

Islamic and Human Rights Perspectives on The Discourse on The Existence of Gender-Neutral Toilets in Indonesia

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ABSTRACT

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Wacana tentang toilet netral gender telah memicu perdebatan multidimensi di Indonesia, negara mayoritas Muslim yang menjunjung tinggi nilai-nilai agama dan norma-norma Timur. Studi ini bertujuan untuk menganalisis keberadaan toilet netral gender melalui lensa ganda: perspektif hukum Islam (Maqasid al-Shari'ah) dan instrumen hak asasi manusia internasional. Dengan menggunakan metode penelitian hukum normatif dengan pendekatan konseptual dan komparatif, artikel ini mengeksplorasi ketegangan antara inklusivitas ruang publik bagi minoritas gender dan prinsip privasi (khalwah) serta segregasi gender dalam tradisi Islam. Hasil penelitian menunjukkan bahwa sementara perspektif hak asasi manusia menekankan aksesibilitas tanpa diskriminasi dan martabat manusia sesuai dengan prinsip Yogyakarta, perspektif Islam di Indonesia cenderung menekankan perlindungan moral publik dan batasan aurat. Namun, terdapat ruang dialektis melalui prinsip masalah mursalah untuk menyediakan fasilitas yang aman tanpa mengganggu tatanan sosial yang ada. Studi ini menyimpulkan bahwa implementasi toilet netral gender di Indonesia memerlukan model hibrida yang mempertimbangkan sensitivitas lokal untuk menghindari eskalasi konflik sosial.

The discourse on gender-neutral toilets has sparked a multidimensional debate in Indonesia, a Muslim-majority country that upholds religious values and Eastern norms. This study aims to analyze the existence of gender-neutral toilets through a dual lens: the perspective of Islamic law (Maqasid al-Shari'ah) and international human rights instruments. Using normative legal research methods with a conceptual and comparative approach, this article explores the tension between the inclusiveness of public spaces for gender minorities and the principles of privacy (khalwah) and gender segregation in Islamic tradition. The results show that while the human rights perspective emphasizes non-discriminatory accessibility and human dignity according to the Yogyakarta principles, the Islamic perspective in Indonesia tends to emphasize the protection of public morality and the boundaries of aurat. However, there is a dialectical space through the principle of masalah mursalah to provide safe facilities without disrupting the existing social order. This study concludes that the implementation of gender-neutral toilets in Indonesia requires a hybrid model that takes into account local sensitivities to avoid escalating social conflict.



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INTRODUCTION

The global phenomenon of deconstructing the gender binary has permeated various aspects of public space, one of which is the emergence of discourse on gender-neutral restrooms. In various Western

countries, these facilities are seen as a form of human rights advancement that guarantees inclusivity for non-binary or transgender individuals (Jones & Cunningham, 2020). However, when this narrative entered the sociopolitical space in Indonesia, strong resistance emerged due to the clash of values between individual human rights aspirations and the foundations of religious morality embraced by the majority of the population. Restrooms are not simply functional sanitation spaces, but rather spaces fraught with ethical constraints, privacy, and long-established rules of sexual segregation within Indonesian legal culture (Suwardi et al., 2021).

The international human rights perspective, as outlined in the Yogyakarta Principles, affirms that every individual has the right to legal recognition and protection from discrimination based on gender identity (O'Flaherty, 2015). In this context, the lack of facilities that accommodate groups outside the binary of male and female is seen as a disregard for human dignity. Fear of bullying, violence, or harassment in public restrooms is often experienced by gender minority groups when they are forced to choose spaces that do not align with their gender expression (Sanders & Stryker, 2016). Therefore, gender-neutral restrooms are promoted as a solution to create safe and welcoming public spaces for all parties without exception.

On the other hand, Indonesia is a country that places "Belief in the One and Only God" as the first principle of Pancasila, which has implications for the integration of religious values into public policy. Islamic law regulates *purification* (thaharah) and toilet etiquette in great detail, including the principle of spatial separation to maintain modesty and avoid *slander* (Ibrahim, 2019). The concept of gender-neutral toilets is viewed by most Islamic scholars and mass organizations as a threat to the principle of *gender segregation*, which aims to protect women's honor and prevent unwanted mixing between the opposite sexes (*ikhtilat*) (Mubarok & Rustandi, 2022). This tension demonstrates that toilets are not simply an architectural issue, but rather a manifestation of ideological struggles over gender identity in public spaces.

Based on a legal perspective, Article 28J of the 1945 Constitution of Indonesia states that the exercise of human rights is limited by considerations of morality, religious values, security, and public order. This justification serves as a justification for the government and society to reject policies deemed contrary to prevailing religious norms (Arifin, 2020). The discourse on gender-neutral toilets in Indonesia is often linked to concerns about the normalization of the LGBTQ+ agenda, which is still widely considered contrary to positive law and local cultural values. In this context, human rights are not understood in an absolute, liberal sense, but must align with the fundamental human obligation to respect collective societal norms (Muhtadi, 2021).

The Maqasid al-Shari'ah perspective (the aim of Islamic law) provides an interesting analytical framework on this issue. One of the key elements in Maqasid is *hifzh al-nafs* (protection of the soul) and *hifzh al-muru'ah* (protection of dignity/honor). If gender neutral toilets are intended to protect individuals from violence, then there is an element of *maslahah* (benefit) in them (Auda, 2008). However, if the existence of these toilets actually triggers greater moral damage or a violation of *hifzh al-nasl* (protection of offspring and family), then the principle of *dar'u al-mafasid muqaddamun 'ala jalbi al-mashalih* (preventing damage takes priority over taking benefits) must be applied (Ramizah, 2021). It's important to recognize that public infrastructure in Indonesia has historically relied heavily on biological sex classification. Moving toward gender neutrality in sanitation facilities requires significant social engineering and economic costs, as well as the challenge of social acceptance. Sociological research shows that Indonesians generally feel uncomfortable sharing intimate private spaces with individuals who are biologically different, regardless of their gender identity (Nurhadi, 2023). This discomfort stems from the Islamic concept of *mahram*, which strictly limits physical interaction to maintain individual purity and privacy.

However, Indonesia also has a history of diversity that recognizes non-binary gender identities within certain local traditions, such as *the Bissu* in South Sulawesi. Ironically, this traditional recognition is often marginalized by modern religious puritanism and top-down universal human rights standards (Davies, 2010). The discourse on gender-neutral toilets forces Indonesia to rethink how these identities are managed in modern spaces without ignoring the aspirations of the majority. This dilemma demonstrates that the right to sanitation cannot be separated from the rights to safety and psychological well-being of the wider community (Cunningham & Jones, 2019). From an international legal perspective, UN-Water affirms that access to sanitation is a human right that must be safe, accessible, and provide adequate privacy (United Nations, 2010). The question is whether this privacy should be achieved through total segregation

or through gender-neutral architectural design that still ensures the cubicles are sealed from floor to ceiling. In Indonesia, this discussion remains very superficial and is dominated more by reactive sentiment than by a functional analysis of the needs of specific groups, such as people with disabilities who require assistance from the opposite sex or parents accompanying their children (Savitri, 2022).

Ultimately, this background reveals a regulatory and consensus vacuum in Indonesia regarding how to manage identity diversity in public facilities. This article seeks to fill this gap by evaluating whether gender-neutral toilets are acceptable if redefined not as "mixed" toilets, but as "unisex" or "family" toilets, which are already widely recognized in limited contexts. By synthesizing moderate Islamic values and contextual human rights principles, this research hopes to provide a middle ground for future sanitation policies in Indonesia that are inclusive while still respecting the nation's religious identities (Zuhdi, 2020).

METHODS

This study uses a normative legal research method *that* focuses on doctrinal studies to evaluate the synchronization between Islamic legal norms and international human rights instruments. The approaches applied include a conceptual approach *to* dissect the philosophy of *Maqasid al-Shari'ah* and gender identity, as well as a statutory approach *to* examine the relevance of Article 28J of the 1945 Constitution and the International Covenant on Civil and Political Rights (Marzuki, 2017). The use of this normative method allows researchers to conduct an in-depth analysis of primary legal materials such as the Qur'an, Hadith, and the constitution, as well as secondary legal materials in the form of academic literature and fatwas of scholars relevant to the discourse of public space (Soekanto & Mamudji, 2015). Through a systematic literature study, this study seeks to build a solid legal argument regarding the existence of gender-neutral sanitation facilities in the socio-religious order in Indonesia (Ibrahim, 2008).

Data analysis techniques were conducted qualitatively through legal reasoning *and* content analysis *methods* to synthesize two perspectives that are often considered contradictory. Researchers applied *the Maqasid al-Shari'ah* analytical framework to weigh the elements of benefit (*maslahah*) and potential harm (*mufsadah*) from the implementation of gender-neutral toilets, by referring to the principles of protecting human dignity (*hifzh al-muru'ah*) and protecting the soul (*hifzh al-nafs*) (Auda, 2008). In addition, the principles of inclusivity in universal human rights were used as a comparison to see the extent to which the dignity of minority groups can be accommodated without violating the norms of public morality prevailing in Indonesia (Muhtadi, 2021). This analysis process aims to produce a harmonious policy model, in which the right to privacy and security of every citizen can be guaranteed through contextual and adaptive legal interpretations to current developments (Diantha, 2017).

RESULT AND DISCUSSION

Dialectics of Inclusivity: A Human Rights Perspective on Sanitation Space

The research findings show that, from an international human rights perspective, the provision of gender-neutral toilets is not merely an architectural technical issue, but rather a manifestation of the fulfillment of the rights to privacy, dignity, and security for all citizens. Human rights instruments, such as the Yogyakarta Principles, emphasize that states have an obligation to ensure that every individual can access public facilities without fear of discrimination or violence based on their gender identity (O'Flaherty, 2015). In Indonesia, access to safe sanitation is part of the right to an adequate standard of living as stipulated in Article 11 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). When transgender or non-binary individuals are forced to use toilets that do not align with their gender expression, the risk of verbal and physical harassment increases significantly, which in turn violates their right to personal integrity (Sanders & Stryker, 2016). Therefore, the discourse on gender-neutral toilets is seen as an effort to deconstruct public spaces that have been designed only for binary categories, in order to accommodate real human diversity (Jones & Cunningham, 2020).

However, the implementation of universal human rights principles in Indonesia faces significant challenges related to the doctrine of "contextual human rights" adopted in national law. Article 28J paragraph (2) of the 1945 Constitution explicitly states that the implementation of human rights must be subject to limitations established by law with the sole purpose of guaranteeing recognition and respect for the rights and freedoms of others and to meet just demands in accordance with moral considerations,

religious values, security, and public order (Arifin, 2020). This means that the demands of gender minority groups for gender-neutral facilities cannot stand alone without considering the rights of the majority of society to feel comfortable and safe based on their religious values. This tension shows that inclusivity in the Indonesian context cannot be achieved through the imposition of Western liberal standards, but must instead be achieved through cultural negotiations that take into account social cohesion and public order (Muhtadi, 2021).

Islamic Perspective: Between Gender Segregation and Masalah Murlah

From an Islamic legal perspective, the existence of toilets is closely related to the etiquette of *thaharah* (cleanliness) and the protection of the genitals (*satar al-awrah*). The majority of Islamic scholars in Indonesia adhere to the principle of separating spaces between men and women (*gender segregation*) to prevent *khalwah* (being alone together in a secluded place) and *ikhtilat* (uncontrolled mixing) which have the potential to cause moral slander (Ibrahim, 2019). The concept of gender-neutral toilets in the form of open spaces shared by the opposite sex is considered contrary to the principles of *Maqasid al-Shari'ah*, especially in maintaining honor (*hifzh al-muru'ah*) and offspring (*hifzh al-nasl*). The prohibition on men from seeing women's genitals and vice versa is an absolute limitation in conventional Islamic legal tradition, so the existence of sanitary spaces that freely unite both sexes is difficult to gain religious legitimacy in Indonesia (Mubarok & Rustandi, 2022).

However, Islamic law is dynamic through the instrument of *maslahah mursalah* (benefit not specifically determined by evidence but not contrary to general sharia principles). If gender-neutral toilets are designed as individual spaces (one enclosed stall for one user) that do not allow direct interaction between the opposite sex, then the theological obstacles regarding *ikhtilat* can be minimized (Auda, 2008). In this context, the existence of "unisex" or "family toilets" can be seen as a form of benefit to protect certain groups, such as people with disabilities assisted by the opposite sex or parents with small children, while providing a safe space for individuals with gender ambiguity without violating sacred privacy boundaries (Savitri, 2022). The *Maqasid* approach emphasizes that the protection of the soul (*hifzh al-nafs*) from the threat of violence must take precedence over speculative concerns about moral damage, as long as the design of the facility still ensures total privacy (Ramizah, 2021).

Synthesis: Searching for a Hybrid Model for the Indonesian Context

This discussion concluded that the solution for Indonesia is not the elimination of binary toilets or the widespread imposition of gender-neutral toilets, but rather the provision of adaptive facility options. A hybrid approach that integrates Islamic values and human rights standards could be realized by providing a third, inclusive, yet enclosed toilet adjacent to the existing men's and women's toilets (Cunningham & Jones, 2019). This model meets human rights standards for non-discriminatory access without violating Islamic legal principles regarding the separation of private parts in public spaces. By providing more culturally neutral names such as "Individual Toilets" or "Disability and Family Toilets," resistance from conservative religious groups could be reduced because these facilities are no longer seen as ideologically motivated but as functional humanitarian needs (Zuhdi, 2020).

The transition to a more inclusive public space in Indonesia requires dialogue involving religious scholars, human rights activists, and public policy architects to formulate regulations based on *local wisdom*. Ignoring the voices of the Muslim majority will only trigger social conflict that is counterproductive to the protection of gender minorities themselves (Nurhadi, 2023). Conversely, a rigid understanding of religious texts without considering the dynamics of human needs is also inconsistent with the essence of Islamic law, which was revealed as a blessing for the universe (*rahmatan lil-alamin*). Therefore, gender-neutral toilets in the Indonesian context must be positioned as a legal compromise space aimed at protecting the dignity of every human being as God's most noble creation (Muhtadi, 2021).

CONCLUSION

Based on a comprehensive analysis of the discourse on gender-neutral toilets in Indonesia, this study concludes that there is a significant but not impossible tension between universal human rights principles and contextual Islamic legal doctrine. From a human rights perspective, the provision of inclusive sanitation facilities is mandated by the protection of human dignity and the right to security for gender minorities from the risk of discrimination and violence in public spaces (O'Flaherty, 2015). On the other hand, the Islamic perspective in Indonesia places the protection of public morality and gender segregation as top priorities to avoid *slander* and maintain the sanctity of social interactions (Ibrahim, 2019). This

tension indicates that the implementation of gender-neutral toilets cannot be adopted raw from the Western liberal paradigm, but must undergo a process of domestication of values in line with Article 28J of the 1945 Constitution, which limits human rights to religious values and national morality (Arifin, 2020).

This study proposes a "Moderate Accommodation" model as a middle ground, where gender-neutral toilets are implemented not as a replacement for the existing binary system, but rather as additional facilities that are individual and private. Through the perspective of *Maqasid al-Shari'ah*, providing a single enclosed cubicle that can be used by all genders (including those with disabilities and the elderly) fulfills the *maslahah* element of protecting the soul (*hifzh al-nafs*) and individual dignity without violating the principle of prohibiting mixing (*ikhtilat*) (Auda, 2008). Thus, inclusiveness of public spaces in Indonesia can be achieved without sacrificing the community's religious identity. Political will from the government and open dialogue between stakeholders are needed to formulate sanitation policies that respect diverse identities while upholding the divine values that are the foundation of the nation (Muhtadi, 2021).

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