

# **Discrimination Against Transsexuals in Accessing Public Services : A Review from The Perspective of Human Governance**

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## **Abstract**

This article is intended to provoke discourse about male to female transsexual or transvestite rights to obtain basic public services. The issue is particularly interesting to be appointed, because it is in accordance with the latest paradigm in public administration that embrace the values of human rights and democratic principles or known as the Human Governance. Transvestites or men with the appearance of women are considered as a form of social deviation so that their existence are not accepted by society. As a result, transvestites are marginalized and forgotten in the delivery of public services. Their civil, political, economic and social rights are not recognized by the State. This article aims at giving the recommendation on how to position the public administration when faced with the question of rights of the transvestites and how this issue is reviewed from the perspective of Human Governance.

Keywords : discrimination, transvestites, public services, human governance

In society, there is a group of people who are not reached by the public service because of their physical characteristics. One of them is those commonly known as waria or transvestites or people who were born men but feel as women that they live like women. Transvestites are part of transsexuals or male to female transsexuals that considered as a form of social deviation so that their existence is not accepted by society. As a result, transsexuals are marginalized and forgotten in the public services. Their civil, political, economic and social rights are not recognized by the State.

Actually, the transsexuals in Indonesia have received assurances of protection by the enactment of Law No. 39/1999 on Human Rights. Article 3 paragraph (3) states, "Everyone is entitled to the protection of human rights and basic human freedoms, without discrimination". Although there is a strong legal basis for the transsexual to obtain fair treatment from the state, in reality they have not been treated like other citizens, accessibility to basic public services has not been granted by the government of Indonesia.

Oetomo (2004) states the biological rights of transsexuals are always considered pathological, anomalies, or abnormal, because of that they are removed from social life. Yuliani and Demartoto (2006) identified several forms of discrimination against transvestites in accessing basic public services in Surakarta as:

- difficult to get identification cards with the identity as transvestites;
- difficult to be accepted as students in formal educational institutions or as an employee in both public and private institutions; barrier to accessing health services;
- difficult to utilize public facilities and infrastructure such as public transport or public toilet;
- often exposed to violence and sexual abuse , verbally and physically, by security and public order.

Pooling by Stonewall on 1658 lesbian, gay and bisexual throughout the UK in 2007 finds that:

- one out of five LGBT suffer ill-treatment when applying for public housing,
- 60 percent of respondents have problems when wanted to be a judge;
- one in four thought that would be treated worse if reported to the police as victims of violence because of hatred,
- almost one in five are still oppressed in work place for being a gay(stonewall.org.uk, 2007).

A research carried out by The William Institute School of Law UCLA in the US during 2008-2009 addresses that there has been a widespread pattern of unconstitutional discrimination by state governments on the basis of sexual orientation and gender identity. The research also finds that there is no meaningful difference in the pattern and scope of employment discrimination against lesbian, gay, bisexual, and transgender (LGBT) people by state governments compared to the private sector and other public sector employers” (<http://williamsistitute.law.ucla.edu>).

Finally, the recent research by Green reported in March 2012 finds that :

- 76.5 percent of 268 LGBT respondents have experienced verbal violence like namecalling
- 44 percent of respondents have experienced harrassment by their superior or co-workers , 44.16 percent forced to quit from their job
- 41 percent of respondent experienced harassment or violence by a school friend, 14.2 percent by teachers, and 6.3 percent forced to quit from school
- 13.4 percent had abused by health care workers, 8.6 percent by police, 7.5 percent – at least once - had been forced to stop by the highway police just because they're a transvestite

It is obvious that discrimination against transsexuals, transvestites in particular, are everywhere in any cultural environment. As the part of the community, transsexuals have the same civil rights, political, economic, social and cultural rights. Transsexuals deserve of being recognized, need a job to support their lives, need to interact with each other in a social and cultural activities, and other human needs in general. As human beings they also need to get the public services , just like other citizens.

The transsexual is a person who is different from the side of her sexual identity. This difference should not be a reason to restrict their access to public services. The denial of civil rights is a violation against human rights, thus contrary to the current paradigm of public administration that respects human rights and democratic principles or Human Governance.

This article aims at giving the recommendation on how to position the public administration when faced with the question of rights of the transsexual and how this issue is reviewed from the perspective of Human Governance.

## **The discrimination of transsexuals in public services and its causes**

Discrimination against transsexuals in accessing public services can be traced from many factors. Determinant factors are the culture and structure of a society that dominated by patriarchal values. Transvestites are not only regarded as physically strange, but also considered as a sinner or a person who is cursed by God for being attracted to the same sex or homosexual. Homosexuals are minority in society, because their sexual preference to his fellow man is considered unusual or deviant.

In patriarchal culture, the sexual relations that are considered normal are heterosexual. Non-heterosexual relations are categorized as a violation of religion and state law. For this reason, Foucault (in Castell, 1997) argues that sexuality is socially constructed. Control of human sexual desire through regulations or rules laid the basis of social institutions as well as a channel of punishment and domination of the organization.

Similar to Castell, Joffe (in Epstein, 1988: 119) stated that the law and public policy have organized the interaction between men and women who are most intimate. The law regulates the sexual relations that permitted by the state. Law in many countries is also used to control women and other minority groups, including transsexuals. In some countries this control is accompanied by the threat of sanction or penalty that imposed by the courts. Even to enforce gender roles expected by moral values, states often use force and violence approach.

Considering the reality of eastern culture that upholds the values of religion, the hope of transsexuals to be legally accepted almost like utopia. Although the need for affection and sexual desire is a natural need, no state agency or moral institution will allow people to openly express their nonheterosexual sexuality. Discrimination against transvestites proves that a public facility that is easily accessible to most people and almost accepted as something that already exists on its own and can be used any time of need, turned out to be a luxury item and hard to reach for a group of people who considered 'deviant'.

The physical and gender conditions of transvestites that is considered as deviates from rigid categorization of socio-cultural or religious values become the justification for the discrimination, resulting in the denial of access to their rights and public obligations. The dichotomy of human being into two sexes (male and female) and two types of gender identity (masculine and feminine) have led the male to female transsexuals to be categorized as 'abnormal' human being.

Lukmantoro (2006) mentions that the categorization of "normal" and "abnormal" is an effort to standardize the value. Benedict (in Dananjaja, 2003) argues that there is no valid criterion about the type of "normal" and "abnormal" personality. A normal personality is the one that is in accordance with the dominant personality type. Those who are not in accordance with the dominant personality type would be considered "abnormal" or deviant.

If the value of standardization was legalized in the form of law or legislation, then there is a justification to punish people that are considered abnormal, unconventional, and eliminated. The punishment can be in a form of discrimination against transsexuals. This can be manifested in an exclusion or removal of their access in basic public services.

Another example of discrimination is the difficulty to have a recognition by mentioning their identity as a transsexuals in their identification card (ID card). This is

derived from the difference in perspective or misunderstanding of the transsexuals "sense of identity". State officials, or society in general, see the transvestites more from their physical appearance, and therefore consider them as men, not women.

On the one hand, abuses against male to female transsexuals in the form of raids, sexual harassment, non-recognition of the identity, difficult access to basic public needs such as education, health, employment are not seen as a form of human rights violations, but even accepted as a reasonable treatment or as a form of punishment for their behavior. On the other hand, the provision of such public services for transsexuals by the State would be considered as a form of an acceptance of the state to the "abnormal" behaviors that conflict with or violate the moral standards as well as the social and religious values.

This condition then raises some further questions. Can state limit the access of certain community group to get the public services based on the standard value of the majority? Doesn't this violate the democratic values and human rights?

### **Transvestites and Public Services : A Human Governance Perspective**

The cause of discrimination against transsexual is homophobia in most societies, including among public officials. Faiz (2004) states that a democratic society based on the principles of pluralism and egalitarianism. Everyone is treated equal, as far as not doing things that harm others. Discrimination in accessing public services on the basis of sexual orientation and gender identity is no longer in line with the current paradigm of public administration that respect human rights and democratic values or known as democratic or human governance.

Human governance (Baccini, 2005; EUPAN, 2005) is the administration with a human face or the humanization of public administration. This perspective appreciates the individual as a whole and the fundamental values of democracy and human rights as the main principle. Nasahsh (2010) states Human Governance emphasizes the values, norms and knowledge that compatible with the principles of good governance, with a focus on democratic governance based on respect for human rights and fulfill all the needs of its citizens.

According to human governance perspective, the denial of the right of transsexual (or transsexual in general) to obtain basic public services is a violation to human rights. The basic function of a state is to respect, to protect, and to fulfill human rights (United Nations Population Funds – unfpa.org). The principles of human rights include the following:

- **Universality and inalienability**

Human rights are universal and inalienable. Article 1 of the Universal Declaration of Human Rights states, "all men are born free and have the same dignity and rights." Based on this principle, the transsexual as a person has had a fundamental right as human beings with dignity and entitled to be treated equally with other humans. The inherent dignity and rights as human beings cannot be revoked and denied by the State. Therefore, regardless of their odd appearance, transvestites remain eligible for public services and the state have to guarantee the protection of their rights to live as a dignified human being.

- **Indivisibility**

Human rights cannot be divided. Within every human being inherent the civil, cultural, economic, political and social rights . All human rights have an equal footing and cannot be ranked in a hierarchical manner. This principle obliges the State to guarantee the civil, cultural, economic, political and social development of all its citizens, without exception. All of this right shall be granted by the State in a parallel position. The State does not have the right to remove transsexuals civil rights simply because of their “abnormal” sexual orientation and gender identity.

- **Nondiscrimination and equality**

As human beings, all individuals are equal. All human beings have equal rights without discrimination on the basis of race, color, sex, ethnicity, age, religion, politics, and other identities. This principle clearly stated that any form of discriminations are contrary to the values of human rights. The denial of the right of transsexuals to obtain basic public services on the basis of gender identity and sexual orientation is clearly contrary to the principle of non-discrimination and equality.

- **Participation and inclusion**

Every person has the right to participate actively, freely and meaningfully, and receive the benefits of economic , social, cultural and political development. These principles laid the basis for the transsexuals to get the same opportunities and facilities in order to develop their potential capability and contribute to the development of the nation and the State.

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Based on the principles of human rights, it can be concluded that human governance is a human-based model of governance of public affairs, which is based on the principle that the human being as the main focus of the perpetrators and beneficiaries of public services. All human beings are entitled to the same public services without discrimination based on race, color, sex, ethnicity, age, religion, politics, and other identities. United Nations (2006) formulate the main indicator of a rights-based governance includes participation as a means and goals, empowerment as a strategy, and programs focused on the realization of the rights of the risky groups such as disadvantaged and marginalized groups.

Governance which is based on the values of humanism, would not make the interest and the standard value of the majority as a standard for determining whether a person is eligible or not for public services. The state must protect all citizens and enhance their status and dignity as human beings. To get public service is the right of all citizens. Wetzel (in Walker 2004) states that in a system-based on human rights, the State is obliged to create conditions in which the laws can be enforced so that each individual is free from human rights violations, whether conducted by the State itself or by other parties.

Transsexuals as human being have dignity and equal rights just like other human beings. They have right to live, to get a guarantee of their future, and live as they wish. Society and the State are not entitled to compel by force so that they are subject to the rules of 'normality' according to the standards of the majority. State cannot take their rights to live

according to their true identity. Just because physically male to female transsexuals or transvestites look different from the rules of society, does not mean that the State is authorized to write off their rights as beneficiaries of public services.

Although transvestites are considered as deviate from moral values and religion, but after all as humans, they are entitled to be treated humanely. To that end, the state is obliged to provide basic needs, as long as these services do not conflict or harm the sense of faith or religiosity of the public, such as the delivery of health services, education, and public facilities that are sensitive to the 'sense of identity' of the transvestites.

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### References

- Blackwell, Christopher.W.; Ricks, Janice L.; and Dziegielewski, Sophia F.(2004). *Discrimination of Gays and Lesbians: A Social Justice Perspective* . Journal of Health & Social Policy, Vol. 19(4)
- Castells, Manuel. (1997). *The Power of Identity*. Blackwell Publisher. Massachusetts.
- Danandjaja, James. (2003). Homoseksual atawa Heteroseksual ? in Srinthil Media Perempuan Multikultural : *Menggugat Maskulinitas dan Femininitas*. Kajian Perempuan Desantara. Jakarta.
- Epstein, Cynthia Fuchs. (1988). *Deceptive Distinctions : Sex, Gender And The Social Order*. The Russell Sage Foundation. New York.
- Faiz. (2004). *Lebih Memahami Para Transeksual*. Article in Kompas 9 August 2004
- Gree, Melissa.S., (22 March 2012). *Anchorage LGBT Discrimination Survey:Final Report*. Identity,Inc. Anchorage, Alaska. ([http://alaskacomunity.org/wp-content/uploads/2012/03/akq\\_final\\_report.pdf](http://alaskacomunity.org/wp-content/uploads/2012/03/akq_final_report.pdf)). Accessed on 5 April 2012
- Lukmantoro, Triyono. (2006). Membongkar RUU Pendemoralisasi Perempuan. Article in Kompas 29 May 2006.
- Nasahsh, Hyam. (2010). *Toward Human Governance in Public Administration Through Quality of Education*. Paper presented in 2010 United Nations Public Service Day – Awards Ceremony and Forum “ The Role of Public Service in Achieving the Millenium Development Goals : Challenges and Practices”. 21-23 Juni 2010. Barcelona. Spain.
- Suwarno, Bambang. (2004). *Transeksual Minoritas Yang Terlupakan*. Article in Kompas 26 Juli 2004
- Yuliani, Sri. (2010). *Menguak Konstruksi Sosial Dibalik Diskriminasi Terhadap Waria*. Journal DILEMA. Departement of Sociology FISIP UNS Vol.18 No. 2.
- and Demartoto, Argyo. (2006). *Aksesibilitas Waria Dalam Memperoleh Pelayanan Publik Dasar di Kota Surakarta*. Penelitian Dosen Muda (Research report).
- Documenting Discrimination on the Basis of Sexual Orientation and Gender Identity in State Employment* (<http://williamsinstitute.law.ucla.edu/wp-content/uploads/ExecutiveSummary1.pdf>). Accessed on 30 Maret 2012.
- Human Rights Principles* (<http://www.unfpa.org/rights/principles.htm>). Accessed on 1 April 2012
- Serve You Right, Lesbian and gay's peoples expectations of discrimination* .( <http://www.stonewall.org.uk/documents/serveyourright.pdf>). Accessed on 1 April 2012.

United Nations. (2006). *Frequently asked questions on a human-rights-based approach to development cooperation* – Office of The United Nations High Commissioner for Human Rights.

UU No 39 Tahun 1999 tentang Hak Azasi Manusia