QUESTIONING WARIA'S SUBJECT POSITION IN SOCIAL AND RELIGIOUS LIVES: Nahdlatul Ulama Activists and Waria Santri Religious Practice Partnering Program at The Pesantren Waria Al-Fatah Yogyakarta

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Abstract
This paper explores how Activists from Nahdlatul Ulama Islamic University rethink the transgender subject position in social and religious lives then come to the idea of Religious Practice Partnering Program working together with Transgender santri. The question on LGBT right in social and religious lives have been an attention of activists, scholars including Kecia Ali and Scott Kugle, in decades. As part of responding LGBT questions and phenomenon, The activists have taken part in discussing transgender’s place in Islam, contending that Islam is blessing for all mankind, thus insisted on teaching different Islam, as part of the program, that challenge dominant assumption. The paper finds that the process of rethinking waria subject position starts from rethinking gender binary, contending that there is legal vacuum in Islamic law, and categorizing transgender as mukhanats. This process then led them to come to the idea of Religious Practice Partnering Program that may be a space for transgender and scholars to discuss transgenderism in both social and religious lives.

Keywords
Transgender, Islamic Law, Mukhanats, UNISNU, Al-Fatah, Waria, Hukum Islam, Mukhanats, UNISNU, Al-Fatah

Abstrak
Introduction

The question on LGBT right in social and religious lives has been visible in not only Western societies but also in Indonesia. However, how people, communities, including the religious one respond to it differently. Muslims Scholars like Kecia Ali and Scott Kugle are one of those working on answering the question, contending that Islam as blessing for all mankind. In Indonesia, for example, were rejections on LGBT people in the beginning of 2016 when LGBT was rising and attracting people's attention, including politicians. Yogyakarta, taking another example, known as tolerant city, was also effected by the issue which then responded by several Muslims groups mobilising the mass around Tugu, the symbol of Yogyakarta. Hundreds people occupied the place in order to prevent LGBT communities, who planned to express their aspiration at Tugu which was canceled since the police blocked them, from demonstrating at that place. Pesantren Waria was also became the victim of anti-LGBT movements when several guys as one of Muslims groups in Yogyakarta demanded the closing and the banning of their activities. As a result, it was closed. Hence, this leaves us the questions, such as Can LGBT people be equal with other before the law? Can they also practice religion or simply leave it out of their lives, since many religious communities condemn them? This paper offers the discussion on those questions by Nahdlatul Ulama activists from Jepara, Central Java, who came to the Pesantren Waria al-Fatah Yogyakarta, teaching Islam in different ways that challenge the dominant assumption. So How do the scholar activists of Nahdlatul Ulama Islamic University of Jepara rethink the waria subject position?

On May 16th, 2015, NU activists and waria maintained held Isra' Mi'raj at the Pesantren Waria al-Fatah, Yogyakarta, as part of Religious Practice Partnering Program. They raised the theme on “How Waria should pray” and invited Kholis, Alimatul Qibtiyah (State Islamic University lecturer), and Kyai Muhaimin (Board of NU, an advisor of the pesantren, and a noted advocate for interfaith marriages), as speakers. Kholis argued that we should implement rukhsah as one concept in fiqh meaning the despinning or an exemption, usually applied for Muslims unable practicing certain Islamic teachings, and are ordered to do other things. This means that waria may pray either as male or female based on their gender consciousness, since there is no set of rules or fiqh explaining about the matter yet. I point out the term “gender consciousness” as an attempt to recognize waria's subjectivity. Hence, through the program, they construct the discourse of waria's place in Islam by considering their gender consciousness and subjectivity in practicing religion (Widyantoro, 2014).

This study explores the process of rethinking waria discourse by questioning waria subject position. This process then contributes in constructing the discourse that challenge the dominant assumption. These are those representing the dominant discourse; Indonesian law stipulates only two genders: male and female while other country like India and Pakistan recognized the third gender, hijra. We can see how Indonesian identity card provides male and female gender binary, based on the population of Administrative Law and the Marriage Law (Nos.1/1974). This consequently leads to the difficulties in accessing public services and obtaining business permits. Moreover, The Regulation of the Ministry of Social Affairs (No. 8/2012) perceives that waria are people with social welfare problems. Hence, they have to be rehabilitated. Besides, they also face discrimination in social lives, such as many are rejected by their families, facing difficulties in obtaining education, and bullied at school ' (see more “Being LGBT In Asia: Indonesia Country Report", 2015).

The paper is based on five months of fieldwork at both the Pesantren Waria al-Fatah, Yogyakarta and Nahdlatul Ulama Islamic University of Jepara. I conducted participant observation in every event they held and interviewed Six NU activists involved in the program about how they think of waria in social and religious lives. Regarding the program data, Religious Practice Partnering Program's proposal and
accountability report was taken into account.

Like my previous study, I insist on using the term waria instead of transgender, considering its history and locality, inspired by Boellstorff argument that gays and lesbians in Indonesia understand their subject position through encountering the global media, but preserve a gap in meaning to the local (Boellstorff, 2003). In this case, the using of the local term should be considered in favor of recognizing its locality. Besides, I also found that Foucault's theorization of subjectivity is relevant, since the waria are led to be the subject of their beings and sexualities. Foucault described "Subjectivity", in the history of sexuality, from ancient to modern time, as how individuals were led to recognize themselves as subject of desire, sexualities, and the truth of their beings, by certain form or discourse (Foucault, 1985: 5, 30).

Continuing Kholis's work, Muiz Ghazali also voiced out the fiqih waria discourse and took the Pesantren Waria as one of the case. Quoting Quranic verses explaining about aurat, as Kholis did, he pointed out the term ghairu' ulil 'irbah min al-rijab as one of humans category created by God. The term means men who have no desire to live with women. The waria are included to this category by refering it to the term mukhanats in the hadith, interprated by al-Nawawi and al-Asqalani. Both categorized teh mukhanats into mukhanats by nature and nurture. However he discussed fiqih waria further than did Kholis, such as how four fiqih mazhab say about sholat's line and then relate it to where waria should pray, eventhough both Kholis and Ghazali insisted the same thing which is waria subjectivity on deciding where to pray (Muiz, 2015).

Moving further to Kugle's work on Homosexuality in Islam, Lot's story (Asy-Syuraa (26:160-173)) did not represent the story of homosexuality condemnation, yet it tells us different case. This work becomes significant since many Muslims took this verse to condemn transgender and LGBT in general. Kugle contended the story tells the condemnation of male sexuality driven by aggression, subjugating other by force and rape—"(Kugle, 2010).

Rethinking Waria Subject Position

Rethinking waria subject position becomes an important process for the scholar activists, before developing the idea Religious Practice Partnering with waria santri. Beside exploring how they think of it, I shall also discuss some other scholars who had talked about this issue, such as Scott Kugle, Kyai Husain Muhammad, Musdah Mulia, and Kyai Marzuki Wahid. Like the scholar activists, they refer the same hadith talking about mukhanats, as an important term to discuss waria subject position. However, some differences emerges among their understanding of gender and sexuality, that influenced how they used the term. This chapter explores how the scholar activists rethink waria subject position, and then relates it to how other scholars, mentioned above, use the term mukhanats to talk about waria, transgender women, gender, and sexuality.

As the scholar activists rethink the waria subject position in religious and social lives, they emphasize several points in discussing the waria discourse. First, they have called for rethinking the gender binary. They argue that there is legal vacuum in Islamic Law about waria matters, categorize waria as Mukhanats (a term for the men behave like women in Prophet's time, according to certain hadith), call for Muslims to consider waria as human beings. The Islamic law humanism (Humanisme Hukum Islam), suggested by Kholis then came to be the solution that manifested as Religious Practice Partnering Program at the Pesantren Waria al-Fatah, Yogyakarta. These are the process of rethinking before coming to the idea of Religious Practice Partnering Program as collaboration between the activists and waria santri. So one important term to discuss waria or transgender women subject position is—mukhanats,” that emerged in several hadith, referred by some scholars for analogy, considering their gender behaviours. Some of them that will be discussed here are Scott Kugle, and the book —Fiqih Seksualitas by Kyai Husain Muhammad, Musdah Mulia, and Marzuki
Wahid. They used this term to illustrate critical understanding of gender and sexuality, with their different understandings. Besides, the scholar activists also insisted on using that term, since *mukhanats* and *waria* share same experiences of gender behaviours, as men behaving like women.

Rethinking the Gender Binary

Looking at how the activists from UNISNU explain about how they came up to the idea of religious mentoring, I found that they started from the necessity of rethinking and rediscussing the gender binary. What they mean by gender binary here is how society, religious leaders and the state define citizens as male or female. In this case, they realized that there are others, who do not fit in that binary but who live in this world, and are not yet treated equally with those who fit in that binary. In short, the idea of male and female gender binary forces those other who do not fit in it to be excluded and invisible. *Waria* are real people living in this world, yet are invisible within the binary that has room for a person to be only either male or female. So rethinking of gender binary is one process for rethinking the *waria* subject position in social and religious lives, and becomes that breaking dominant understanding of gender normativity, based on male and female binary, in order to make *waria* visible.

Nur Kholis, the leader of the program, was the one who realized that there was a group missing from the gender forum discussion in PMII, which was *waria*. With his leadership the question about *waria* in religious and social context has now come to be discussed not only in small forums, but also in university forums, such as the National *Fiqh* Seminar held in Jepara by UNISNU. He states, thus far, *fiqh* has only been concerned with matters of male and female, while it cannot be denied that *waria* exist in this world (Kholis 2015). This is quite different from Boellstorff’s suggestion that *waria* are male femininity and male subsumed within male, looking at the toilet devide between male and female at Taman Remaja, Surabaya. The *waria* are put into male toilet, meaning they are gendered not as a third gender or other that do not fit in that male and female gender. He consider the toilet as signifier for this case, avoiding gendering *waria* within male and female binaries help these activists understand and work with the *waria* in the Pesantren. Hence, thinking of gender binaries has become the first part of knowledge production, before having the collaboration with the *waria* santri.

Wahidullah, one of activists who is also a lecturer UNISNU, explained, that Indonesian legal foundation is clear that every human being has right to live. Right to live is for those who are created by the creator. In this context are humans. When I asked him about the dichotomy of male and female, gender binary, he responded, (Wahidullah 2015) “Who created that dichotomy? If they (waria) were born with that condition (being waria), so they have right to live too.” Right to live means to have existence recognized, and the existence needs room and space, which is this world.... The waria are unequally recognized, since we still have the idea of male and female gender binary. Yet, when there are other, how then does the state and public policy answer that? Hence, to consider *waria* as human living in this world, required them rethinking of gender binary. It is not clear whether they accept third gender concept, because they never talk about its concept. However, the way they narrate and understand *waria* as human leads them consider *waria* as those who are not in male and female binary, to make them visible. Without this, *waria* are those who do not fit in male and female gender binary, who are always forced to be fit in it. On the one hand, this will contribute to how they gender *waria* in *fiqh* to be in those binary, yet on the other, they think it will discriminate *waria* as those who are not in that binary. So seeing them outside that binaries might be an option to make them visible, and then they can understand, help them, and build their argument behind the idea of religious Practice Pratnering Program.

Legal Vacuum in Islamic Law: *Waria* Sexual and Gender Identity in *Fiqh* Discussion

Legal vacuum in Islamic law is an
important finding in Kholis's observation of waria discourse in Islamic Law and fiqih as well. He often uses this term to invite and to discuss with other activists. As a result, it appeared many times when some activists talked about waria in religious and social lives. This term emerged in Kholis's master thesis, when finishing the Master Program in Islamic Studies in Islamic State University of Walisongo, Semarang. Earlier, he also wrote his undergraduate thesis at UNISNU about waria hopes for marrying men, seen from the fiqih perspective. After finishing his study, he lived in Yogyakarta for two years, and then engaged with the waria in the Pesantren. His idea of a legal vacuum in Islamic law about waria matter leads him to intellectual interest and is influential among other activists, so that they support and participate in the collaboration with waria santri.

In his master thesis, Kholis explored how waria in Fiqh discussion. The Fiqh discussion on waria in Islam is at least divided into two questions of identity, their sexual and gender identity. First, physical-biological perspective determines each person's sexual identity, as mentioned in hadith. If urine comes out through a penis, that person is considered male, and through a vagina, female. Hence, those who suffer genital ambiguity are perceived as khuntsa, which is usually translated as hermaphrodite. According to Kholis, most of fiqih literature included waria in khuntsa category, even though they are clearly different, since Waria is about males behaving like females, while khuntsa is about genital ambiguity. Hence, precedent for waria in classical Islamic texts is found by studying hadith and fiqih about khuntsa. They then develop the discourse about waria subject position in Islamic law, using khuntsa concept. As a result, the pattern of how society think of waria is referred to khuntsa. In this case, he did not explain further which literature, people, and scholars referring waria to khuntsa category, even referring to hadith discussing khuntsa matter, as primary source. The detail and example of how the people refer waria to khuntsa also becomes an important question for this claim. I shall discuss some who discuss transgender as mukhanats phenomenon rather than khunsa in the next sub-chapter. The second, gender identity is determined by looking at psychological, behavior, and socio-cultural pathology perspectives. In this case, fiqih sees waria as tasyabih (prohibited imitation) phenomenon, either as mukhanats or mutarajilat. Both are different from khuntsa, since Khuntsa is that suffering genital ambiguity, while mukhanats and mutarajilat are those suffering gender ambiguity. In academic discussion, Mukhanats is well-known as male to female trans, while mutarajilat is female to male trans. As consequence, most fiqih perspective agreed on waria cursing and expulsion based on certain hadith discussing about both waria cursing and expulsion. Al-Malibari, an author of classical fiqih — Fath Al-Mu'in, for instant, argued that waria deserve to be burned alive, because they behave differently from most people (Kholis 2013, 2). Arguing waria is about gender behavior, and then referring it to mukhanats is a good thing to do, since they share the same characteristic. However, Kholis's claim of most fiqih perspective agreed on waria condemnation, without explaining further which fiqih that is, leads us to the question, —Which fiqih is that and —What is fiqih? Fiqh even neither talks nor argues by itself. There are people who made it, so the agency of the actors who made that fiqih will provide deep information. Besides, his explanation that fiqih is ambivalent in discussing waria phenomenon, such as Al-Suyuthi explanation, also leaves us a question, “What term did Al-Suyuthi use to describe waria?” How did Kholis conclude that Al-Suyuthi discussed about waria? This consequently becomes another homework to him.}

Kugle was the one providing an important insight of how transgender were perceived as sexual orientation case, homosexuality case, by Muslims in Umayyad and Abbasid period. He contended that Muslims perception of mukhanats shaped in that period from being considered as gender case to sexual orientation case. Muslim Jurists consider transgender and effeminate men as passive homosexual actors, or as those receiving anal intercourse from other men.
Unlike Kholis explanation above that most fiqh literature consider waria or transgender as the condemned tasyabih phenomenon in terms of gender identity question, Kugle argued transgender were condemned based on their sexual orientation as homosexuals, rather than their gender behaviors, in Umayyad and Abbasid period. So the jurists use sadd al-dhara ‘i’ (necessary means), as the concept to produce Islamic law, to prohibit transgender behaviors, to avoid homosexuality –‘(see more Kugle 2010). This means transgender behaviours were accepted as given by God, looking at how classical jurists had the mukhanats category, as men who were not sexually attracted to men. Yet their sexual attraction towards men were prohibited.

Furthermore, Kholis argues that there is no reason to curse and to expulse waria, since they are also human who are created by God and even being waria is not a choice of life. One interpretation of one verse in Qur’an, al-Nur (24): 31 by at-Thabari, discussing the meaning of ghairi uli al-irbat min al-rijal becomes one of his references. It means there are some who are allowed to see females aurat because they have no sexual desire towards women. Ibnu Katsir (12th century Muslim scholar) also interpreted to refer to men who are not sexually attracted to women or who have no desire to build a family with them. Mukhanatsis also referred to other interpreters, such as Ibnu Abbas, Mujahid and Ikerimah who interpreted that words as all this kind of people mentioned above. This category, Kholis contended, might include castrated men and those with erectile dysfunction and mukhanats. Thus he thinks that waria should not be condemned either socially or theologically (Kholis, 2013, 11-12). Looking at how he read those scholars, it shows the acceptance of waria and mukhanats as the category of the men, who are not sexually attracted to women in classical Islam, were based on sexual orientation rather than gender behavior. Mukhanats were not independent case different from other, since they were considered as men who are sexually not attracted to men. So Kugle then was right that how Muslims see mukhanats in that period was based on their sexual orientation. However, if contemporary Muslims scholar, including Kholis, interpret the verse mentioned above this way, they must also be talking on homosexuality acceptance in Islam, since it is about sexual orientation rather than gender.

The conclusion Kholis makes is that waria are sometimes considered as women and sometimes also as males by Fiqh. Hence, he sees the interpretations to be ambivalent. Besides, he found no literature discussing waria legal issues, such as marriage, prayers, and sexuality, so that he perceive it as legal vacuum. Here he sees how waria are judged by majority perspective. Considering that Islam is blessing for all mankind, he argues that there should be fiqh specific for waria, based on their context to answer this legal vacuum. The consideration that Islam is blessing for all mankind is the second reason that led him conducting this program. He argues that Islam actually concerns waria matter and do not condemn them, as human. Hence, we should humanize them (Kholis 2013, 1-3).

Other activists also agree that there is a vacuum in Islamic law. Barowi insists that waria are not discussed in Islamic Law Compilation (Indonesian Islamic Law referred in Religious Court). Only is the discussion limited on male and female matter. So this Religious Practice Partnering Program is significant for Syariah and Law Faculty of UNISNU, in order to intellectually explore it. It might be a contribution for Indonesian Islamic Law Compilation (Barowi 2015). Musfiah, furthermore, admitted that not only lack of fiqh and religious literature discussing waria matter, but also religious experts helping them (Musfiah 2015). In this case, legal vacuum about waria matter in fiqh and Islamic Law takes important place in rethinking of waria discourse. After rethinking of gender binary in relation to social lives and religious lives, they see waria are invisible in that binary. In social lives, they are forced to be fit in that binary, while in religious lives, the similar thing happens, even categorized as khunta (hermaphrodite). So legal vacuum becomes an important term taking place in the argument of having
Religious Practice Partnering Program and suggesting fiqh special for waria.

Categorizing Waria as Mukhanats

An alternative categorization to this genital-based issue of khuntsa for waria is that of Mukhanats (men who behave like women in their daily lives, including in their way of dressing). In this case, Kholis and other activists stand for the waria "s right to express religiousities as mukhanats who have existed since the Prophet’s time. In addition to answering these issues, Mukhanats as categorization also becomes a gate for waria to have a room in Islam and be recognized outside male and female gender binary. Thus categorizing waria as mukhanats is an important process of rethinking waria discourse.

Kholis argued most Fiqh litterature see waria as khuntsa (hermaphrodite), which then became references for other, such as religious leaders in villages, and scholars. Kholis problematized this as too positivistic because it considers physical appearances more than psychological aspects. In many of his narrations, he insisted on stop referring waria to khuntsa, because it leads to bias, since khuntsa is mostly about genetic matter, while waria is about behavior. Even so doing, he neither clearly explained the literature nor scholars referring waria as khuntsa in his master thesis. However, he emphasized that many people now days do it, based on his experiences encountering with other when discussing waria matter. I heard some did, since not many classical Islamic literature categorizing transgender as mukhanats, yet I also found many believe waria are mukhanats rather than khuntsa, such as Kugle, Faris Malik, Husain Muhammad, Musdah Mulia, and Marzuki Wahid. MUI (Indonesian Ulama Council) even contended waria are not khuntsa, yet are males who shouldn’t behave like females. Besides, Waria are also Condemned by not only lie people but also scholars, and religious leaders. Kholis took one example of Muslim scholars, such as Al-Malibari who illustrated that waria were burned alive by Khalid bin Walid, based on the prophet companion’s suggestion, such as Abu Bakr and Ali(Kholis 2013, 2).

In categorizing waria as mukhanats, Kholis uses a term in the Prophet’s time to describe a male behaving female to show that waria share certain characteristic seen from their behavior, such as having male body, yet having female souls. This is also applied to waria santri in the Pesantren. However, Kholis found there are at least two of fiqoha who classified (mukhonnats) in Islam into two types. Al-Nawawi classified them into min khalqin (by nature) and bi takalulfum (by nurture). Al-Nawawi argued the first is not cursed, not sinful, and not reproached, while the second is cursed according to hadith. This is because their attitude of imitating females while in fact are normally males and are able to avoid this attitude. Another Muslim scholar classifying waria is Al-Asqalanli. Similar to an-Nawawi, there are two kinds of Waria (mukhanats), according to him, such as min asli khalqin (those who have been waria since they were born) and bilqads (those who have become waria on purpose). He contended that the first is not cursed, while the second is cursed no matter behavior they have good or bad. Hence, Kholis classified waria santri at the Pesantren into the first category, mukhanats min khalqin or min asli khalqin (Kholis 2013, 12-14).

Not only Kholis who talk about waria, transgender, and mukhanats but also Kyai Husain Muhammad one of Fiqh Seksualitas book authors, and Kugle. One of the chapter discusses about homosexuality in Islam with similar way that Kholis did. They are similar, since they both use the same hadith and verse in Qu’an mentioned by Kholis, refers the same scholars, such as al-Asqalanli, Ibn Katsir, at-Thabari, and al-Suyuthi (Muhammad 2011, 87-94). What is basically different is that the book discusses homosexuality as sexual orientation case and included waria in it, while Kholis explains waria as gender case, as the people who do not fit in male and female gender binary. Moreover, Kugle argued mukhanats is a good analogy for transgender phenomenon, as modern terminology. Mukhanats means effeminate man, or that who is anatomically male, raised as male, but he dresses and act
social roles as woman – "(Kugle 2010).

However, the discussion stops here, in the sense that the classical Muslims scholar does not yet explore how waria marriage, sexualities, and religiousities. The discussion only seeks whether or not waria is accepted in Islam, thus the questions about their marriage, sexualities, and religious lives are not answered yet. In this point, Nur Kholis stands for suggesting fiqh special for waria, rather than including them into the concept of khunista or into males or females concept (Kholis 2015). Why don’t classical and some contemporary Muslims scholar explore waria marriage, sexualities, and religiousities as an independent concept of fiqh or independent case? One way to answer it is that many of them do not distinguish gender and sexuality concept. —Fiqh Seksualitas book is an example of it, since it includes waria into homosexuality phenomenon, rather than into gender phenomenon. Gender and sexuality are so much related yet remain different, because gender is about behavior, while sexuality is a consciousness of sexual desire and expression. Waria are considered as homosexuals, so that they are men who are attracted to other men. Hence, in many cases, waria should follow fiqh for men. From this explanation, we see how Kholis categorizes waria at the Pesantren as mukhanats by nature given by God and argues that waria existed in the Prophet’s time and were accepted. The Prophet never cursed them because of their existence, so that there is no reason to curse and to discriminate them now. Categorizing them as mukhanats by nature leads him and other activists to provide a room for waria in Islam, such as through Religious Practice Partnering Program. It is interesting to see these scholars took an Arabic term that existed long time ago in the Prophet’s time, Mukhanats, within global Islam, for waria within local Indonesia, and consequently provides waria a room in social and religious lives.

Considering Waria as Human Beings

Considering waria as human beings means equally recognizing their existence in social and religious lives. It happened after rethinking of gender binary. Looking at how they do it, I found that they see waria as those who are invisible beyond male and female gender binary, yet exist in this world. They then found them as reality, as humans living and asked questions what we should do and think of them, including how the state and religious leaders should consider waria. Looking at how waria are different from those in male and female binary, it leads them think that waria cannot be in that gender binary. As outside of that binary, Waria are perceived as humans as others who are created by God. Knowing waria are those who do not fit in male and female binary, they then excluded waria from that binary, including in fiqh discussion, so that they agreed on inventing fiqh waria. It is to avoid discrimination and to avoid imposing outsider’s perspective and let them have their gender consciousness. This is illustrated from Kholis’s graduate thesis and some of my respondents’ arguments, such as Abdul Wahab, one of the activists, added (Wahab 2015): Islam is humanist religion and not discriminatory religion. God said if my servant asks me... this verse said —servant. We are all God’s servant no matter what your gender is. We are all equal before God, yet devotion is the only thing that distinguishes us. The waria need not to be judged, yet be partnered. From this explanation, we see how waria are perceived as humans who have right to express religiosities, without their gender being labelled as deviant from majority perspective of heteronormativity and heterosexuality. Heteronormativity means seeing humans are based on male and female gender classification, and perceiving all humans should be based on it and should partner only with those of the —opposite sex. The activists responded it by avoiding this kind of heteronormativity, to consider those who do not fit in it as humans as same as other.

Islamic Law Humanism

Islamic Law Humanism (Humanisme Hukum Islam) takes place as a solution suggested by Kholis in his master thesis, then manifested as fiqh waria in discourse stage, then Religious Practice Partnering Program.
It means a humanistic law that Muslims should have, since Islam consider all different people as humans, created by God, including waria. It considers waria as humans who also have rights to pray and to practice Islam. This term is his invention to provide a room for waria in Islam and social lives as well, and to answer the dominant discourse on waria claiming them as khunta, men, and even deviant whom should be healed. Hence, this term is part of the discourse of waria that Kholis rethink and is influential among other activists, that leads them to consider humanism when seeing waria religiosities. Discussing about Islamic law humanism, I shall quote again Kholis’s ideas and see how he built the argument regarding Islamic law humanism, to provide room for waria, who are considered as humans created by God. First, he considers waria as humans. Second, he sees Islam as blessing for all mankind, including waria because they are humans as well. Regarding the second, he cites a number of Muslim thinkers who promoted Islam as blessing for all mankind and not a discriminatory religion towards any kind of human.

What Kholis means by Islamic law humanism is that it is based on how the truth in religion can be obtained. There are three methods: bayani, which means finding the truth through the text; irfani, meaning understanding the truth through belief on religious experiences; and burhani or finding the truth through philosophical reasoning supported by empirical science, which is based on human behavior. More deeply, Nur Kholis sees the importance of looking at waria religious practices in the Pesantren, as a —humanistic phenomenon observable in waria’s individual religious experiences. It is more significant to understand the humanistic side of waria in practicing religion, rather than simply blaming them as deviant. This is how Islamic law humanism is applied (Kholis 2013:20). Furthermore, Kholis quotes Ali Syari ati suggesting that humanism values aims at freeing us from oppression, life perfection, justice, truth, humans self-consciousness, rejection on tyranny, rejection on war, protecting worship, rejecting on ignorance and weakness. It also struggles on universal life, and rejecting individual and communal discrimination as well. Humanism refers to human nature, feelings, and human kindness (Kholis 2013; see also Syariati 1992, 92). Hence, he sees the importance of looking at waria religious practices as individual religious experience, to find the truth by themselves. Their religious experiences should be respected and should not be condemned. This is based on how he understands the idea of humanism by Ali Syari ati.

Still about humanism, suggesting humanism should be applied in Islamic law, Kholis explained Islamic humanism is based on al-kulliyyah al-khams (five general principles). They are main purposes of Syariah, such as hifdž al-din (keeping faith glory), hifdž al-nafs (preserving the safety of the soul), hifdž al-aql (maintaining freedom of thought), hifdž al-nasl (preserving offspring), hifdž al-mal (maintaining the validity of the material). However, some Muslim thinkers, such as Hasan Hanafi and Abdurrahman Wahid, prioritize preserving the safety of the soul (Kholis 2013:21-22). Here again, he insisted that we have to see the importance of preserving the safety of the soul of waria, who practice religion in the Pesantren, rather than only seeing the text to find the truth, without considering their religious experiences. In this context, Kholis contends that to understand reality means to refer not merely to the text, but also the context of that reality. Furthermore, humanity-feeling must be considered in favor of benefit in every legal decision making. In other words, human experiences must be prioritized rather than only referring to text authority. Hence, for the sake of this benefit, waria should not be included in male and female binary in terms of fiqh matter. Instead, there should be fiqh special for waria, because they have different case from those who fit the male and female binary. So waria religiosities which have been invisible within dominant religious discourses, can only be understood if we are able to feel how it is to live as waria (Kholis, 2013:25).

Here we see that Kholis emphasizes waria
religion experiences, or waria subjectivity when conducting religious practices in the Pesantrn. This is very important in order to produce fiqh waria. Fiqh waria itself is a manifestation of Islamic law humanism implementation to create benefit for all humans. It is better than placing waria subject position into dominant fiqh, which assumes a male and female binary. Hence, the construction of fiqh waria is in process, led by Kholis who convened a Fiqh Indonesia seminar in Jepara, as part of the religious mentoring program.

Conclusion
The question on waria’s place in Islam begins from the process of rethinking the waria subject position containing several thought process, leading them to come to the idea of Religious Partnering Program as a solution. First they rethink the normative male-female gender binary, in which waria are invisible and often considered deviant. Hence, they argue this understanding of gender binary has caused waria to suffer in both their social and religious lives. The same thing happens in fiqh, where waria discussion is ignored, so that they difficultly find a space to express religiosities. This finding led them to admit that there is legal vacuum in fiqh and Islamic law, regarding waria matter, while they live as others. Furthermore, Kholis, the leader of the program whose academic interest is the place of waria in Islamic Law, has found the necessity to categorize waria as Mukhanats, and then consider them as humans equally as others. In his master thesis, he has argued that waria have existed since the Prophet’s time considered as mukhanats by nature, or by destiny. Categorizing waria as mukhanats becomes a gate for waria to have a room in Islam and social lives as well. The room for waria is significant here, because it means considering them as humans, based on their —gender consciousness as equal as others. The idea beyond considering them as humans based on gender consciousness is Islamic Law Humanism. This is that which leads Kholis and other activists as well to provide a room for waria in Islam, so that they freely practice religion and can answer the mainstream understanding of gender binary.

This process of questioning and rethinking can be a lesson for us, responding anti LGBT movement now days. Instead of being anti, there is another way to comprehend deeply transgender phenomenon specifically, and LGBT in general. Comprehending the phenomenon is a step before coming to the judgement, just like what NU activists did by bringing the case to the intellectual space instead of judging them. Finally I argue that this process of rethinking is a gate for transgender discussion in Islam especially in Indonesian context of religious lives where they are considered as deviant, fiqh transgender, and gender equality in social and religious lives.

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