

# Discrimination and Legal Protection of Transgender: What Can We Learn?

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## ABSTRACT

This article aims to describe the discriminations experienced by transgender and explore the regulations addressing it. Transgender is a sexual and gender minority under the group of LGBT (Lesbian, Gay, Bisexual, and Transgender). This study is a literature review exploring data collected from several source documents such as articles published in national and international journals, mass media, and other various related reports. Transgender, like other minority groups, experience several unpleasant and discriminatory treatments. Transgender categorized as the most vulnerable due to their high level of visibility to be identified compared with other parts of the groups. They experience such discrimination is not only in their private domains like in their family and neighborhood but also in the public environment such as workplaces, schools, and other public service areas. We all know that all laws prohibit any forms of discrimination, yet not many countries having specific legal protection addressing this issue were found, including Indonesia. The exploration result of this study contributes awareness to all of us, more specifically to the government, to have more insights about advancing social justice for all, including transgender as vulnerable groups.

**Keywords:** *Transgender, discrimination, legal protection*

## 1. INTRODUCTION

Transgender, also known as transsexual, is an inclusive terminology referring subgroups such as genderqueers, crossdressers, transsexuals, drag kings, drag queens, and gender non-conforming people [1,2]. In Indonesia, this transgender group is known by several other names such as *waria*, *wadam*, *wandu*, *calabai*, and *bencong* [3]. Transgender is part of a sexual and gender minority group known as the LGBT (Lesbian, Gay, Bisexual, and Transgender). The first three groups, Lesbian, Gay, and Bisexual, refer to sexual orientation related to a person's sexual behavior, while transgender refers to gender identity related to gender expression and behavior that is different from congenital sex at birth [4]. Transgender is a term used to describe people who live and feel they have a gender identity that is incompatible with their innate gender at birth [5,6]. The antonym of transgender is cisgender, a term used to describe people who have a gender identity and gender expression that matches their innate gender at birth [7,8]

The transgender group is the most easily recognized group due to their distinctive appearance and style appearance. Their typical appearance and style include having long hair, dressing up, wearing women's clothing

for a boy group, and vice versa. Physical appearance and gender expression which are very different from the innate gender identity that determines this transgender group are very easy to recognize [9,3] and the public is easier to identify [10]. The high visibility of this transgender group leads them to be the most vulnerable group to experience violence and various unpleasant as well as discriminatory treatment compared with the other three groups, Lesbian, Gay, and Bisexual [9,3,10]. The negative stigma and marginalization in various areas of life from personal relationships to health services because of their gender identity create the uneasy life of the transgender groups [11,12].

Some countries have committed to protecting LGBT gender and sexual minorities from discrimination and ensuring equal rights. There are at least five countries in the world that have a constitution that protects gender identity from discrimination [19]. Several countries including Australia have also committed to protecting gender identity from discrimination through special laws [20]. This article aims to describe various phenomena of discrimination experienced by transgender groups and explore the aspects of legal protection related to these issues.

## 2. LITERATURE REVIEW

Studies and researches on discrimination and legal protection for transgender have often been carried out in Indonesia. Similarly, studies on transgender have also been carried out in many other countries. The International Bar Association and LGBTI Law Committee (2014) which examines various legal issues and transgender rights in various countries report that only a few countries have legislation related to transgender [20]. More specifically, the legislation referred to includes matters relating to safeguarding transgender against discrimination, recognition of self-perceived gender identity in personal documentation, and a guarantee of their right to access gender reassignment surgery or any other medical procedure required for the reconstruction of gender expression. A policy investigation related to transgender in nine federal government institutions of the United States coding a policy design with five main categories: the transition process, privacy and comfort issues, distraction and discipline, proactive resources and programs, and document details. The results showed that the category of policy design that had the most proportion was transition processes, while the category of proactive resources and programs was the least [21].

Various unpleasant treatment and discrimination experienced by transgender groups can be categorized as violations of human rights. It should be understood that transgender groups have no difference from cisgender and any other individuals in terms of human rights that are inherent as well as to experience the same life without exception [13,14,15]. In Indonesia, in 2017 there were 973 victims of cases of stigma, discrimination, and human rights violations targeting LGBT people. Of the 973 cases, the transgender group ranks the highest with a rate reaching 73.86% [16]. Despite the law in Indonesia prohibits all forms of discrimination, there are no laws that clearly and specifically prohibit discrimination that targets transgender groups and other sexual and gender minorities [9,13,17].

Muthmainnah [18] explained that the law in Indonesia has not yet recognized the existence of human rights for LGBT groups [18]. The problem of the absence of explicit legal protections for transgender people is further complicated by the existence of various government policies that are still dominated by homophobic views. This view discredits LGBT sexual and gender minorities that LGBT as deviant sexual behavior and must be punished through state policy. Apart from having to face the problem of discrimination and the absence of legal protection, transgender groups also facing the absence of legal recognition of their gender identity. Transgender people as a minority group are still covered with various issues of discrimination. Also, the legal protection of the state is still far away from protecting this vulnerable group.

## 3. METHODS

The data collection for this study was performed by reviewing various sources related documents [22]. In this case, the data sources used include articles published in national and international journals, news from the mass media, and activity reports from various sources. The analysis technique implemented is a qualitative descriptive technique defined as a technique for analyzing by summarizing and describing various data that has been collected following the subject or the problem of the study [23].

Two main research questions raised are the types and impacts of discrimination experienced by transgender groups that have occurred in Indonesia and how the government protects these transgender groups. The context of legal protection here means legal protection in the form of policies or products such as laws and court decisions that comprehensively recognize the identity of transgender groups and provide protection from all forms of discrimination. The findings of this review are expected to contribute to increasing the awareness of all of us, especially the government, to have more insight into advancing social justice for all, including transgender groups.

## 4. RESULTS AND DISCUSSIONS

### *4.1. Transgender Discrimination in Private and Public Spaces*

Discrimination incidents experienced by transgender groups occur in private spaces such as families to public spaces such as schools, workplaces, and health services. A study involving 27,715 transgender people in the United States showed that 50% of respondents who had come out to their family experienced rejection from their families. Such rejection include being ignored or terminated, being expelled from home, being treated violently, prohibited from wearing clothes that were assumed related to gender identity, are sent to a therapist, counselor, or religious advisor to stop them from becoming transgender [24]. Furthermore, from research involving 106 transgender women at Sanggar Swara Jakarta, 78.3% of them did not have family support, 36% had extreme family relations and 64.1% did not have peer support [25].

Transgender group also experience discrimination and unpleasant treatment in the public sphere. Based on monitoring and research on the news on issues of LGBT sexual and gender minorities in online media [26], from January to December 2017, there were 973 people from LGBT sexual and gender minority groups who were victims of stigma, discrimination, and violence. Of the 973 victims, transgender people (mainly transgender women) became the group with the highest number of victims, reaching 715 victims or around 73.86%. A national survey conducted in December 2017 showed that 87.6% of respondents felt very and quite threatened by LGBT. This

increases from the previous survey in September 2017 of 85.4%. From the survey, 79.1% of respondents objected to LGBT people being their neighbors, and the majority of them also objected to LGBT people becoming government officials [27].

Several forms of discrimination experienced by LGBT sexual and gender minorities in Indonesia. This form of discrimination is categorized into several categories: discrimination through discriminatory policies in the form of discriminatory regional regulations, proposals for the death penalty and imprisonment, for criminalization, for anti-LGBT socialization, proposals for torture, and homophobic regional policies. Although these policies or regulations have not been legally passed or are still in design, they are likely to be passed and have an impact on transgender groups [10]. Transgender groups are also victims of violent murder. Globally, The TDoR's latest 2019 report noted that 331 cases of transgender homicides occurred between 1 October 2018 and 30 September 2019 in Brazil, Mexico, and the United States. This evidence brings the total number of homicides against transgender people to 3314 recorded cases from 74 countries around the world during the period of 1 January 2008 to 30 September 2019 [28]. By 2020, at least 22 transgender people in the United States were shot or killed in other heinous ways [29]. In Indonesia, in 2014-2019, there were 24 cases of murder of transsexuals recorded [30].

The latest case is the burning alive of a transgender named Mira to death which is located in North Jakarta [31]. In addition to the arson case that killed a transgender, Mira, occurred in 2020, other cases of atrocities such as beatings and persecution targeting transgender groups have also been found in Indonesia. In 2016 for example, the Al-Fatah Waria Islamic Boarding School in Bantul Yogyakarta was closed by government officials after previous meetings involving Pesantren managers, representatives of residents, Front Jihad Islam (FJI), RT, RW sub-district officials, and police discussing the claims on the existence of this Islamic boarding with claimed as no permit, disturbing residents, and against Islamic values [32]. Then, in 2018, CNN released news reporting two transgender in West Java who claimed to have been beaten, shaved, and even stripped naked by a group of people [33]. There have also been cases of mob attacks called 'raids' by law enforcement officers in 2018. In 2018, three transgender people in Lampung were raided by the local Satpol PP and sprayed with water with a fire engine [34]. Still in the same year and the perpetrators are also from the government, 12 transgender women in North Aceh were arrested by the police and the Sharia police to be 'nurtured' [35]. A report published by the Community Legal Aid Institute also presented a profile of perpetrators of stigma and discrimination against LGBT sexual and gender minorities in Indonesia [36]. Schools that are supposed to be safe places for everyone are also scary places for transgender people.

A study result shows that 12% of respondents have come out when they are at school between Kindergarten and Grade 12 (K-12) and 77% of them have experienced

unpleasant treatment at school such as verbal harassment, physical attack, sexual assault until expelled from school. Of all respondents who had come out while in the K-12 period, 54% were verbally harassed, 24% were physically attacked, and 13% were sexually assaulted because they were transgender. In fact, as a result of the cruel treatment, 17% of them left school [37]. Workplaces and public service places are also places that are often not transgender-friendly. According to the PRIDE Survey 2014 examining discrimination based on sexual orientation and gender identity in the workplace in Indonesia, involving 408 respondents, 69.12% of respondents feel uncomfortable working under a transgender boss and 67.65% of respondents feel uncomfortable working with transgender colleagues [9].

A study reported that 33% of respondents had experienced discriminatory and unpleasant treatment because of their gender identity when visiting doctors or other healthcare providers [37]. The forms of negative treatment experienced range from being treated harshly, verbally abused, to not being served. The access to identity cards shows that 68% of respondents do not have any ID or record that reflects both the name and gender they preferred and 32% of respondents who show ID with names or gender that do not match their presentation experience unpleasant treatment such as harassment and denied services. Moreover, a study in 2017 tried to determine the level of access and ownership of KTP and BPJS Kesehatan by MSM (Men Like Men) and Transgender people also found similar things showing that out of a total of 1,900 respondents spread across 4 cities in Indonesia with a proportion of 911 MSM and 149 transgender, only 77.9% (n = 1481) have a KTP and 20.7% (n = 564) have a BPJS Kesehatan [38].

Transgender people who often experience raids on the pretext of maintaining public order are often targeted for physical, psychological, and even sexual violence in their police custody [9]. Over the years, Indonesian authorities have committed violence against the LGBT community with public arrests and convictions [39]. Discriminatory treatment in legal processes, such as arbitrary detention, torture, and extrajudicial executions, is also often experienced by transgender people [40]. A report from 2006-2018 highlighted about at least 1850 cases of persecution against transgender people that were not resolved by the authorities [41].

Table 1. Discrimination of Transgender in Private and Public Sphere

No	Private Sphere	Public Sphere
1	Treated rudely	Verbally and sexually abused
2	Not allowed to express their gender identity	Raided and arrested arbitrarily
3	Forced to stop being a transgender	Assaulted, tortured, killed, and persecuted
4	Forced to consult or seek a treatment related to their gender identity	Forbidden to gather and arrange religious activities
5	Their presence is denied or is not recognized as a family member	not being served in a public service facilities
6	Getting kicked out of the house	Marginalized and affixed with various negative

#### **4.2. The Impacts of Discrimination for Transgender**

Transgender people in Indonesia experienced to leave their homes to avoid harsh treatment from their families, and as a result they are unable to produce KTPs which required a family registration process [42]. Further consequences include issues that have a bigger impact, namely difficulties in getting a formal job or access to social services [9]. Exposure to gender identity-based discrimination has the most significant effect on stress-related to suicidal thoughts. Exposure to higher gender identity has twice the chance of higher rates of depression and eight times more likely to experience stress-related suicidal thoughts when compared with lower discrimination [43]. Also, high discrimination and low family support increase the risk of poor quality of life [25]. In addition, when compared with cisgender adolescents (cisgender youth matched control), transgender adolescents have two to three times the risk of suffering from depression, suicide, and various other mental health problems [44].

Transgender people who were expelled from home are 43% more likely to live in poverty, 3.5% more likely to live with HIV, and 66% more likely to have attempted suicide when compared with transgender who is not kicked out of the house. Furthermore, transgender people who experience rejection from their families are 40% more likely to experience homelessness and 49% more likely to commit suicide when compared with transgender not experience rejection from their families. Transgender people who have experienced unpleasant treatment at school are 52% more likely to attempt suicide and 40% more likely to experience homelessness when compared with transgender people who do not receive unpleasant

treatment. Another problem that arises in the aftermath of discrimination targeting transgender groups is the various phenomena of alcohol and drug abuse [24]. Another research involving 6,450 transgender people in the United States showed that as many as 26% of research respondents have used alcohol and drugs as a means of coping in facing gender identity-based discrimination [45].

#### **4.3. Equal Rights in Legal Protection**

The human rights inherent in transgender groups should be the basis for equal legal protection for transgender groups. The Universal Declaration of Human Rights is a general statement regulating human rights in the international sphere. Law No.39 of 1999 concerning Human Rights explained that the state must uphold and recognize human rights and basic human freedom, everyone has the right to recognition, guarantees, and fair legal treatment; everyone has the right to protection of human rights. Transgender people are part of "everyone" who is entitled to human rights just like any other individual.

Legal protection for transgender needs to be upheld for the sake of transgender wellbeing. A legal changes have a positive impact on a person's health because they have something that can minimize discrimination, social prejudice, and stigmatization [46]. The results of quantitative research involving 498 transgender people in Argentina show that the implementation of the law has a positive impact on transgender people in various aspects of life, such as access to health, education, work, and civil and political rights [47]. The qualitative findings of the above study also shows similar results reporting that after one year of enactment of Argentina's Gender Identity Law, transgender women involved in the study felt that they had experienced changes in their lives. The transgender women feel that they have benefited in various aspects of life, such as improvements in education, increased freedom of expression in the streets, fewer reports of violence perpetrated by the police [48].

A transgender person as human beings deserves basic human rights such as the right to life, the right to be free from fear, the right to receive fair treatment, and the right to be recognized. Various basic human rights are often violated by various people, from the general public through the various stigma attached and other unpleasant treatment to the government through policies that often discredit transgender groups. For protection to have an official basis, to have coercive power, and to be implemented permanently, legal protection is needed that can comprehensively accommodate the interests and rights of individuals and communities [49]. Legal protection is an effort to create a dignity as a human being by protecting society from the actions of arbitrary rulers as well as protection given to the law so that it is not harmed or protected by law against something it regulates [50,51]

#### **4.4. Legal Protection for Transgender**

Discrimination against gender identity and sexual orientation has become a concern in several countries. There are at least 10 legal products from 10 countries that explicitly provide legal protection for transgender people. In Asia, countries having legal products explicitly protecting transgender people from discrimination are India, Thailand, and Pakistan, while on the American continent are Argentina, Bolivia, Ecuador, and Canada. The others are Australia, Fiji, and the United Kingdom. If differentiated according to the type of legal product, there are at least three state constitutions, six special laws, and one Supreme Court decision that explicitly protect transgender people. This concern has prompted several countries to produce regulations on the protection of gender identity and sexual orientation regulated in several legal products. In general, some of them can be categorized into three types of products, namely constitutions (laws), court decisions, and special laws (see table 2 below).

In ASEAN, several countries still have negative sentiments towards LGBT, such as Indonesia. In Malaysia, Singapore, and several other countries, same-sex sexual relations are criminalized. Even in Brunei in 2019, the law on the death penalty for same sex and adultery was enacted, which was not enforced for the next several decades due to criticism by international community [52]. This is different from several other ASEAN countries such as Vietnam, Cambodia, or Laos which are more open and accepting of the LGBT community. In Vietnam, the lifting of the ban on same-sex marriage has been in effect since 2015. In Cambodia, the lifting of the ban on same-sex marriage has also been carried out since 2011 [53]. Thailand, in 2015 passed the Gender Equality Law to punish discrimination based on gender identity and sexual orientation [54]. From several examples of these regulations, it can be a reference for other countries including Indonesia, which still has negative sentiments and a track record of protecting the rights of transgender people and other sexual minorities. The making of legal

products related to protection and security related to social identity and sexual orientation needs to be a major concern for the government to ensure the survival and safety of individuals and communities [55]. Changing the legal landscape, the attitudes of government agencies and court institutions must be appropriate and adaptive and still protect rights, especially concerning sexual identity and orientation [56]

#### **5. CONCLUSION**

Transgender people as part of LGBT sexual and gender minority groups are the most vulnerable groups and often receive discrimination and other unpleasant treatments such as harassment to murder because of their high visibility. Transgender groups receive discriminatory treatment in the most private spaces such as the family and social environment to public spaces such as schools, workplaces, and public policy spaces. The perpetrators of discrimination who target transgender groups vary widely, from community organizations to law enforcement officials to the government. Discrimination and unpleasant treatment harm various aspects of transgender life. The negative impact due to discrimination and stigma from the family sphere will cause successive problems in other aspects.

Transgender people marginalized by their families tend to end up on the streets. This will further create other problems, such as the difficulty of transgender groups to access ID cards or other identities, difficulties in getting jobs, and access to various public services. Discriminatory treatment experienced by transgender groups also has an impact on mental health conditions such as being more susceptible to stress, depression, alcohol, and drug abuse to suicidal thoughts and lower quality of life. Discrimination and various unpleasant treatments that cause harm to transgender groups are a violation of human rights that should not occur. Transgender groups also have the right to basic human rights including the right to life, to feel safe, to legal protection, and to be recognized just like other individuals

**Table 2. Legal Protection for Transgender across Countries**

<b>Country &amp; Legal Product</b>	<b>Content/Regulations</b>
<b>Argentina</b> Gender Identity Law / Ley N° 26.743 Identidad de Género	<b>Article 1</b> “Right to gender identity. All persons have the right, a) To the recognition of their gender identity; b) To the free development of their person according to their gender identity; c) To be treated according to their gender identity and, particularly, to be identified in that way in the documents proving their identity in terms of the first name/s, image and sex recorded there.”
<b>Australia</b> Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013	<b>Title</b> “Omit “marital status”, substitute “sexual orientation, gender identity, intersex status, marital or relationship status”.” <b>Subsection 4(1)</b> “gender identity means the gender-related identity, appearance or mannerisms or other gender-related characteristics of a person (whether by way of medical intervention or not), with or without regard to the person’s designated sex at birth.”
<b>Bolivia</b> Constitución Política del Estado	<b>Article 14</b> (II) The State prohibits and punishes all forms of discrimination based on sex, color, age, sexual orientation, gender identity, origin, culture, nationality, citizenship, language, religious belief, ideology, political affiliation or philosophy, civil status, economic or social condition, type of occupation, level of education, disability, pregnancy, and any other discrimination that attempts to or results in the annulment of or harm to the equal recognition, enjoyment or exercise of the rights of all people.
<b>Canada</b> Canadian Human Rights Act	<b>Part I – Proscribed Discrimination</b> (1) For all purposes of this Act, the prohibited grounds of discrimination are race, national or ethnic origin, colour, religion, age, sex, sexual orientation, gender identity or expression, marital status, family status, genetic characteristics, disability and conviction for an offence for which a pardon has been granted or in respect of which a record suspension has been ordered.
<b>Ecuador</b> Constitución de la República del Ecuador	<b>Article 11</b> (2) “...No one shall be discriminated against for reasons of ethnic belonging, place of birth, age, sex, gender identity, cultural identity, civil status, language, religion, ideology, political affiliation, legal record, socio-economic condition, migratory status, sexual orientation, health status, HIV carrier, disability, physical difference or any other distinguishing feature, whether personal or collective, temporary or permanent, which might be aimed at or result in the diminishment or annulment of recognition, enjoyment or exercise of rights. All forms of discrimination are punishable by law....”
<b>Fiji</b> Constitution of the Republic of Fiji	<b>Article 26</b> 3 (a) actual or supposed personal characteristics or circumstances, including race, culture, ethnic or social origin, colour, place of origin, sex, gender, sexual orientation, gender identity and expression, birth, primary language, economic or social or health status, disability, age, religion, conscience, marital status or pregnancy
<b>India</b> Supreme Court Decision National Service Legal Authority v. Union of India and Others (2014)	129. We, therefore, declare: (1) Hijras, Eunuchs, apart from binary gender, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by the Parliament and the State Legislature. (2) Transgender persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed to grant legal recognition of their gender identity such as male, female or as third gender.
<b>Pakistan</b> Transgender Persons (Protection of Rights) Act, 2019	<b>Chapter II – Prohibition against discrimination</b> (3) No person or establishment shall discriminate against a transgender person on any of the following grounds, namely:— <b>Chapter III – Recognition of Identity of Transgender Persons</b> 4 (1) A transgender person shall have a right to be recognized as such, in accordance with the provisions of this Act.
<b>Thailand</b> Gender Equality Act B.E. 2558	<b>Section 3:</b> In this Act: “Unfair gender discrimination” means any act or omission of the act which causes division, discrimination or limitation of any right and benefit either directly or indirectly without justification due to the fact that the person is male or female or of a different appearance from his/her own sex by birth. <b>Section 17</b> The establishment of policy, rule, regulation, notification, project or procedures either by government agencies or private organizations or any individual with the characteristics of unfair gender discrimination shall not be permitted
<b>United Kingdom</b> Equality Act 2010	<b>Part 2 Chapter 1 – Protected Characteristics</b> (4) The following characteristics are protected characteristics— age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion or belief; sex; sexual orientation

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