

## **Rights and Obligation on Transgender Funeral**

By

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### **Abstract**

One of the rights of a human being is to get a proper burial when he dies. On the other hand, burying a human being is an obligation for the family of the buried person. The funeral procedures for men and women have principal differences in intentions/prayers and burial procedures, namely bathing, shrouding, praying, and burying the body. In reality, a group of transgender people change their gender from female to male or vice versa. This raises the question: What are the funeral rights for transgender women? Do you use the intention/prayer and funeral procedures according to their original nature or according to the results of the transgender person? This study uses normative legal research using an Islamic law approach and the Universal Declaration of Human Rights (UDHR), cases, and conceptual research on primary and secondary legal materials collected using a literature study. Based on the study's results, it was concluded that in the perspective of Islamic law, a human being had been created by Allah SWT according to their respective natures, which are certain and cannot be contested anymore. So, for adherents of Islam, Islamic law applies, which states that when a man changes his gender to a woman or vice versa, his funeral uses the intention/prayer and funeral procedures according to his nature, namely male. And the family must bury it using the intention/prayer and funeral procedures for men. It is different from the universal declaration of human rights, which stipulates the right to self-determination for everyone so that if such an event occurs, it is the full right of transgender people to choose the burial procedure for themselves. Likewise, obligations to the transgender family. Thus, ideally, funeral rights for transgenders follow their nature, but in reality, transgenders have the right to determine their destiny.

**Keywords:** Rights, Funerals, Transgender.

### **Introduction**

Every human being will go through 6 (six) phases of life. Starting from the spiritual realm (rukh enters into an agreement and receives a mandate from God the Creator), the womb realm (rukh is blown into the fetus and develops to become a human), the world realm (humans carry out promises and mandates), the *barzakh* realm (waiting for rewards or replies for the implementation promises and mandates), the afterlife (the human phase is responsible for the implementation of promises and mandates), and heaven/hell (a place of retribution/punishment for humans). Right now, we are all in the natural world. But remember, every human being will experience death and go to the *barzakh* realm. A person who experiences death will go through a funeral process that his family or other Muslims will carry out. The funeral process also varies depending on the religion, belief, and customs adopted by the person who died. In Islamic law, burial is not only interpreted as someone who dies buried, but there are a series of procedures, intentions, and prayers, which are the background of the burial process for humans. Usually, a man will be buried based on the procedure and intention/prayer, for men and women too. This makes burial a right that belongs to every person who dies, which carries an obligation for his family and other Muslims to bury the dead.

Currently, several groups claim to be transgender groups who change their gender from male to female or vice versa. Transgender is different from lesbian, gay, and bisexual, which are deviations from sexual patterns like the same sex. Transgender is a psychological deviation, namely personality. One of the transgender people who is also a well-known actress in Indonesia is Dorce Gamalama, who died on February 16<sup>th</sup>, 2022. As is known, Dorce Gamalama is a transgender who changed her gender from male to female. Before he died, Dorce Gamalama willed his family to bury himself using funeral procedures for men according to the demands of Islamic teachings. This has also become a controversial question among the public: how is the funeral process for transgender people when they die? Do you use funeral procedures according to the nature of origin or the results of transgender people? This issue is a social problem because it cannot be denied that there are transgender people who live in a social environment. Especially for families and Muslims who are subject to the obligation to bury the transgender.

Therefore, the authors are interested in examining the funeral rights of transgender people to provide an understanding of the ideal form of burial for transgender people. This research looks at the funeral process from the perspective of Islamic law.

## Method

This research is qualitative research with an Islamic law approach and a human rights approach in the universal declaration of human rights (in the future referred to as UDHR), which will analyze the data collected based on literature studies and then will be analyzed using content analysis methods to answer the problems that have been formulated.

## Result and discussion

### *Definition of Funeral*

Etymologically, according to the Big Indonesian Dictionary, burial comes from the basic word "*makam*", which means a place to live or a residence for the corpse. Meanwhile, in Arabic, "*makam*" comes from the word "*maqam*", which means place, status, or hierarchy. The place to keep the body in Arabic is called "*Qabr*". Not surprisingly, the word grave is often confused with the word tomb even though both have the same meaning: a place to bury or a corpse or tomb. Because the word tomb is added to the prefix "*pe-*" and the suffix "*-an*", it means process, namely the process of placing the body. So, what is meant by a tomb? Etymologically, "*corpse*" comes from the Arabic "*Janazah*", which means the corpse's body. In the Islamic encyclopedia, "*corpse*" means all things related to the funeral process and the shroud for the corpse. The word "*corpse*" comes from the Arabic language, "*al-mayyit*", which means the person who died. The word "*corpse*" in Arabic is general, so it is used for humans who die and for animals that die. However, in Indonesian, to refer to the human body that has died more often uses the word "*jenazah*".

In addition, life in the world is one of the life journeys taken by every human. The life after life on earth is life in the grave until every human being is resurrected to be collected on the last day. Thus, in addition to the process of placing the corpse into the tomb, burial is also an activity to deliver a human from life in the world to life in the grave. The correct burial process affects the delivery process for the deceased human being.

### *Funeral Process*

Talking about the funeral process is not only limited to placing the body into the tomb,

but some procedures and intentions/prayers are carried out before the activity and, of course, have something to do with the rights of the corpse that the family must fulfil, relatives, and friends who are *fardhu kifayah* which means if some Muslims take care of the corpse, then the other part of the obligation falls. In addition, the Prophet Muhammad SAW advised to hasten it. As for the rights of the corpse, namely bathing, shrouding, praying, and burying. These rights can be found in several hadiths of the Prophet Muhammad SAW. Here's the description:

a. Bathing the corpse. How to wash the corpse in Islam is explained in the Hadith History of Imam Ahmad as narrated by Yahya bin Al Jazzar where Aisyah Raidhayallahuanha heard the Prophet Muhammad SAW say, "*Whoever washes the corpse, he does it with a mandate, does not spread (tell) what is in the corpse when washing it, then he comes out of his sins like when his mother gave birth to him.*" He said, "*let him bathe by the person closest to you if he knows (well, the matter of the corpse). But if he does not know, then the person who bathes him should be someone who has the character of wara 'and trust.*" The Hadith explains the following:

- 1). The person who is most prioritized in washing the corpse is the family or the closest family;
- 2). People other than family can bathe the corpse;
- 3). The person who washes the corpse must be trustworthy, namely keeping a secret regarding what was found when washing the corpse;
- 4). The person who bathes the corpse must know the procedures for bathing the corpse.

Some of these things are basic principles that must be known by the person who bathes the corpse so that it can run properly and correctly in its implementation. One of the most important principles is the principle of trust. The body must be protected for its good name or disgrace, which the closest family only knows, be it parents, children, or siblings. Specifically for the intention of bathing the bodies of men and women, the readings of different intentions are as follows:

- a). The intention to bathe the male corpse, namely "*Nawaitul gusla adaa-an 'an haadzal mayyiti lillahi ta'aalaa*", which means "*I intend to bathe to fulfil the obligations of this (male) corpse because of Allah Ta'ala*".
- b). Intention to bathe the female corpse, namely "*Nawaitul gusla adaa 'an hadzihil mayyitati lillahi ta'aalaa*", which means "*I intend to bathe to fulfil the obligations of this (woman) corpse because of Allah Ta'ala*".

Bathing the bodies of men and women also has differences in the person who will bathe them, which of course, must be of the same type and have very close family ties to the corpse. Men's bodies should be bathed by their male families, and the same goes for women.

- b. Shrouding the corpse. The shroud process is carried out immediately after the body has been washed. Likewise, the person who shrouds the shroud is prioritized by the family or other trustworthy people who know the procedures for shrouding the corpse. Shrouding the corpse is to cover it from view and as a form of respect. Covering aurat and respecting it is an obligation while he is still alive, and so is when he dies. The kinds of shrouds are divided into three. The first type of shroud, the obligatory shroud (shroud *ad-Darurah*), is a garment that covers the entire body, where there is no deficiency in the lower part of the body.
- c. Second, a sufficient shroud (shroud *al-Kifayah*), namely two clothes that cover the whole body (no less below). The fabric and pleats should both cover the entire body.

Sufficient with both is permissible and not makruh. Third, the sunnah shroud (shroud *as-Sunnah*), namely clothing for men who have reached puberty and are nearing puberty according to Hanafi scholars and Fuqaha scholars from various schools of thought; clothes, fabrics, and covers or folds. The robe covers from the neck to the feet, without sleeves, and does not open on the chest and sides of the stomach. The bottom must not be as wide as a living person but parallel. Likewise, the cloth must cover the entire body, then wear a covering for the body from head to toe. The whole body was covered in 3 (three) clothes. Some things that are sunnah in shrouding the corpse include improving the shroud, namely by using a clean, fragrant shroud that can cover all the limbs, not what is forbidden like silk, and its use is not excessive. It is recommended to use a white shroud. For the bodies of men, there are three shrouds, and for the bodies of women, there are five shrouds. One of these fabrics should be one of those with stripes, if this is possible. Especially for the intention to shroud, there are differences between the bodies of men and women as follows:

- 1). The intention to shroud the male body, namely *Bismillaahi wa'ala millati rasuulillaah nawaitu takfina hadzal (hazihi) mayyiti fardhol kifayati lillahi ta'ala.*, which means that mentioning *the name of Allah and the religion of the Prophet, I intend to shroud this male corpse, fardhu kifayah, because Allah Ta'ala 'ala. O Allah, please bathe him with water, snow and dew.*
- 2). The intention to shroud the female body, namely *Bismillaahi wa'ala millati rasuulillaah nawaitu takfina hadzal (hazihi) mayyiti fardhol kifayati lillahi ta'ala.* This means that by mentioning *Allah's name and the Prophet's religion, I intend to shroud this woman's body, fardhu kifayah, because of Allah Ta'ala . O Allah, please bathe her with water, snow and dew.*
- d. Pray for the corpse. Praying on the corpse is *fardhu kifayah* for Muslims who attend it. As for the virtue of praying on a corpse, it is based on a hadith from Abu Hurairah RA, that the Prophet Muhammad SAW said, "*Whoever prays on a corpse and does not accompany it until it reaches his grave, he will get a reward of one qirath, and if he participates in accompanying it, he will get a reward of two qirath.*" *what do you mean by two qirath?"* Rasulullah SAW said, "*The smallest of the two is like Mount Uhud.*" (HR. Muslim). The intentions to pray for the bodies of men and women are as follows:
  - 1). Intention to pray for the male corpse, namely *Usholli 'ala hadzal mayyiti arba'a takbirotin fardho kifayatin imaman/ma'muman lillahi ta'ala.*, which means *I intend to pray on this corpse 4 (four) times Takbir fardu kifayah, as priest/mamm only because of Allah Ta'ala.*
  - 2). Intention to pray for the female corpse, namely *Usholli 'ala hadzahihil mayyitati arba'a takbirotin fardho kifayatin imaman/ma'muman lillahi ta'ala.*, which means that *I intend to pray over this woman's corpse four times takbir fardu kifayah, as a priest/mamm only because Allah Ta'ala.*
- e. Burying the corpse. The body is *fardhu kifayah*, burying the body in the ground so as not to smell the smell, not to be eaten by wild animals, and so as not to allow thieves to take the shroud easily. In burying a body, the things that are recommended in burying the body are as follows:
  - 1). Burying the body in a cemetery far from home. Because burying at home is only reserved for the bodies of the Prophets.

- 2). The burying person is entitled to be the imam of the funeral prayer. If he does not know burial methods, it is best done by Muslims who know about it.
- 3). Cover the grave with a cloth when placing the corpse in the grave to cover the corpse, both male and female corpses, and untied the shroud because the corpse is not tied except to prevent slipping. Especially for female corpses, it is sunnah to be covered with cloth curtains.
- 4). Entering the corpse from the side of his feet, if it is possible for the buryer, he may enter it from the side of his head.
- 5). Face the corpse towards the Qibla. It is intended that the corpse rest on his right side, and his face is facing the Qiblah.
- 6). The person who puts the body says: "*Bismillahi wa ala sunnati Rasulillahi.*" which means *in the name of Allah and based on the religion of the Prophet*".
- 7). For female corpses, it is better if the men who are not in a state of junub or have intercourse with their wives the previous night should take care of them.
- 8). Attaching the right cheek of the corpse and placing it on an obstacle, stone, or soil.
- 9). Put something behind him from the ground or other so that he does not fall and always faces the Qibla.
- 10). The person who attends the burial of the corpse should hold three lumps of earth on the grave by the side of the head of the corpse and then sprinkle them with both hands.
- 11). Standing at the side of the grave, praying for strength for the corpse, asking forgiveness for him, and ordering those present to do the same.

After burying the body, read the prayer "Allahummaghfirlahu warhamhu wa 'aafihi wa'fu 'anhu wa akrim nuzulahu, wa wassi' madkholahu, waghsilhu bil maa-i wats tsalji wal barod wa naqqihi minal kothoyaa kamaa naqqoitats tsaubal abyadho minad danaas, wa abdilhu daaron khoirom min daarihi, wa Ahlan khoirom min ahlihi, wa zawjan khoirom min zawjihi, wa adkhilkul jannata, wa a'idzhu min 'adzabil qobri wa 'adzabin naar.", which means O Allah, forgive him, have mercy on him, erase and forgive his sins, honour his place (is paradise) and widen his grave. Wash away his sins. "His guilt is as clean as a white cloth from dirt. Replace a house that is better than his former house. His family is better than his poor family, and enter him into paradise and keep him from the torment of the grave and the torment of hell fire.

Thus a series of intentions/prayers and procedures for burying the bodies of both men and women. The funeral is an activity to lead a human to walk to the next life in the grave. Therefore, the funeral process for the corpse must be under the Shari'a or law, which must be carried out according to religious demands and teachings so that the corpse gets the right to a proper burial for himself.

### ***Transgender***

Transgender is part of the acronym LGBT which means lesbian, gay, bisexual, and transgender. LGBT is a concept based on gender and sexual identity. Lesbian is a term taken from the name of the island of Lesbos, an island where women tend to be attracted to other women so that they are identified as lesbos/lesbi. A lesbian is a woman who chooses to bind herself personally (psychically and emotionally) with other women. Gay is a man who has an interest in men. Gays usually have intercourse by manipulating their partner's genitals by inserting the penis into the mouth (oral eroticism), using the lips (fellatio), and the tongue (cunnilingus) to tickle. Another method is manipulating the penis between the thighs (interfemoral coitus). A Bisexual is a person, both male and female, who has sexual attraction to both men and women simultaneously.

In contrast to all of that, a transgender is someone who wears gender attributes different from the socially constructed conceptions by society. To achieve this gender expression, transgender people can be assisted with surgery, hormone addition, or not. The characteristics of a transgender person are not uniform. Transgender, as we know, is divided into two. First, male-to-female transgender, also known as *waria* (women and men). Second, transgender female to male is also called *priawan* (male and female). However, the term *waria* is much better known than *priawan* in Indonesia because *waria* has been visible longer than the men who have just emerged. While transexual is someone who feels he has the wrong gender. For example, a person born with a vagina, but after growing and developing his soul and psychology, felt he was a man and underwent surgery to change his sexual organs. The emphasis on this transexual group is on the issue of biological sex.

### ***Rights for Transgenders***

The sources of Islamic law are the Qur'an, Hadith, and *Ijtihad*. Regarding sex change or transgender, behaviour is at least related to several arguments in the Qur'an. First, the word of Allah SWT in Surah Al-Hujurat verse 13 states: "*O humanity! Indeed, We created you from a male and a female and made you into peoples and tribes so that you may 'get to' know one another. Surely the most noble of you in the sight of Allah is the most righteous among you. Allah is truly All-Knowing, All-Aware.*" Based on these arguments and the Book of Tafsir Ath-Tabari, Islam has taught the principle of justice for all humans before Allah and the law that each gender has been determined, and this provision of Allah cannot be changed. A person must live his life according to his nature.

Second, the word of Allah SWT in the letter An-Nisa 'verse 119 states: "*I will certainly mislead them and delude them with empty hopes. Also, I will order them and they will slit the ears of cattle<sup>1</sup> and alter Allah's creation.*" And whoever takes Satan as a guardian instead of Allah has certainly suffered a tremendous loss." Based on these arguments and books of interpretation such as Tafsir Ath-Tabari, Al-Shawi, Al-Khazin (I/205), Al-Baidhawi (II/117), Zubat al-Tafsir (p. 123) and al-Qurtubi ( III/1963) mentions several human actions that are forbidden because they include changing God's creation as referred to in verse, such as castrating humans, homosexuals, lesbians, connecting hair with hairpieces, pangurs and buns, making tattoos, scraping eyebrow hairs and takhannus (a man dress and behave like a woman like a transvestite and vice versa).

In the context of Islam, gender reassignment can only be done to maintain life, including:

- a. Sex repair or refinement carried out on a person who from birth has had a sex defect, such as a perforated or imperfect testicle (penis) or vagina;
- b. The disposal of one of the multiple sexes is carried out on people who have two organs/sexes from birth.

Provisions for sex change other than the purposes mentioned above are things that are prohibited or forbidden by Allah SWT. No instrument of jihad can be used to justify transgender.

The legal consequences of gender reassignment, such as transgender, namely if a person changes sex with the aim of *tabdil* and *taghyir* (change the creation of Allah SWT), then his identity is the same as before operation and does not change from a legal point of view. He is still considered under the nature that Allah SWT has determined. For example, if a man changes

his gender to become a woman, then his inheritance rights as a man are not lost, and there are no inheritance rights for him as a woman.

Concerning funerals, as explained earlier, every Muslim who is buried will go through the process of bathing, shrouding, praying, and burying, which will be carried out by the family of the corpse where there are differences regarding intentions/prayers and procedures in carrying out the funeral process for the corpse. Male and female. In summary, here are the differences:

	<b>Man</b>	<b>Woman</b>
<b>Bathing</b>	<i>Nawaitul ghusla adaa 'an hadzal mayyiti lillahi ta'aalaa</i> , which means I intend to bathe to fulfil the obligations of this (man) corpse because of Allah Ta'ala.	<i>Nawaitul ghusla adaa 'an hadzihil mayyitati lillahi ta'aalaa</i> , which means I intend to bathe to fulfil the obligations of this (woman) corpse because of Allah Ta'ala.
<b>Shroud</b>	<i>Bismillaahi wa'ala millati rasuulillaah nawaitu takfina hadzal (hazihi) mayyiti fardhol kifayati lillahi ta'ala</i> , which means by mentioning the name of Allah and the religion of the Prophet, I intend to worship this man's corpse, fardhu kifayah, because of Allah Ta'ala. O Allah, please bathe him with water, snow and dew. For the bodies of men, there are three shrouds.	<i>Bismillaahi wa'ala millati rasuulillaah nawaitu takfina hazihi mayyiti fardhol kifayati lillahi ta'ala</i> , which means by mentioning the name of Allah and the religion of the Prophet, I intend to worship this woman's body, fardhu kifayah, because of Allah Ta'ala. O Allah, please bathe him with water, snow and dew. For the female corpse, the shroud is five strands.
<b>Pray</b>	<i>usholli 'ala hadzal mayyiti arba'a takbirotin fardho kifayatin imaman/ma'muman lillahi ta'ala</i> , which means I intend to pray on this corpse 4 (four) times takbir fardu kifayah, as an imam/mammum only because of Allah Ta'ala.	<i>usholli 'ala hadzahihil mayyitati arba'a takbirotin fardho kifayatin imaman/ma'muman lillahi ta'ala</i> , which means that I intend to pray on this woman's body four times takbir fardu kifayah, as an imam/mammum only because of Allah Ta'ala.
<b>Bury</b>	Not covered with cloth curtains.	Cloth curtains.

The intention has an important function in acting. In the Hadith narrated by Bukhari and Muslim, it is stated that the Prophet Muhammad SAW stated that *"Indeed every act is rewarded according to his intention, and indeed everyone will get a reward according to his intention, so whoever emigrates for Allah and His Messenger, then his emigration is for Allah. and His Messenger, and whoever emigrates for worldly affairs, or for a woman whom he wishes to marry, then his migration is for what he intended."* The Hadith shows that every action is meaningless in the Shari'ah if an intention does not accompany it. It is the intention that distinguishes between actions that are legal (accepted by the Shari'a) and actions that are not legal (not accepted by the Shari'a). Meanwhile, the procedure is the act of carrying out the intention that must be carried out based on the shari'a or the law that has been determined. Each ordinance has its meaning and purpose.

The funeral process for the bodies of men and women has different intentions/prayers, especially regarding mentioning a male corpse or a female corpse as an object for burial. If the intentions/prayers and procedures carried out by the people who carry out the funeral process for the corpse are carried out according to the Shari'ah, then surely the intention/prayer will be

granted and heard by Allah SWT so that it is worth the reward, however, if it is wrong or even based on prohibited actions, then instead of getting a reward but getting punishment from Allah SWT. Punishment also applies to families or Muslims who carry out funerals that are not under the nature of transgender origin. Human rights are a gift from God Almighty so that a transgender person has the right to undergo the funeral process according to the nature given by Allah SWT and not based on the results of the transgender.

In contrast to Islamic law, the UDHR emphasizes the right for everyone to receive recognition before the law as a person wherever he is and is entitled to equal treatment and legal protection without discrimination. A transgender person is a human being who also has human rights that the state must protect. This is what makes 31 (thirty-one) countries legalize the practice of LGBT as a form of protection for human rights. Every transgender has the right to be considered a complete human being who can determine his destiny. The consequence of this normative reality is that the funeral process that will be carried out for the transgender person can follow the results of the transgender or under the choices made by the transgender itself.

Indeed, a transgender corpse who changes his gender must use the intention/prayer in accordance with Allah SWT's nature. It can't then be based on the gender of the transgender result. Because basically, he was created according to his original nature and will return to his original nature. However, if the transgender has changed or performed genital surgery, both breast and pubic, then the procedures used for bathing, shrouding, praying, and burying use procedures based on the results of the transgender person. This is to maintain the shape of the genitalia that the transgender has changed. This condition only excludes the procedure, but the intention/prayer remains under its original nature.

If buried according to the results of a transgender person who is not based on reasons justified by Islamic law, the body will receive punishment. Likewise, with the family of the transgender corpse or the Muslims who bury the transgender, if they justify the funeral process according to the transgender results of the transgender who died, they will also bear the punishment because they are considered to justify the prohibition of Allah SWT. It is an obligation for families or Muslims who bury them to carry out the funeral process according to the original nature of the transgender so that they can live their next life well.

## **Conclusions**

The funeral process is placing the corpse into the tomb to deliver a human from life in the world to life in the grave. In the funeral process, there are several stages, namely bathing, shrouding, praying, and burying the body. Each of these stages has an intention/prayer and procedure according to the gender of the body to be buried. Transgender is an act that Allah SWT prohibits because it denies the predetermined nature, so every transgender should be buried with the intention/prayer and procedures according to the gender, which is the nature of origin and not based on the gender of the transgender. This also protects the bodies to be buried as well as the families and Muslims. They bury them from punishment if they justify transgender practices that are contrary to Islamic law.

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