muslim will be held by Muslims. The case of transgender corpses is confusing, especially if it is related to private parts and who can wash the corpse.

In the Islamic jurisprudence books of the scholars, there is a special chapter that discusses who is allowed to bathe a corpse. This is because they consider their private parts which must be protected. Ibnu Rushd stated in the book *Bidāyah al-Mujtahīd wa Nihāyah al-Muqtaṣid*, the scholars agree that the law of covering the private parts is

⁶ Firman Arfanda dan S St, "KONSTRUKSI SOSIAL MASYARAKAT TERHADAP WARIA," *Kritis* 1, no. 1 (2015): h. 94.

⁷ Rita Damayanti, *Pandangan Transgender Terhadap Status Gender dan Persamaan HAM di Jakarta, Bogor, Depok dan Tangerang Tahun 2015* (Depok: Kementrian Pemberdayaan Perempuan dan Anak Pusat Penelitian Kesehatan UI, 2015), h. 2.

⁸ Nik Nik Fadlah, "Potret 10 Artis Transgender Indonesia yang Punya Segudang Prestasi," Rukita, 29 April 2022, https://www.rukita.co/stories/artis-transgender-indonesia.

⁹ "Biodata Lucinta Luna yang Asli, Profil Selebgram Baru Dilamar Bule Lengkap Umur, Agama, Jenis Kelamin - Kilat," diakses 26 Januari 2024, https://www.kilat.com/hiburan/8449640417/biodata.

¹⁰ "Biodata dan Agama Millen Cyrus, Selebgram Transgender yang Sempat Tersandung Kasus Narkoba : Okezone Celebrity," diakses 27 Januari 2024, https://celebrity.okezone.com/read/2021/11/12/33/2500971/biodata.

¹¹ Agung Supriyono, "Biodata Bunda Dorce Gamalama Lengkap dengan Nama Asli, Riwayat Hidup, dan Agama - Jatim Network," Biodata Bunda Dorce Gamalama Lengkap dengan Nama Asli, Riwayat Hidup, dan Agama - Jatim Network, 16 Februari 2022, https://www.jatimnetwork.com/hiburan/pr-432694524/biodata-bunda-dorce-gamalama-lengkap-dengan-nama-asli-riwayat-hidup-dan-agama.

¹² "Profil dan Biodata Dinda Syarif: Umur, Agama dan Karier, Transgender juga Miss Queen Indonesia 2018 Operasi Jakun," diakses 27 Januari 2024, https://correcto.id/beranda/read/56336/profil.

 ¹³ "Biodata dan Agama Gebby Vesta, Selebgram, DJ, dan Bintang Iklan yang Akui Jadi Transgender
Portal Purwokerto," diakses 27 Januari 2024, https://portalpurwokerto.pikiran-rakyat.com/seleb/pr-1152270178/biodata.

¹⁴ Desi Puspasari, "Transgender Solena Chaniago Tegaskan Masih Beragama Islam," detikhot, diakses 27 Januari 2024, https://hot.detik.com/celeb/d-3551458/transgender-solena-chaniago-tegaskan-masih-beragama-islam.

¹⁵ "Mayoritas Penduduk Indonesia Beragama Islam pada 2022," diakses 27 Januari 2024, https://dataindonesia.id/varia/detail/mayoritas-penduduk-indonesia-beragama-islam-pada-2022.

absolutely mandatory.¹⁶ This law also applies to corpses. Covering the body's private parts is obligatory.¹⁷

The handling of transgender bodies, especially when washing them, causes problems because of changes in physical conditions. This raises questions "Is he returned to his original gender, namely before the change occurred or is he punished based on his current gender?" If a transgender body has been changed to a woman and its status has been returned to its original gender, namely male, then the person permitted to bathe the body is a male relative or someone else. Meanwhile, her current physical appearance is that of a woman. According to the majority of ulama, men carry out the washing of male corpses, while women wash the bodies of women, unless they are husband and wife. The wife may bathe her husband's body and the husband may bathe his wife's body.¹⁸ This shows that even if it is his family or mahram, he is not allowed to bathe the body because the people who are allowed to bathe it are his family or Muslims of the same gender.

Vice versa, if a transgender body has been changed to a man and its status is returned to its original gender, namely female, then the person who has the right to bathe it is a female relative or someone else. Meanwhile, his current physique is that of a man. Even though it has become a corpse, this still causes harm or slander for men who bathe the corpse with a woman's body and harm for women who bathe a body with a man's body. They will see and touch the private parts of the opposite sex. Not to mention, if the person bathing him is an unmarried person, the slander or harm caused will be greater. Muslims must be protected from situations that cause harm to them.

Meanwhile, if the body is washed according to the current gender, namely female and the people who carry it out are women, it will cause strangeness because originally he was a man. Likewise for the case of a transgender woman who becomes a man, because she was originally a woman. The assumption that Islam is happy with the act of being transgender will emerge even though it is clearly forbidden. These two conditions both cause harm.

This research aims to analyze the rules of *al-darar al-ashaddu yuzālu bi al-darar al-akhaf* (bearing light harm to eliminate heavy harm) during the procession of washing the body of a transgender person. This research is qualitative literature research with a normative juridical approach. This research describes and analyzes texts relating to the rules of harm jurisprudence, then implements these theories in the procession of administering transgender bodies.

Researchers have traced previous research conducted by other researchers, including: 1. Acep Jurjani, thesis entitled "Transgender dalam Perspektif Hukum Islam."¹⁹ The purpose of this research is to find out transgender law in Islam. The research results explain that transgender in the context of Islamic law is divided into two. First, khunsa were actually created with dual sex or no genitals at all. Second, men who are created with male genitals, but act like or become women or vice versa. The difference between this thesis and this research is in the focus of the discussion. This research does not only touch on transgender law, but also focuses on discussing the analysis of

¹⁶ Ibnu Rusyd, *Bidāyah al-Mujtahid wa Nihāyah al-Muqtaşid*, vol. 1 (Kairo: Dār al-Hadiš, 2004), h. 121.

¹⁷ Abdurrahmān al-Jazīrī, *al-Fiqh 'alā al-Mażahib al-Arba'ah*, vol. 1 (Beirut: Dār al-Kitāb al-'Ilmiyyah, 2003), h. 458.

¹⁸ al-Jazīrī, 1:h. 458.

¹⁹ Acep Jurjani, "TRansgender Dalam Perspektif Hukum Islam" (Jakarta, Institut Ilmu Al-Qur'an (IIQ) Jakarta, 2016).

regulations during the procession of washing the body of a transgender person. 2. Agususanto, thesis entitled "Perubahan Status dan Akibat Hukum Pelaku Transgender terhadap Kewarisan dalam Perspektif Fikih Empat Mazhab."²⁰ The research aims to determine the legal consequences of changes in the status of transgender perpetrators regarding inheritance from the perspective of the jurisprudence of four schools of thought. The results of the research show that in inheritance law four schools of jurisprudence differ in responding to changes in transgender status. The difference between this thesis and this research is that the thesis discusses changes in status and legal implications when a transgender person dies. Another difference is that the thesis examines transgender inheritance laws, while this research focuses on the laws of washing transgender bodies. 3. Misra Netti, dissertation entitled "Transgender menurut Buya Hamka (1908-1981) dalam kitab tafsir al-Azhar."²¹ This dissertation aims to analyze transgender law according to Buya Hamka in the book Tafsir al-Azhar. The results of the research explain that transgender law according to Buya Hamka in the al-Azhar commentary book refers to two propositions. The difference between this dissertation and this research is that this dissertation focuses on discussing Buya Hamka's point of view towards transgender people, while this research discusses the implementation of a rule in the procession of washing corpses. 4. Abdul Muiz, journal entitled "Landasan dan Fungsi al-Qawā'id al-Fighiyyah dalam Problematika Hukum Islam."²² This research aims to determine the function of *al-qawā'id al-fiqhiyyah* in Islamic legal problems. The research results show that there are several functions of *al-qawā'id al-fiqhiyyah*. The difference between this journal and this research is that the journal does not highlight case examples and how to implement the rules in certain cases. This is different from this research which will analyze a rule and its implementation in a particular case.

2. DISCUSSION

2.1. Disadvantages in the View of Ulama

Mudarat in Arabic means *al-darar*. *Darar* in linguistic terms isloss or damage, reduced.²³ *Darar* is the opposite of *al-naf'u* which means benefit.²⁴ In terms of terms, several scholars provide an understanding of *darar*, including:

2.1.1 Ahmad Muwāfi

Al-Darar is a bad condition experienced by someone; because they experience a decline in their rights or property, drought, poverty, hardship, suffering from illness or emaciation, the need for protection, competition and resistance or because something that is contrary to their benefit has occurred.²⁵

2.1.2 Abu Bakr bin al-'Arabi

²⁰ Agususanto, "Akibat Hukum Perubahan Status Transgender Terhadap Kewarisan dalam Perspektif Fikih Empat Mazhab" (Bengkulu, Institut Agama Islam Negeri (IAIN) Bengkulu, 2019).

²¹ misra Netti, "Pelarangan Transgender Menurut Buya Hamka (Dalam Kitab Tafsir Al Azhar)," *Jurnal An-Nahl* 9, no. 1 (30 Juni 2022): 28–38, https://doi.org/10.54576/annahl.v9i1.45.

²² Abdul Muiz, "Landasan Dan Fungsi Al-Qawa'id Al-Fiqhiyyah Dalam Problematika Hukum Islam," *Journal for Islamic Studies* 3, no. 1 (2020).

²³ al-Azharī Abu Manšūr, *Tahžib al-Lugah*, Cet. I, vol. 11 (Beirut: Dār Iḥyā al-Turās al-ʿArabī, 2001), h. 314.

²⁴ Taqiyuddīn al-Hisnī, *al-Qawa'id*, Cet. I, vol. 1 (Riyad: Maktabah al-Rusyd, 1997), h. 333.

²⁵ Ahmad Muwāfi, *al-Darar Fī Fiqhi al-Islāmī*, Cet. I, vol. 1 (al-Khubar: Dār Ibnu 'Affān, 1997), h.

Al-Darar is pain that has no benefit to it, while al-naf'u is the opposite of *al-darar* is something that doesn't exist *al-darar* to him.²⁶

2.1.3 Abu Muhammad 'Izzuddīn al-Salami stated that harm or mafsadah in terms is the nature of an act that causes damage and eliminates the benefits and interests of the five (*al-darūriyyāt al-khamsah*). If the rejection of harm is not done, it will result in not achieving *maqāşid al-syarī'ah*.²⁷

Based on understanding *al-darar* according to these scholars, it can be concluded that *al-darar* is a bad condition that causes damage, loss, injustice and danger to a person's religion, soul, mind, lineage and property. Even if there is loss and injustice in just one of these five things (*al-darūriyyāt al-khamsah*) then it is considered a disadvantage.

2.2. Legal Basis for the Rule of Disadvantage

The legal basis on which it is haram to do harm is as follows:

2.1.1 Q.S. al-Baqarah/2: 188,

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِمَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

Meaning:

Do not eat the wealth between you in a false way and (do not) bring (the affairs of) the wealth to the judges with the intention that you can consume some of other people's wealth in a sinful way, even though you know.²⁸

Ali bin Abu Talhah narrated from Ibn Abbas that this verse relates to a man who has debts, while those who have receivables do not have strong evidence to prove that the person has debts. The man who was in debt did not admit his debt and then reported the case to the judge, even though he was aware of the truth of the debt and knew that he had sinned and consumed ill-gotten wealth.²⁹

This action is a form of harm to other people's property. Sharia prohibits eating property obtained by force and injustice. Therefore, laws have been determined that must be implemented by humans so that injustice does not occur between one another, one of which is when entering into a debt and receivable contract. Debts and receivables contracts must present witnesses and a recorder of the contract so that they can be used as evidence later when the person who owes the debt does not acknowledge the debt or when the person who has the receivables exaggerates the amount of the debt and commits other forms of injustice. This is a form of caution that has been taught by this Shari'a.³⁰

2.1.2 QS al-Qasas/28: 77

Meaning:

²⁶ Abu Bakr Ibn al-'Arabī, *Aḥkām al-Qur'ān*, Cet. III, vol. 1 (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003), h. 81.

²⁷ Abu Muhammad 'Izzuddīn al-Salamī, *al-Qawā 'id al-Kubrā al-Mausūm Bi Qawā 'id al-Aḥkām Fī Işlah al-Anām*, vol. 1 (Damaskus: Dār al-Qalam, t.th), h. 19.

²⁸ Kementerian Agama RI, *Mushaf Al-Qur'an dan Terjemah* (Jakarta: Ummul Qura, 2017), h. 29.

²⁹ Ismā'īl bin 'Umar Ibnu Kašir, *Tafsīr Ibnu Kašir*, Cet. I, vol. Juz 3 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), h. 384.

³⁰ Tafsīr Ibnu Kasir, Cet. I, vol. Juz 1 (Beirut: Dār al-Kutub al-'Ilmiyyah, 1998), 559.

And do not cause harm on the earth. Indeed, Allah does not like those who do damage. 31

This verse fragment explains the prohibition against causing damage on the face of the earth and doing evil to Allah's creation because Allah does not like destructive people.³² Al-Qurtubi explains in his commentary regarding this verse that what is meant is the prohibition against committing disobedience because of Allah swt. does not like people who commit immorality.³³ Damage and disobedience are forms of harm on earth, therefore the prohibition against doing them is very strict in this Shari'a.

2.1.3 Hadith History of Baihaqī

It means:

From Abu Sa'īd al-Khudri, he said that Rasulullah saw. said: "You must not do harm and you must not repay harm with harm. Whoever causes harm, Allah will reward him with harm too, and whoever causes trouble to others, Allah will cause trouble to him.

This hadith explains the prohibition against doing harm, whether it is to repay the harm, let alone starting to do harm. Allah swt. will repay anyone who causes harm to others with harm and will give trouble to anyone who makes things difficult for others.³⁵

2.1.4 Muslim History Hadith

It means:

From Abu Hurairah ra. said, Rasulullah saw. said: every Muslim has unlawful blood, wealth and honor over another Muslim.

Injustice is darkness on the Day of Judgment. One of the worst injustices is cruelty by a Muslim towards his Muslim brother. Every Muslim has two rights: humanitarian rights and Islamic rights. A Muslim's right to another Muslim is not only to help him when he is wronged so that the injustice will be removed from him or when he asks for help and then he is helped, but a Muslim's right is also not to belittle or insult him even though he is poor and down. One of the biggest sins and vices is that a Muslim looks down on other Muslims because of their appearance, profession or weakness. The honour, blood and property of a Muslim are haram for other Muslims, all of this is forbidden except by Islamic right.³⁷

Injustice to a Muslim's self-respect, blood and property is a form of harm that must not be tolerated. This of course does not only apply to fellow Muslims, although this hadith discusses relations between Muslims more specifically. The forms of injustice mentioned previously cannot be done to anyone.

³¹ Mushaf Al-Qur'an dan Terjemah, h. 394.

³² Ibnu Kasir, *Tafsīr Ibnu Kasir*, Juz 3:h. 228.

³³ Al-Qurțubī, *al-Jāmi' Li Aḥkām al-Qur'ān*, Cet. II, vol. 13 (Kairo: Dār al-Kutub al-Miṣriyyah, 1964), h. 315.

³⁴ Al-Baihaqī, *al-Sunan al-Kubrā*, Cet. III, vol. 6 (Beirut: Dār al-Kutub al-'Ilmiyyah, 2003), h. 114. ³⁵ 6:h. 114.

³⁶ Muslim ibn al-Hajjāj, Ṣaḥīḥ Muslim, vol. 8 (Turkish: Dār al-Ṭibā'ah al-'Āmirah, t.th), p. 10.

³⁷ Mūsā Syāhīn Lāsyīn, Fathu al-Mun'im Syarhu Ṣahīh Muslim, Cet. I, vol. 10 (Beirut: Dār al-Syurūq, 2002), h. 22.

الضَّرَرُ الأَشَدُ يُزَالُ) 2.3 The Rules of al-Darar al-Asyaddu Yuzālu bi al-Darar al-Akhaff

(بِالضَّرَرِ الأَخَفِّ

There are several pronunciations with the same meaning as this rule, including: *yukhtāru ahwanu al-syarrain, yukhtāru akhaffu al-dararain, yudfa'u a'zamu al-dararain bihtimāli akhaffihimā, izā ijtama'a dararāni asqaṭa al-asgar al-akbar, yudfa'u syarru al-syarrain,* and *iza ta'ārada mafsadatāni rū'iya a'zamuhumā birtikābi akhaffihimā*. This rule contains the same meaning, namely that greater harm is eliminated by carrying out lighter harm.

Not all harm is of the same degree but varies according to its type and impact, but basically harm must be eliminated. But if it is not possible to eliminate the harm completely and some of them are heavier than others while one of them must be eliminated then the heavy harm is eliminated and avoided by doing the light one. This rule also means that one cannot eliminate harm by doing harm of the same magnitude or greater.³⁸

Following are some applications of the rule *al-darar al-ashaddu yuzālu bi al-darar al-akhaff*, among others:

- 2.3.1 It is permissible to remain silent about a crime if denying it will cause greater harm.
- 2.3.2 It is permissible to obey orders and laws set by unjust rulers if rejection and rebellion against them will cause greater harm.
- 2.3.3 It is permissible to open a dead woman's stomach to remove her child if she wishes for her life.
- 2.3.4 It is permissible to go into seclusion if you are worried that you will fall into slander.
- 2.3.5 It is permissible to open the corpse's stomach to remove the child or the treasure it ate.
- 2.3.6 The priest must prevent people who are known to have eye disease from mixing with other people. He had to be kept at home so as not to disturb other people with his illness. If he is poor, the imam pays for his needs because the danger is worse than the danger of eating garlic that is kept out of the mosque and the danger of animals destroying the harvest.³⁹
- 2.3.7 The prohibition on accusing a father for the death of his child is because the prerequisite for intentional murder is the presence of hostility, while this requirement is removed in the case of a father because of his known loving nature towards his child.⁴⁰

It is better to do light accidents to avoid major accidents. Evil is not justified and must be prohibited. However, if evil causes great harm when expressed, it is better to remain silent about it. An unjust ruler may not have his orders followed, but if not following his orders will cause dangerous consequences then he is permitted to follow them. Likewise, cases of cutting open the stomach of a dead woman, isolating herself, cutting open the corpse's stomach to remove the treasures she ate, preventing people who

³⁸ Muhammad Mustafā al-Zuhailī, *al-Qawa'id al-Fiqhiyyah wa Tatbīqātuhā Fī al-Mažāhib al-Arba'ah*, Cet. I, vol. 1 (Damaskus: Dār al-Fikri, 2006), h. 219.

³⁹ al-Zuhailī, 1:h. 232-233.

⁴⁰ al-Zuhailī, 1:h. 228.

Eka Syahriani, Supardin, Fatmawati, Sri Ujiana Putri

are known to have eye disease from mixing with other people and the prohibition against blaspheming a father for the death of his child are lighter forms of harm. and it is better to do so in order to avoid greater losses.

2.4 Overview of Transgender

2.4.1 Understanding Transgender

There are only two genders in the history of Indonesian culture that are objectively recognized by society, namely men and women. This is very reasonable because the definition of gender itself refers to the physical condition of the human reproductive organs. This assessment results in differences between men and women in terms of gender roles. Men must be like men who are identified with strength and so on and women must also be like women who are identified with femininity and so on. People who are not in their place, for example men who resemble women, are considered an abnormality.⁴¹ Likewise, women resembling men are also considered an abnormality. This disorder is called transgender.

Transgender is linguistically composed of two words, namely trans and gender, in English trans is one part of the adjective which means moving (hand; dependent); transfer⁴² and gender which means sex.⁴³ Gender is a characteristic inherent in men and women which is constructed socially and culturally. Women, for example, are known to be gentle, beautiful, emotional or motherly. Men are considered strong, rational, manly and powerful.⁴⁴

According to Setiawan Budi Utomo, transgender is a symptom of a person's dissatisfaction because they feel there is no match between their physical form and genitals and their mental state or because they are dissatisfied with their genitals. The expression can be in the form of grooming, make up, style and behavior, even gender reassignment surgery.⁴⁵

Transgender is the act of resembling the opposite sex in appearance, style, behavior and even carrying out physical replacement surgery, such as changing gender from male to female or vice versa, lifting or growing breasts and lifting or growing Adam's apple and other changes that can occur. done to resemble the opposite sex.

Based on this understanding, it can be seen that there are two types of transgender, namely:

1) Transgenders who change gender usually involve lifting or growing their breasts or Adam's apple and have a very similar appearance and sometimes it is difficult to differentiate them from those of the opposite sex.

⁴¹ Masnun Masnun, "WARIA DAN SHALAT REINTERPRETASI FIKIH UNTUk KAUM WARIA," *Musãwa Jurnal Studi Gender dan Islam* 10, no. 1 (29 Januari 2011): h. 123, https://doi.org/10.14421/musawa.2011.101.123-134.

⁴²Agususanto, "Akibat Hukum Perubahan Status Transgender terhadap Kewarisan dalam Perspektif Fikih Empat Mazhab" review of the book *Popular Scientific Dictionary* by Pius A. Partanto and M. Dahlan Al Barry, *Thesis*, p. 757.

⁴³Agususanto, "Akibat Hukum Perubahan Status Transgender terhadap Kewarisan dalam Perspektif Fikih Empat Mazhab" review of the book *Popular Scientific Dictionary* by Pius A. Partanto and M. Dahlan Al Barry, *Thesis*, p. 197.

⁴⁴ Mohammad Idrus Assayuti, "Perlindungan Hukum bagi Waria Perspektif Hukum Islam," *Iqtisodina* 2, no. 1 (2020): h. 12.

⁴⁵ Setiawan Budi Utomo, *Fiqih Aktual Jawaban Tuntas Masalah Kontemporer* (Jakarta: Gema Insani, 2003), h. 171.

2) Transgenders who do not change gender usually only resemble them in terms of external appearance such as clothing or other attributes usually worn by the opposite sex.

Transgender is known to be divided into two, namely: female transgender, male to female (male to female) and male transgender, female to male (female to male). The highest peak of changes carried out by transgender people is undergoing sex change surgery.

2.4.2 Transgender in Indonesia

In Indonesia, the terms for naming transgender people are better known as waria (sissy) and priawan (tomboy). Waria (male women) are men who resemble women and priawan (female men) are women who resemble men. There are two types of waria known in Indonesia, namely:

- Transvestites who change their gender and other body parts to look like women. Transvestites who change their gender are the focus of this research study. In Indonesia, there are several Muslim transgender artists who have changed their gender from male to female, including: Muhammad Fatah, known as Lucinta Luna, Dedi Yuliardi Ashadi, known as Dorce Gamalama, Dinda Syarif, who until now has not His real name is known, Dedi Ariyadi, known as Gebby Vesta, and Solena Chaniago, whose real name is also unknown.⁴⁶
- 2) Transvestites who only resemble women in terms of clothing, grooming and behavior and do not change their gender. In Indonesia, one of the famous transgender artists who has not had genital surgery is Myllen Cyrus, whose real name is Muhammad Millendaru Prakasa Samudro.⁴⁷

There are also two men known in Indonesia, namely:

- Males who change their gender and other body parts to resemble men. Men who change their gender are also the focus of this research study. In Indonesia, there is a Muslim artist named Phuwaryne Keenan (real name Matanawee) from Medan who has changed his gender to male. However, now he has settled and is pursuing a career in Thailand.⁴⁸
- 2) Men who do not change gender and only resemble men in terms of clothing, grooming and behavior. In Indonesia, there is a man named Amar Al-Fikar whose real name is Ning Amalia.⁴⁹

Men in Indonesia are classified as non-existent and no data has been found discussing the existence of their community. As for waria, the community is very existing and has been established for a long time.

The formation of the first transgender organization in Indonesia began in the late 1960s with the establishment of the Djakarta Wadam Association (Hiwad) which was facilitated by the Governor of DKI Jakarta, Marine General Ali Sadikin at that time. The

⁴⁶ "6 Artis Indonesia Ini Dulu Pria tapi Operasi Kelamin Jadi Wanita, Ada yang Sampai Nikah," diakses 27 Januari 2024, https://www.tvonenews.com/lifestyle/trend/42442-6-artis-indonesia-ini-dulu-pria-tapi-operasi-kelamin-jadi-wanita-ada-yang-sampai-nikah.

⁴⁷ Tim detikcom, "Millen Cyrus Ungkap Alasan Tak Akan Ganti Kelamin," detikhot, diakses 27 Januari 2024, https://hot.detik.com/celeb/d-5949166/millen-cyrus-ungkap-alasan-tak-akan-ganti-kelamin.

⁴⁸ Fria Sumitro, "Profil Phuwaryne Keenan, Transgender Muslimah Darah Medan yang Macho Abis," detiksumut, diakses 27 Januari 2024, https://www.detik.com/sumut/berita/d-6609012/profil-phuwaryne-keenan-transgender-muslimah-darah-medan-yang-macho-abis.

⁴⁹ "Amar Alfikar Transpria Muslim Indonesia: Ibu, Saya Bukan Perempuan....," diakses 27 Januari 2024, https://www.suara.com/news/2021/10/12/133327/amar-alfikar.

term wadam (Adam's woman) was introduced as a replacement for the derogatory words sissy or bencong. This term was then replaced in 1978 with waria (male woman) because the Indonesian Ulema Council considered it inappropriate for the name of a prophet (Adam) to be used as part of the term for men who express their gender in a way that resembles women.⁵⁰

The response of Indonesian society to the existence of transgender people varies, the majority of people reject it, others accept it and some just let it go. However, if it is related to the religious domain, especially Islam and the fact that the majority of Indonesia's population is Muslim, the existence of waria becomes contradictory,⁵¹ because Muslims in Indonesia cannot be separated from Islamic law which is a product of the legal thought of Muslims in the country,⁵² In Islamic law the existence of waria is denounced and rejected.

2.4.3 Mukhannas and Mutarajjil

Based on the interpretation of surah al-Hujurat verse 13, al-Ṭabarī explains that Allah swt. created humans from germfah into male and female, so that in Islam the only genders recognized are male and female.⁵³ However, Islam recognizes the existence of humans who are born with two genders or no gender at all. People born in this condition are called khunsa.

Islam also discusses men and women who commit deviant acts, namely resembling and acting like the opposite sex. People who do these actions are called *mukhannas* and *mutarajjil*.⁵⁴

Mukhannas, *mutarajjil* and khunsa are terms in Islam related to transgender. Discussions related to mukhannas, mutarajjil and khunsa are found in the hadiths of the Prophet Muhammad saw. and various books of scholars.

Mukhannas and mutarajjil has been explained in the hadith of the Prophet Muhammad saw.,

عَنْ ابْنِ عَبَّاسٍ رَضِيَ اللَّهُ عَنْهُمَا قَالَ: لَعَنَ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ الْمُخَنَّثِينَ مِنَ الرِّجَالِ وَالْمُتَرَجِّلَاتِ مِنَ النِّسَاءِ، وَقَالَ: أَحْرِجُوهُمْ مِنْ بُيُوتِكُمْ، وَأَحْرَجَ فُلَانًا، وَأَحْرَجَ عُمَرُ فُلَاناً (رَوَاهُ البُخارِي)⁵⁵

It means:

From Ibn Abbas ra. said, the Prophet saw. curse *mukhannašīn* (those who resemble women from men) and *mutarajjilāt* (those who resemble men from women). And he said: get them out of your house. Ibn Abbas said, then the Prophet saw. also brought out so and so and Umar ra. bring out so and so.

The hadith explains that Rasulullah saw. curse or curse *mukhannas* and *mutarajjil*. The order to expel these two groups from the homes of Muslims indicates the expulsion

⁵⁰ USAID, "Hidup sebagai LGBT di Asia," t.th, https://www.refworld.org/cgibin/texis/vtx/rwmain/opendocpdf.pdf?reldoc=y&docid=54ed854f4.

⁵¹ Masnun, "WARIA DAN SHALAT REINTERPRETASI FIKIH Untuk KAUM WARIA," h. 124.

⁵² Supardin, *Hukum Islam di Indonesia (Studi Pengembangan Materi)*, Cet. I (Gowa: Alauddin University Press, 2020), h. 37.

⁵³ Muhammad bin Jarīr al-Ṭabarī, *Jāmi' al-Bayān*, vol. 22 (Makkah: Dār al-Tarbiyah wa al-Turās, t.th), h. 309.

⁵⁴ Syarh Şahih Al-Bukhāri, 8:469.

⁵⁵ al-Bukhārī, Şaḥīḥ al-Bukhārī, 6:h. 2508.

Implementation the Rules of al-Darar al-Asyaddu Yuzālu bi al-Darar al-Akhaf at the Bathing Process Transgender Body Eka Svahrigni, Supardin, Fatmawati, Sri Llijang Putri

Eka Syahriani, Supardin, Fatmawati, Sri Ujiana Putri

of everyone who is feared to bring slander or harm to the religion and lives of other people. 56

It means:

From Ibn Abbas that Rasulullah saw. asked about a child who is born with female and male genitalia, where does he inherit it from? Rasulullah saw. answered he inherited where he urinated.

It means:

It is also narrated that the prophet saw. visited by a khunsa from the Ansar. He said: they inherit from the first place where urine comes out.

This hadith explains the inheritance of khunsa. The status of a khunsa is unclear whether female or male. Therefore, the status is determined by looking at the gender that produces urine.⁵⁹

The following are the differences between *mukhannas*, *mutarajjil* and khunsa and explanations related to them.

1) Mukhannas (مُخَنَّتُ)

Mukhannas linguistically it comes from the words *khanisa-yankhasu-khanasun* which means acting like a woman.⁶⁰ *Mukhannas* is a man who resembles a woman in gentleness, speech, appearance, gestures and the like.⁶¹ *Mukhannas* looks or behaves like a woman, even though he has obvious male characteristics such as the shape of his genitals, an Adam's apple on his neck and a beard growing on his chin. It's just that he made himself up to resemble and become a woman.⁶² The act of *mukhannas* is prohibited in Islam as mentioned in the hadith narrated by Ibn Abbas above.

(مُتَرَجِّلٌ) Mutarajjil (مُتَرَجِّلٌ)

Mutarajjil comes from the words *tarajjala-yatarajjalu-tarajjul* which means a woman who resembles or becomes a man.⁶³ *Mutarajjil* is a woman who resembles or imitates men in appearance and behavior, both in assertiveness, speech and the like, even though she has clear signs of femininity, namely having breasts, a uterus and menstruation.⁶⁴ The act of *mutarajjil* is prohibited in Islam as *mukhannas* is mentioned in the hadith narrated by Ibn Abbas above.

3) Khunsa(خُنْثَى)

⁵⁶ Syarh Ṣaḥiḥ al-Bukhāri, 8:h. 469.

⁵⁷ Al-Sunan al-Kubrā, 6:p. 428.

⁵⁸ 6:p. 427.

⁵⁹ Wizārah al-Auqāf wa al-Syu'ūn al-Islāmiyyah, *al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah*, Cet. II, vol. 20 (Kuwait: Dār al-Salāsil, n.th), p. 22-23.

⁶⁰ Majma' al-Lugah al-'Arabiyyah, *al-Mu'jam al-Wasīţ*, Cet. IV (Maktabah al-Syurūq al-Dauliyyah, 2004), p. 258.

⁶¹ al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, 20:h. 20.

⁶² Ardiansyah, "Waria dalam Perspektif Hukum Islam," Istishlah 6, no. 1 (2013): h. 77.

⁶³ al-Mu'jam al-Wasīt, h. 332.

⁶⁴ "Waria Dalam Perspektif Hukum Islam," p. 77.

Eka Syahriani, Supardin, Fatmawati, Sri Ujiana Putri

Khunsa is a person who is born with two genitals at once (male and female) or neither at all. Khunsa resembles a woman in his actions. Khunsa is not reproached in Islam because he was destined to be born that way. However, if it is clear that a khunsa is a man then he must try hard to erase his characteristics and actions that resemble women. If he doesn't try to get rid of it and a khunsa actually enjoys and follows his desire to resemble a woman, then his actions are despicable and the same as *mukhannas* who deliberately makes himself look like a woman.⁶⁵

Determining the sex of khunsa before puberty is seen from where the urine comes out. As for after puberty, it can be seen through changes in the body's organs. If what is dominant and visible in him are the signs of a man, then the male law is given to him. Likewise, if signs of femininity are visible and dominant in him, then a woman's law will be imposed on him.⁶⁶

Khunsa is divided into two, namely khunsa *gairu musykil* and khunsa *musykil*. a) Khunsa *gairu musykil*

Khunsa *gairu musykil* is a khunsa whose gender is not difficult to determine, meaning it is quite easy to determine whether it is a man or a woman.⁶⁷ If a khunsa has two genders and urinates from a place where a man's urine comes out, he is punished as a man, whereas if he urinates from a place where a woman's urine comes out, he is punished as a woman. If urine comes out of both of them, look at which one urinates first. If urine comes out simultaneously through both sexes, this means that it is difficult to determine the gender, this is what is called khunsa impossible.⁶⁸

b) Khunsa *musykil*

727.

Khunsa *musykil* is a khunsa whose gender is difficult to determine, meaning that it cannot be determined whether he is a man or a woman. This happens because the signs of male and female genitals appear equally strong or because they don't have both genitals at all, there are only holes.⁶⁹ This condition occurs before puberty.

Most scholars are of the opinion that the way to determine a khunsa's gender before puberty is by looking at his urine. If urine comes out of the penis then he is a man, if urine comes out of the penis then he is a woman⁷⁰, as in the hadith of the Prophet Muhammad saw. about khunsa's inheritance.

As for after puberty, look at the condition of his body. If he grows a beard, experience wet dreams and have characteristics of courage and firmness in facing enemies, these are signs of a man. If breasts appear, have a uterus and experience menstruation, these are signs of femininity. If these signs of femininity are present in the khunsa's body and also have signs of being male then the sign of femininity precedes all signs that conflict with it.⁷¹

After the signs appear, they are judged to be both strong and the sex of the khunsa cannot be ascertained, then a medical council's consideration is needed to examine the condition. If he has been examined and determined to be a man based on a medical examination, the khunsa may undergo genital surgery, namely perfecting his male

⁶⁵ Ibn Hajar al-Asqalānī, Fath al-Bāri, vol. 9 (Beirut: Dār al-Ma'rifah, 1379), 334.

⁶⁶ Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, 20:h. 22.

⁶⁷ Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, 20:p. 22.

⁶⁸ Muhammad Amīn, *Hāsyiah Raddu Al-Muḥtār*, Cet. II, vol. 6 (Egypt: Muṣṭafā al-Bābī, 1966), p.

⁶⁹ Al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, 20:p. 22.

⁷⁰Wizārah al-Auqāf wa al-Syu'ūn al-Islāmiyyah, *al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah*, Juz 20, p. 22-23.

⁷¹ al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, 20:h. 23.

Eka Syahriani, Supardin, Fatmawati, Sri Ujiana Putri

genitalia and removing his female genitalia and trying his best to make himself a real man, even though it takes a long time and hard work and vice versa, if it is decided that you are a woman, you are allowed to undergo genital surgery and try to make yourself a real woman.

Scholars provide various views in providing law to khunsa *musykil* in the care of his body when he dies, his private parts and clothes, his imam and his prayer staff, his Hajj and his testimony, his marriage and his inheritance.

When the khunsa *musykil* died, the scholars differed in their opinions regarding washing his body. Khunsa *musykil* is not bathed by men or women according to the Hanafi School because her private parts must be protected even though she has become a corpse, therefore the body is not washed but simply does tayamum. Meanwhile, according to the Syafii School of thought, khunsa is held by a male or female mahram. If there is no mahram then in this case it is divided into two: *first*, the khunsa is sufficient with tayamum; *secondly*, you may be bathed by someone else because it is considered an emergency. The Hambali School believes that khunsa aged seven years and over are sufficient for tayamum.⁷²

2.4.4 Arrangement of Transgender Funerals

The procedures for handling the bodies of Muslims have been regulated in detail in Islamic law. The procession consists of four ways: *First*, washing the corpse. *Second*, shroud. *Third*, pay attention. *Fourth*, bury the body. These four processes have established laws and regulated mechanisms. This includes the Shari'a regarding who can take care of the body during the washing process, where during this process the body's private parts will be seen and touched, while the private parts must still be protected. The command to cover the private parts is mentioned in a number of verses in the Quran.⁷³

Ibnu Rushd said in the book of *Bidayah Al-Mujtahid wa Nihayah Al-Muqtashid*, the scholars agree that covering the private parts is absolutely obligatory.⁷⁴ This law also applies to corpses. Covering the body's private parts is obligatory.⁷⁵

Therefore, in Islamic jurisprudence books there are special chapters that discuss who is allowed to bathe a corpse. Bathing of male corpses is carried out by men and female corpses are washed by women.

Most scholars agree that the law on washing a woman's body is not permissible for men and vice versa, unless they are husband and wife then it is permissible for each of them to bathe the body of their partner.⁷⁶

In contrast to the handling of human remains in general, the handling of transgender bodies has experienced polemics. Because a transgender person has changed himself against his nature, from male to female or vice versa. His appearance changes according to the appearance of the opposite sex, both clothing and attributes, behavior and gender.

When he dies, the body of a transgender person must still be held by Muslims. It's just that the procession of holding transgender bodies causes problems. Are they returned to the gender before the change occurred or punished based on their current gender? This becomes even more confusing if it is related to the laws of private parts and who should

⁷² al-Mausū'ah al-Fiqhiyyah al-Kuwaitiyyah, Cet. II, vol. 20 (Kuwait: Dār al-Salāsil, t.th), 24.

⁷³ al-Fiqh 'alā al-Mażahib al-Arba 'ah, vol. 1 (Beirut: Dār al-Kitāb al-'Ilmiyyah, 2003), 458.

⁷⁴ Bidāyah al-Mujtahid wa Nihāyah al-Muqtaşid, 1:h. 121.

⁷⁵ al-Jazīrī, *al-Fiqh 'alā al-Mażahib al-Arba'ah*, 1:h. 458.

⁷⁶ al-Jazīrī, 1:p. 458.

Eka Syahriani, Supardin, Fatmawati, Sri Ujiana Putri

wash the body. If a transgender body has been turned into a woman and the law has returned to its original gender, then the person who must wash the body is a male relative or someone else. Meanwhile, her current form has become a woman. Even though it has become a corpse, this still causes slander or harm. Likewise, if the body is held according to the current gender, namely female and held by women, then of course it will also cause strangeness and harm because it is originally a man.

2.5. Analysis of the Rules of al-Darar al-Asyaddu Yuzālu bi al-Darar al-Akhaf at the Procession of Washing the Body of a Transgender Person

The harm that befalls Muslims when transgender bodies are punished or held based on their original gender must be eliminated. The prejudice regarding the perceived approval of Islam or Muslims towards the actions of transgender people when their bodies are punished in their current condition must also be removed. It is necessary to determine the law that will be applied after comparing and weighing the level of harm that occurs in these two conditions. The misfortunes that occur in the first condition and the second condition are both serious disadvantages because they both affect Muslims and the Islamic religion. However, the first condition where harm befalls Muslims who hold transgender bodies is still more special than the second condition which seems to condone the actions carried out by transgender people. This special property causes the first condition to be lighter than the second condition, so that it is better to carry out lighter losses and leave behind greater losses.

Therefore, the management of transgender bodies in Islamic law is still based on their original gender when they were born, either male or female, because genital surgery can only change their physical form and in essence they remain in the initial condition they were born with.

This is in line with the statement by the Chairman of the Indonesian Ulema Council (MUI) Cholil Nafis who emphasized that transgender people who die must be cared for based on the sex they were born with. For example, a man who moves to become a woman has his body taken care of by a man, and vice versa.⁷⁷

Thus, based on the rules *al-darar al-asyaddu yuzālu bi al-darar al-akhaf* (taking light adversity to eliminate heavy adversity) means that transgender bodies are sentenced to return to their original gender. Therefore, the body is washed by Muslims of the same gender before the gender change occurs so that transgender women (originally male) are bathed by men and transgender men (originally female) are bathed by women.

After choosing the lighter of the two cases of harm, it does not mean that the harm of washing a transgender corpse is completely gone because one of the harms still has to be done. A better solution to reduce the level of harm in this case is the corpse is described as having a khunsa *musykil* condition. Khunsa *musykil* body was not washed due to her gender being unclear, it was enough to simply place it in tayamum as agreed by the majority of ulama. It would be better if the person washing the body was from their own family. This is a form of caution in order to protect Muslims from touching and looking at the private parts of the opposite gender and harm can ultimately be reduced to a minimum.

⁷⁷ "MUI Respons Wasiat Dorce Gamalama Soal Kematian," diakses 27 Januari 2024, https://www.cnnindonesia.com/nasional/20220131110255-20-753253/mui-respons-wasiat-dorce-gamalama-soal-kematian.

Implementation the Rules of al-Darar al-Asyaddu Yuzālu bi al-Darar al-Akhaf at the Bathing Process Transgender Body *Eka Syahriani, Supardin, Fatmawati, Sri Ujiana Putri*

3. CONCLUSION

The harm that arises from the loss of Muslims who hold bodies of the opposite sex is lighter than the harm that causes the assumption that Islam is pleased with transgender behavior. Therefore, based on the rules *al-darar al-ashaddu yuzālu bi al-darar al-akhaff* then transgender bodies are washed according to their original gender. In order to further alleviate the disadvantages that must be done, then the bathing procession is allusion to condition of the khunsa *musykil* where the body of the khunsa *musykil* is not bathed, it is enough to just place it in tayamum as agreed by the by the majority of ulama and it is better if the person holding the body is from their own family. Heavy adversity can finally be eliminated by enduring light adversity and light adversity can still be alleviated further by referring to the law of bathing khunsa *musykil*.

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