

# Postgender\_Fiqh\_The\_Views\_of \_MUI\_s\_and\_KUPI\_s\_Ulema.pdf

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## Postgender Fiqh: The Views of MUI's and KUPI's Ulema on Postgenderism from *Maqāshid Shari'ah* Perspective

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### Abstract:

This study aims to formulate the paradigm of *fiqh* (Islamic law) in predicting various impacts of postgenderism by exploring postgender preferences according to MUI (Indonesian Council of Ulema) and KUPI (Indonesian Women Ulema Congress) scholars. This qualitative research begins with examining the perceptions of *ulema* (Muslim scholars) of both organizations regarding postgenderism. Primary data about perceptions and preferences on postgenderism were explored through in-depth interviews with four *ulema*, two from each organization. Secondary data were obtained through literature exploration from primary books and articles on postgender. Data analysis techniques employed spiral analysis equipped with content, comparative, and critical analysis. The findings show that: 1) based on *maqāshid shari'ah* (Islamic laws' objectives), the *ulema* view that postgender ideologies and movement threaten human existence and risk the establishment of *hifz al-din*, *hifz al-nasl* and *hifz al-'ird* (preserving one's religion, offspring, and dignity respectively) and 2) postgenderism is considered as an ideology that allegedly violates *sunnatullah* (God's laws) and threatens human existence and humanity. Therefore, every activity, facility, infrastructure, and opportunity born from it that threatens the existence of humanity must be avoided as

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much as possible. One of the preventive paradigms against postgenderism is formulated through *uṣūl fiqh iftirāḍi* (preventive Islamic law's fundament) method as an anticipatory *ijtihād* (intellectual exercise) towards its various possible harms.

**Keywords:**

KUIPI; *Maqāṣid Shari'ah*; MUI; Postgenderism; *Uṣūl Fiqh Iftirāḍi*

**Introduction**

As a creature gifted with intellectual ability, humans are able to take advantage of the gift to develop science and technology. This may be seen by the emergence of scientific and technological progress and advancement which enable them to explore from the microscopic world to the outer space.<sup>1</sup> However, such condition also causes social and cultural changes.<sup>2</sup> In social aspect, for example, humans have been bringing up various ideas and notions including the recognition of human rights and gender equality.

One proof of the development of thought is the theme 'Balance for Better' hailed in commemoration of International Women's Day on March 8, 2021. The theme entails an important message that there are still so many problems relating to women that every country should urgently address. In Indonesian context, for example, two problems for women that remain unsolved well are child marriages and maternal deaths. As a paradoxical condition that has been occurring in parts of America in the last five years, the culmination point of the

<sup>1</sup> Aan Rukmana, "Peran Teknologi Di Dunia Islam," *Mumtaz: Jurnal Studi Al-Qur'an Dan Keislaman* 2, no. 1 (2018): 111-20, <https://doi.org/10.36671/mumtaz.v2i1.21>; Moh. Huda, "Penggunaan Teknologi Reproduksi Bantu (Assistive Reproductive Technology) Dan Implikasinya Terhadap Kesehatan Reproduksi Dalam Pandangan Islam," *Analisis: Jurnal Studi Keislaman* 21, no. 1 (2021): 183-202, <https://doi.org/https://doi.org/10.24042/ajsk.v21i1.7695>.

<sup>2</sup> Baharuddin Baharuddin, "Bentuk-Bentuk Perubahan Sosial Dan Kebudayaan," *Al-Hikmah* 9, no. 2 (2015): 180-205, <https://doi.org/10.24260/al-hikmah.v9i2.323>.

gender struggle and the development of medical technology has led to the emergence of postgender notion and movement.<sup>3</sup>

Postgender is a related term of postgenderism. As nouns, the difference between postgender and postgenderism is that postgender is a person who is postgender, who is not (any longer) gendered, or who does not (any longer) identify as gendered while postgenderism is a sociopolitical and cultural movement for the voluntary elimination of gender in the human species through the application of biotechnology. As an adjective, postgender is (having moved) beyond gender or not (any longer) gendered.<sup>4</sup> Postgenderism, meanwhile, is a movement that involves science and technology to change and negate the human sex. It is not only a rejection toward binary gender namely 'men' and 'women', but also toward popular ideas of gender description between male and female.<sup>5</sup> Along with the current era of information and communication, Lesbians, Gays, Bisexuals, and Transgenders (LGBT); transgender and transhumanism will gradually infiltrate any country in the world.<sup>6</sup> In the Indonesian context, postgender activities may be seen through the movement of LGBT notion and the emergence of its community which spread their ideology by holding art stage activities such as in Makassar, South Sulawesi, West Java, Jakarta, and West Kalimantan.<sup>7</sup>

Dvorsky and Hughes define postgenderism as "a social, political and cultural movement which arose from the eroding of the cultural, psychological, and social role of gender, and an argument for why the erosion of binary gender will be liberatory".<sup>8</sup> Postgenderism supports every person to have or not to have or to choose genitals according to their

<sup>3</sup> Iffatin Nur, "Postgenderism: Weighing a Future World without Gender with the Islamic Law's Philosophy," *Journal of Talent Development and Excellence (JTDE)* 12, no. 1 (2020): 1374-1384, p. 1375.

<sup>4</sup> George Dvorsky and James Hughes, "Postgenderism: Beyond the Gender Binary," *Institute for Ethics and Emerging Technologies*, no. March (2008): 1-18.

<sup>5</sup> Josie Luetke, "Postgenderism," *theinterim.com*, August 1, 2017. <https://www.theinterim.com/issues/society-culture/postgenderism/>

<sup>6</sup> Iffatin Nur, *Ushul Fiqih Ifirādhi: Membincang Diskursus Postgenderisme Dan Posthumanisme*. (Tulungagung: SATU Press, 2022), p. 4.

<sup>7</sup> Editorial Team, "Komunitas LGBT Di Makassar Nekat Gelar Kegiatan Berkedok Panggung Seni, Pemkot Tolak Beri Izin," *palu.tribunnews.com*, May 27, 2022. <https://palu.tribunnews.com/2022/05/27/komunitas-lgbt-di-makassar-nekat-gelar-kegiatan-berkedok-panggung-seni-pemkot-tolak-beri-izin>.

<sup>8</sup> Dvorsky and Hughes, "Postgenderism: Beyond the Gender Binary."

preference. This is so because, to postgenderists, genitals are simply another part of the body's organs that should not be a determinant of one's identity. Such idea eventually would result in an increase in the rate of sex reassignment surgery<sup>9</sup> which, unfortunately, not many people are aware about its detrimental impacts.<sup>10</sup>

An example of the initial idea of postgender in which it tries to eliminate the difference of humans' sex function or to put forward the idea of *gender-neutral* is the attempt of having pregnancy through men instead of women. Nevertheless, the idea of preserving a human life through the use of artificial womb technology or cloning is almost impossible.<sup>11</sup> The very idea of male pregnancy is almost completely impractical because in the male body, there are no necessary ligaments and in terms of hormones which is very much different from women. The news that once shocked the world about a man named Freddy McConnell who was able to conceive and then gave birth turned out to be medically proven that he was a woman who had her uterus left untouched during the sex reassignment surgery she once underwent to become a man.<sup>12</sup> This example is a valid proof that trying to get an unnatural pregnancy is very difficult to do.

Postgenderists insist that a family can be formed by any kind of partner they want, whether it is fellow men, fellow women, or male and female couples in general or even couples without gender identity.<sup>13</sup> Children can be produced through Assisted Reproductive Technology (ART) and do not need to go through a natural process that involves sexual intercourse between a man and a woman. They even voice the idea of giving birth to children from more than one

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<sup>9</sup> Scott J. South & Lei Lei, "Why Are Fewer Young Adults Having Casual Sex?," *Socius: Sociological Research for a Dynamic World*, 7 (2021).

<sup>10</sup> Sintya, "Hati-Hati! Ini 5 Bahaya Yang Mengintai Pasca Operasi Pergantian Alat Kelamin," *shopback.co.id*, 2017, <https://www.shopback.co.id/blog/bahaya-operasi-pergantian-alat-kelamin>.

<sup>11</sup> Kelly M. Werner & Mark R. Mercurio, "Ethical Considerations in the Use of Artificial Womb/Placenta Technology," *Seminars in Perinatology* 46, no. 3 (2022).

<sup>12</sup> Annisa Karnesyia, "Kabar Terkini Pria Yang Hamil & Melahirkan, Perjuangkan Status Anak," *haibunda.com*, Nov 22, 2019, <https://www.haibunda.com/kehamilan/20191122181238-49-68463/kabar-terkini-pria-yang-hamil-melahirkan-perjuangkan-status-anak>

<sup>13</sup> George Dvorsky & James Hughes, "Postgenderism: Beyond the Gender Binary," *IJET Monograph Series*, no. 3 (2008): 1-18.

parent pair which could be made possible by technological advances.<sup>14</sup>

Such idea will certainly entail social impact on people's lives where problems often arise after the birth of a 'technological product' baby. Children's position in social order becomes ambiguous, especially if the sperm used is sourced from a sperm bank or when the egg cell used is sourced from donors. As a result, the genealogy of the child becomes obscure and there is a possibility for inter-family marriages to occur in the future, for example between a father and mother with her own child or between siblings. Consequently, it is very likely that generations will be born with defects due to inbreeding.<sup>15</sup>

Pretty recently, the idea of being *childfree*<sup>16</sup> is becoming a hot issue. The substance of *childfree* is to promote freedom and human rights for every couple or person to choose not to have children in their life. This idea reaps pros and cons; on one hand, the presence of children in a family in Indonesia is still a dream for almost every married couple, on the other hand, *childfree* is promoted under the pretext of honoring human rights, for example, the right to maintain the perfection of a woman's biological body, the reproductive rights<sup>17</sup> or for the reasons of worrying of not being able to educate children properly.

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<sup>14</sup> Katherine N. Cotter, Anna Fekete, & Paul J. Silvia, "Why Do People Visit Art Museums? Examining Visitor Motivations and Visit Outcomes," *Empirical Studies of the Arts* 40, no. 2 (2021): 275-295.

<sup>15</sup> Yushinta Fujaya, *Teknologi Reproduksi Melahirkan Paradigma Baru Dalam Masyarakat* (Bogor: Program Pasca Sarjana IPB, 2001).

<sup>6</sup> Read further: Victoria Tunggono, *Childfree & Happy* (Florida: EA Books, 2021); Christian Agrillo & Cristian Nelini, "Childfree by Choice: A Review," *Journal of Cultural Geography* 25, no. 3 (2008): 347-63; Amy Blackstone & Mahala Dyer Stewart, "Choosing to Be Childfree: Research on the Decision Not to Parent," *Sociology Compass* 6, no. 9 (2012): 718-727.

<sup>17</sup> Siti Nurjanah & Iffatin Nur, "Childfree: Between the Sacredness of Religion, Law and the Reality of Society," *Al-'Adalah* 19, no. 1 (2022): 1-28; Muhammad Khatibul Umam & Nano Romadlon Auliya Akbar, "Childfree Pasca Pernikahan: Keadilan Hak-Hak Reproduksi Perempuan Perspektif Masdar Farid Mas'udi Dan Al-Ghazali," *Al-Manhaj: Journal of Indonesian Islamic Family Law* 3, no. 2 (2021): 157-172.

Another view worthy of scrutiny is *gender-neutral* or non-binary<sup>18</sup> which is used to describe someone who does not identify exclusively as male or female. Non-binary or *gender-neutral* is a concept different from a person's sexual orientation or sex assigned at birth. People generally think that gender is male and female. However, the social reality in our society is that gender is not as simple as men and women, because there are quite a lot of people who identify themselves as neither both. In Indonesia, it can be found in various places, for example *calabai* and *caalai* in South Sulawesi, *ludruk* performances in East Java, and so on. Non-binary is considered to deviate from religious knowledge and norms unless naturally someone has been created as *mukhannaḥkhalqī* (natural homosexual).<sup>19</sup> On the other hand, gender-neutrality is considered as a representation of human rights and, therefore, *gender-neutral* choices must be protected by fulfilling the rights. The *gender-neutral* notion that moves extremely will gradually have a meeting point with postgenderism. If the acceleration of LGBT, *childfree* and *gender-neutral* notions which then has implications for postgenderism in society increases, it is possible that human existence and humanity will be threatened.<sup>20</sup>

There have been some previous studies on binary gender. Hester, for example, stated that the explicit rejection of the heterosexist binary paradigm is to understand the role and importance of sex, sexuality, and sex identity in the 'Kingdom of Heaven'.<sup>21</sup> Laskowski, in his paper, argued that on the grounds that it makes more sense than the importance of several forms of criticism of the mainstream gender ideology, terms such as 'woman' or 'man' are

<sup>18</sup> Jessica Novarianne Risti, "Representasi Fesyen Netral Gender Dalam Gaya Busana BTS", *Dissertation*, (Malang: Universitas Brawijaya, 2021).

<sup>19</sup> Muhammad Husein, *Fiqh Seksualitas* (Jakarta: Perkumpulan Keluarga Berencana Indonesia, 2011); Morarely Hendrayani, "Waria Dan Masyarakat Dalam Literasi Sosial Agama Di Yogyakarta," *Masyarakat Madani: Jurnal Kajian Islam Dan Pengembangan Masyarakat* 4, no. 1 (2019): 1-12, <https://doi.org/http://dx.doi.org/10.24014/jmm.v4i1.7517>.

<sup>20</sup> Nickolas B. Davis & Stephen T. Yeung, "Transgender Equity in the Workplace: A Systematic Review," *SAGE Open* 12, no. 1 (2022).

<sup>21</sup> David J. Hester, "Eunuchs and the Postgender Jesus: Matthew 19.12 and Transgressive Sexualities," *Journal for the Study of the New Testament* 28, no. 1 (2005): 13-40.

polysemic.<sup>22</sup> Meanwhile, Durocher and Caxaj stated that healthcare services must break away from the male and female labels. It is considered a strategic step to produce a postgender view to eliminate all forms of discrimination against certain groups.<sup>23</sup>

Furthermore, David Hester also proposed a 'postgender' alternative that views bodies as active participants and contributors to sex identification, formation and practices.<sup>24</sup> Next, after studying fifteen married couples who divided household and child-care responsibilities, Risman and Johnson-Sumerford found that there were four paths to an equitable division of household labor: a dual-career household, a dual-nurturer relationship, a post-traditional relationship, and external forces.<sup>25</sup> McDowell's research, on the other hand, explored the connections between debates about the transformation of work in a service-dominated economy and those about classed and gendered identities.<sup>26</sup>

Differing to those studies, this paper aims to provide a profound elaboration in the preventive Islamic law (*uṣūl fiqh iftirāḍi*) discourse regarding postgenderism. It tries to prove that postgenderism risks the survival of mankind or, even in a further assumption, that this ideology is a grand strategy to eliminate some of humanity values on earth in which their movement begins with LGBT, transgender, transsexual, postgender, and can end up in the post-humanism.<sup>27</sup> The substance of the study in this article which uses *maqāṣid sharī'ah* and *uṣūl fiqh iftirāḍi* has not been carried out by previous researchers who limited their researches by analyzing the existence of postgender as new ideas and ethical analysis. Therefore,

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<sup>22</sup> N. G. Laskowski, "Moral Constraints on Gender Concepts," *Ethical Theory and Moral Practice*, 23 (2020): 39-51.

<sup>23</sup> Keri Durocher & Claudia Susana Caxaj, "Gender Binaries in Nursing: A Critical Shift to Postgenderism," *Nursing for Women's Health* 26, no. 4 (2022): 262-268.

<sup>24</sup> J. David Hester, "Intersexes and The End of Gender: Corporeal Ethics and Postgender Bodies," *Journal of Gender Studies* 13, no. 3 (2004), <https://doi.org/https://doi.org/10.1080/0958923042000287830>.

<sup>25</sup> Barbara J. Risman & Danette Johnson-Sumerford, "Doing It Fairly: A Study of Postgender Marriages", *Journal of Marriage and Family* 60, no. 1 (1998): 23-40.

<sup>26</sup> Linda McDowell, "Post-Crisis, Post-Ford and Post-Gender? Youth Identities in an Era of Austerity," *Journal of Youth Studies* 15, no. 5 (2012): 573-90, <https://doi.org/10.1080/13676261.2012.671933>.

<sup>27</sup> McDowell.



the novelty of this article is the use of the preventive Islamic law discourse as a method of establishing law by predicting the negative impact of postgenderism in the *maqāṣid shari'ah* perspective.

The *maqāṣid shari'ah* approach in conducting *ijtihād of fiqh* in Indonesia cannot be separated from the MUI and KUPI institutions since both have scholars with progressive views on the pattern of *ijtihād* on various contemporary issues, including the issue of postgenderism. As an effort to study more in-depth about the *maqāṣid shari'ah*-based perceptions of MUI's and KUPI's *ulema* about postgenderism, this study focused on two questions, namely: 1) what is the perception of MUI's and KUPI's *ulema* on postgenderism? and 2) how do they perceive postgender issues employing *uṣūl fiqh iftirādi*?

### Method

This qualitative research<sup>28</sup> was intended to solve and identify postgenderism discourse through a critical study of primary legal sources. The normative legal research approach was used to reveal the truth of the coherence on whether postgenderism is in accordance with religious norms, humanity, and the objectives of Islamic law. The *uṣūl fiqh* approach was conducted by examining various caused impacts to explain postgenderism discourse through the formulation of *uṣūl fiqh iftirādi*; a method of formulating Islamic law which brings together three approaches (i.e. prevention, prediction, and progressiveness) in responding to various problems of contemporary Islamic law. This preventive approach is based on the principle of consequence (*al-ma'āl*) using *sadd al-ẓarī'ah* (blocking the means) and *fath al-ẓarī'ah* (opening the means) methods and the progressive approach using *maqāṣid shari'ah* as the main consideration in the process of conducting *ijtihād*.

Primary data sources were obtained through in-depth interviews with four respondents as key informants. Two of them are *ulema* of MUI: K.H. Mukti Ali Qusyairi (MAQ) and K.H. Ma'ruf Khozin (MK), - both sit on the MUI's Fatwā Commission. The other two respondents representing KUPI are K.H. Husein Muhammad (HM) as the KUPI Advisory Board and K.H. Faqihuddin Abdul Kodir (FAK) as Deputy Chairman of the KUPI's Acting Board. Secondary

<sup>28</sup> Ranjit Kumar, *Research Methodology: A Step-by-Step Guide for Beginners* (London: Sage Publication, 2000).

data were explored through various primary books and research-based articles on postgender discourse. The data analysis techniques employed spiral analysis equipped with content, comparative, and critical analysis. This includes managing and organizing data, reading and memoing emergent ideas, describing and classifying codes into themes, developing and assessing interpretations, and representing and visualizing the data.<sup>29</sup>

## Results and Discussion

### Perceptions of MUI's and KUPI's Ulema on Postgenderism

The main mission of the postgenderism regarding humans and humanity needs to be responded wisely employing the social and cultural wisdom of our people. Complying with the culture of Indonesian society, the most obvious response to postgenderism is obviously related to the construction of thoughts with the *nusantara* perspective.<sup>30</sup> One of them is through the presence of MUI and KUPI.

MUI is a non-governmental organization that accommodates *ulema*, *zu'amā* (government), and Islamic scholars to guide, foster, and protect Muslims in Indonesia. It was established on 17 Rajab 1395 AH or 26 July 1975 AD in Jakarta. In accordance with its duties, MUI assists the government in conducting actions concerning the benefit of Muslims such as issuing *fatwā* (religious edicts) on the *halāl* (permissibility) status of a food or drink, determining the truth of a sect in Islam, and matters relating to the relationship of a Muslim with his/her surrounding.<sup>31</sup>

Meanwhile, KUPI is an affirmation of the existence of Indonesian woman *ulema* and the expansion of their roles and

<sup>29</sup> M. Q. Patton, *Qualitative Evaluation Methods* (London: Sage Publication, 1980); J.W. Creswell and C.N. Poth, *Qualitative Inquiry and Research Design Choosing among Five Approaches*, 4th Edition (Thousand Oaks: SAGE Publications, Inc., 2018).

<sup>30</sup> Abdurrohman Kasdi, "Reconstruction of Fiqh Nusantara: Developing the Ijtihad Methodology in Formulating Fiqh from Indonesian Perspective," *QIJIS: Qudus International Journal of Islamic Studies* 7, no. 2 (2019): 239–66; Iffatin Nur, A Muhdhor Ali, and Ali Abdul Wakhid, "Handasatu Uşūl Al-Fiqh: Naḥwa Muqārabah Indūniyyah Li Al-Ijtihād," *Madania: Jurnal Kajian Keislaman* 26, no. 1 (2022): 123–38, <https://doi.org/http://dx.doi.org/10.29300/madania.v26i1.7162>. Umma Farida and Abdurrohman Kasdi, "The 2017 KUPI Congress and Indonesian Female 'Ulama,'" *Journal of Indonesian Islam*, 2018, 140, <https://doi.org/10.15642/JIIS.2018.12.2.135-158>.

<sup>31</sup> M. Atho Mudzhar, *Fatwas of the Council of Indonesian Ulama: A Study of Islamic Legal Thought in Indonesia 1975–1988* (Jakarta: INIS, 1993).

involvement in society. It is also a social and cultural media for Indonesian woman *ulema* to build knowledge, learn from each other and share experiences, as well as reinforce Islamic, national and humanitarian values. The first congress was held for three days from 25 to 27 April 2017 in Cirebon, West Java, attended by more than 500 people from Indonesia and 15 other countries. The second congress was on 23-26 November 2022 in Semarang and Jepara, Central Java adopting the theme "Strengthening the Role of Female Ulema for Fair Civilization".<sup>32</sup>

Talking about postgenderism, its radical potential is in the form of auxiliary reproductive options which implies that the presence of human sexes for reproductive purposes will become obsolete. Furthermore, all postgender humans are deemed to have the ability to have offspring without having sexual relations. It means that postgenderism does not recognize the terms 'male' and 'female' brought along by humans at their birth.<sup>33</sup> This is certainly contrary to the noble values of Indonesian people who adhere to religious values and see humans as God's creations with their aspects of humanity and divinity.

Utilization of scientific and technological advancement in our daily life is unavoidable. Technology provides benefits to humans as it eases and simplifies the way we do things in our everyday life. It can also be used to solve many tasks and carry out any difficult job. However, if it is applied unwisely, technology can actually bring danger and threaten the very existence of humanity itself.<sup>34</sup> The Chairman of the KUPI Advisory Board, HM, viewed such issue as follows:

"One of the developments that cannot be avoided at this time is the development of technology. Therefore, the *fatwā* institutions like those present in Indonesia need to pay special attention in order to respond to them.

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<sup>32</sup> Editorial Team, "Sejarah Dan Latar Belakang KUPI," *kupi.or.id*, November 13, 2022, <https://kupi.or.id/tentang-KUPI/>.

<sup>33</sup> Natalie Gravenor, "Post-Modern, Post-National, Post-Gender? Suggestions for a Consideration of Gender Identities in the Visual Artworks and Moving Images of Neue Slowenische Kunst," *Acta Universitatis Sapientiae, Film and Media Studies* 14, no. 1 (2017): 175-196.

<sup>34</sup> Huda, "Penggunaan Teknologi Reproduksi Bantu", p. 184.

Especially if the technology has an influence on human existence in their daily activities.”<sup>35</sup>

Thus, in the concept of *fatwā*, technological developments require a religious edict about whether they give *maṣlahāt* (benefits) or cause *mafsadāt* (harms). MAQ, a member of MUI’ *Fatwā* Commission, stated:

“ In formulating a *fatwā* on technology, what must be considered is the impact of using this technology, both positive and negative impacts.”<sup>36</sup>

Furthermore, technological developments ultimately have ethical impacts and, eventually, when the negative impacts are not anticipated wisely, noble values of society and religion may start disappearing. This is in line with the shift in contemporary society’s lifestyle induced by technology. MK, another member of MUI’s *Fatwā* Commission, had his view:

“Regarding the aspect of technological development, it must, of course, be accompanied by the values of the people who participate in providing ethical standardization in social life.”<sup>37</sup>

Based on the above opinion, it is clear that the technological aspect has a major influence on the order of people’s lives, especially regarding with ethics and values in society. MAQ strengthened it with his statement:

“Certainly, the most affected aspect by the development of technology is the erosion of people’s ethics.”<sup>38</sup>

Regarding postgenderism as the impact of technological developments, it is necessary to map the aspects and values contained within as HM said:

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<sup>35</sup> Interview with HM, 20-9-2022, 14.00-15.00 Western Indonesian Time.

<sup>36</sup> Interview with MAQ, 25-9-2022, 18.15-18.50 Western Indonesian Time.

<sup>37</sup> Interview with MK, 21-9-2022, 14.00-15.00 Western Indonesian Time.

<sup>38</sup> Interview with MAQ, 25-9-2022, 18.15-18.50 Western Indonesian Time.

"The development of technology brings impacts not only onto the aspect of increasing human resources but also to other aspects such as economics, politics, culture, and so on."<sup>39</sup>

Furthermore, postgenderism itself is a continuation of the development of thoughts about gender. FAK, the deputy chairman of KUPI's acting board, stated:

"Two things need to be mapped in postgender development, namely physical and non-physical. In the physical aspect, it certainly requires a perception of analysis in religious studies whereas the non-physical aspect relates to the rise and development of the values of equality between humans, especially regarding the relation between men and women."<sup>40</sup>

Relating to the elimination of sexes in humans, especially for reproductive purposes as postgenderists campaign, KUPI's *ulema* states that it is something impossible. In this regard, FAK presented his view:

"I do not agree with the exclusion of gender in human life. Advances and developments in technology and science should not merge humans into the same status since it will only obscure their respective roles."<sup>41</sup>

On the practical aspect, the *ulema* from the two institutions have a very strategic position in presenting Islamic law (*fiqh*) to offer solutions for contemporary problems. As public figures in the clerical context, they are often placed as references in issues relating to Islamic law in the social order, including, very probably, at the time when postgenderism is intensified by their communities. Table 1 shows their perception on postgenderism.

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<sup>39</sup> Interview with HM, 20-9-2022, 14.00-15.00 Western Indonesian Time.

<sup>40</sup> Interview with FAK, 25-9-2022, 20.00-21.00 Western Indonesian Time.

<sup>41</sup> Interview with FAK, 25-9-2022, 20.00-21.00 Western Indonesian Time.

**Table 1.** The perceptions of MUI's and KUPI's *ulema* regarding postgender and its movements

No.	Perception	MUI	KUPI
1	Postgender vision and movement	Postgenderism is caused by political and economic aspects that have an impact on the control of certain groups based on the understanding of capitalism. So that at the estuary, it will cause turmoil and colonization of a group of people who will be marginalized.	The main vision of postgenderism is the realization of a cultural shift in society which has implications for the destruction of various cultures that have supported the achievement of the human aspect in people's lives.
2	Technological developments that spur postgenderism	The main standards of resource and technological development are the ethical aspects and values contained in <i>maqāsid shari'ah</i> which is used as the main basis in the formulation of Islamic law ( <i>fiqh</i> ).	In today's contemporary era, technological developments are certainly unavoidable, but what should be noted is that ethical aspects and Islamic values must be used as the standard and the main basis in accepting or rejecting the technology.
3	Omission of human sexes	The abolition and elimination of male and female sexes is a form of the fall of the human mind that negates God. This is because God's provision in creating men and women has a purpose which, in the end, is for the good sake of humankind.	This concept cannot be justified because it is contradictory to the predetermined text of God
4	Human perception and response to postgenderism	Directly, the community certainly has a response that is based on philosophical aspects and belief values. In this aspect, community culture which is identical with belief and religion cannot immediately accept all notions and movements which are all contradictory with noble religious values.	In general, every society has its own culture, customs and values that exist in the community. As with Indonesian people, there is no philosophical basis for postgenderism, meaning that the majority of Indonesian people will not easily accept postgenderism and they rather will hold strongly to religious principles and religious teaching's values.

As seen in Table 1, KUPI's *ulema* view that postgenderism is motivated by technological development aspects which have an

increasingly significant effect on the society's mindset. Their perception shows that this popular idea is synonymous with the rejection of gender between men and women. It is also deemed as a real movement that has been spurred by the development of ideas and understanding regarding with relations between men and women or so far referred to as genderism. However, it is worth noting that the essence of their perception is based on the *ijtihad* perception oriented to women's empowerment in aspects of family and social life. Thus, in connection to postgenderism, they perceive that the existence of male and female sexes is an undeniable reality. The pattern of roles related to rights and obligations between the two becomes the domain of *ijtihad*. Therefore, when postgenderism contradicts the rules of Islamic law (*fiqh*), it cannot perceptually be justified.

This is corroborated by the *ulema* of MUI's perception arguing that all thoughts based on technology must be based on the values in *fiqh ijthād*, namely *maqāṣid shari'ah*.<sup>42</sup> They perceive postgenderism as an impact of the biotechnological development that must be filtered based on the values and rules of Islamic law. Essentially, the aspects of benefits and harms become their basis in addressing postgenderism.

Furthermore, the most obvious impact of the development of science and technology is for the fragility, vulnerability, and extinction of human species. It is because postgenderism poses a real threat for the existence of human as *khalifah fi al-ard* (God's vicegerents on the earth). In this condition, the KUPI's *ulema* perceive a discrepancy between God's provisions and postgenderism which ultimately raises turmoil in the understanding of Islamic law relating to the laws that must be carried out by humans. In addition, it is also closely related to human responsibility for their lives.

This perception is also supported by the MUI's *ulema* in which they view that all God's provisions have an impact on the mandate and obligations that must be carried out by humans. In addition, the livelihoods of humans and any tool that accompany them in doing their jobs have aspects of benefits that are intended by God to support and facilitate their life. Therefore, in this regard, technological

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<sup>42</sup> Mukti Tabrani, "Maqashid Revitalization in Global Era: Istidlal Study from Text to Context," *Al-Ihkam: Jurnal Hukum Dan Pranata Sosial* 13, no. 2 (2018): 310-333.

developments cannot be justified when they are unable to accommodate human values outlined by God.

### Perception of Postgenderism based on *Maqāṣid Sharī'ah* and *Uṣūl Fiqh Iftirāḍi*

In an effort which is aimed, among others, to prevent postgenderism from growing, especially in Indonesia, MUI scholars have issued a *fatwā* regarding the prohibition of changing the sex of male to female or vice versa; it is considered *ḥarām* (unlawful) because it contradicts to the Holy Qur'an Surah al-Nisā' verse 19. A *khunṭsa* (effeminate) whose maleness is clearer may perfect masculinity and vice versa.<sup>43</sup> MUI assumes that the rise of transsexuals can lead to postgender ideas. The urgent thing that the MUI must do includes issuing *fatwās* to stop various forms of sex and gender injustice because the postgender philosophy of struggle actually departs from prolonged despair over sex and gender injustice. It aims to mainstream sex and gender egalitarianism through internalization, externalization and trans-internalization of just and egalitarian Islamic universal values while minimizing transsexual medical operations except with urgent medical consideration. Meanwhile, KUPI, through a number of the congresses, has also issued some *fatwās* that all forms of violence against women, both out of wedlock and when married, are *ḥarām* (unlawful). It also encourages the government to compile and pass regulations on preventing sexual violence.<sup>44</sup>

In the study of *maqāṣid sharī'ah* as the approach model in the study of contemporary Islamic law, human existence can be fulfilled when the needs and preservations of religion (*ḥifẓ al-dīn*), soul (*ḥifẓ al-nafs*), mind (*ḥifẓ al-'aql*), offspring (*ḥifẓ al-nasl*), possession (*ḥifẓ al-māl*), dignity (*ḥifẓ al-'ird*), and human environment (*ḥifẓ al-bī'ah*) are fulfilled.

According to Shatibi, scholars agree that God establishes various legal provisions with the aim of maintaining the five basic human

<sup>43</sup> Read further: MUI, "Operasi Perubahan/Penyempurnaan Kelamin, *mui.or.id*, June 1, 1980. <https://mui.or.id/wp-content/uploads/files/fatwa/Operasi-Perubahan-atau-Penyempurnaan-Kelamin.pdf>.

<sup>44</sup> Erik Sabti Rahmawati & Melinda Aprilyanti, "Metodologi Fatwa Kongres Ulama Perempuan Indonesia (KUPI)", *kupipedia.id*, [https://kupipedia.id/images/b/b5/Metodologi\\_Fatwa\\_Kongres\\_Ulama\\_Perempuan\\_Indonesia\\_%28KUPI%29.pdf](https://kupipedia.id/images/b/b5/Metodologi_Fatwa_Kongres_Ulama_Perempuan_Indonesia_%28KUPI%29.pdf).



elements (*al-darūriyyāt al-khams*) that uphold human life through five categories as mentioned<sup>45</sup> which are also known as the main purpose of law (*al-maqāṣid al-shari'ah*).<sup>46</sup>

Meanwhile, Imam al-Ghazali calls them *al-uṣūl al-khamsah*.<sup>47</sup> Furthermore, al-Ghazali states that everything intended to maintain the five main elements is *al-maṣlaḥah* (benefit) and vice versa, anything that contradicts them is called *al-mafṣadah* (harm). Avoiding *mafṣadah* itself is also considered as *al-maṣlaḥah*.<sup>48</sup> Later, Imam al-Subki added another purpose of the law which is to preserve one's honor (*hiḍḍ al-'ird*), resulting in *al-kulliyah al-sitt* (six elements),<sup>49</sup> and several other contemporary scholars like Yusuf al-Qaradhawi<sup>50</sup> and Abu Bakar al-Yasa'<sup>51</sup> proposed another aspect namely *hiḍḍ al-bi'ah* (preserving environment) to refine it to seven.

Relating to postgenderism, in the perspective of *maqāṣid shari'ah*, it can be examined using the indicators of *hiḍḍ al-dīn*, *hiḍḍ al-nafs*, and *hiḍḍ al-nasl*<sup>52</sup> as follows:

#### *Hiḍḍ al-dīn (preservation of religion)*

Postgenderism is on a mission to realize a gender-less world.<sup>53</sup> However, as Muslims believe, God creates His creatures in pairs, including humans who are created in males and females.<sup>54</sup> Both have their respective roles including to produce and nurture their offspring

<sup>45</sup> Abu Ishaq al-Shatibi, *Al-Muwafaqat fi Uṣūl al-Syari'ah* (Beirut: Dar al-Kutub al-Ilmiyah, 2004), p. 244.

<sup>46</sup> Ahmad al-Raisuni, *Nazariyyat al-Maqashid 'inda al-Imam al-Syathibi*, (Beirut: Al-Muassasah al-Jami'iyah li al-Dirasat wa al-Nasyr wa al-Tauzi', 1995), p. 39.

<sup>47</sup> Muhammad Ibn Muhammad Al-Ghazali, *Al-Mustasfa Min 'Ilm Al-Uṣūl* (Cairo: Maktabah al-Jumdiyah, 2010), pp. 286-287.

<sup>48</sup> *Ibid*, p. 287; Nur, "Ushul Fiqih Iftiradhi", p. 347.

<sup>49</sup> Taj al-Din 'Abd al-Wahhab Ibn al-Subki, *Hasyiah Al-'Allamah Al-Bannani 'Ala Matn Jam'i Al-Jawami* (Cairo: Dar Ihya' al-Kutub al-'Arabiyyah, 1999), p. 280.

<sup>50</sup> Yusuf al-Qaradhawi, *Ri'ayah Al-Bi'ah Fi Syari'ah Al-Islam* (Cairo: Dar al-Shuruq, 2001).

<sup>51</sup> Abu Bakar al-Yasa', *Metode Istishlahiyyah (Pemanfaatan Ilmu Pengetahuan Dalam Uṣūl Fiqh)* (Jakarta: Kencana, 2016).

<sup>52</sup> Iffatin Nur, "Postgenderism: Weighing a Future World", p. 1375.

<sup>53</sup> Zvorsky & Hughes, "Postgenderism: Beyond the Gender Binary", p. 5.

<sup>54</sup> The Holy Qur'an (QS) al-Zariyat (51): 49 and al-Qiyamah (75): 39. Read further: Abdullah Yusuf Ali, *The Meaning of the Holy Quran* (Bestville-VA: Amana Publications, 2008), pp. 1363 and 1569 respectively.

and to prepare them well as the future *khalifah fi al-ard*. Eliminating sexes in humans for having a better world is a utopian dream since sexes are God's creation and their presence and function cannot be resisted even with any kind of technological advancement. Efforts to fight against natural things will only drop humans from their status as the noblest creature created in the best form (*aḥsanu taqwīm*).<sup>55</sup>

The effort to eliminate gender would also mean challenging God's prerogative right as the Creator (*al-Khāliq*) and plunge humans into the act of playing God which is clearly contrary to the spirit of total servitude to the Most Powerful (*al-Qādir*) as the essence of one's preservation of religion. In addition, God forbids mankind to throw themselves into destruction with their own hands.<sup>56</sup> Humans should realize that they are a part of the creations of the All-Knowing God (*al-'Alīm*). Therefore, conducting anything against the nature or law that has been set by the Creator means deliberately falling into destruction just like any device which is not operated according to its manual instructions or even contrary to the manufacturer's instructions that will surely lead to its detriment.<sup>57</sup>

#### ***Hifz al-nafs (preservation of soul)***

The denial of sexual differences in humans is very dangerous including to the human life itself. This is because after ovulation occurs, the baby's genitals are already mature. As explained by Getz, the baby's sex is set at conception by the sex chromosome received from the sperm (X for girl or Y for boy) although it then takes a while for the actual body parts to develop.<sup>58</sup> Therefore, an intentional sex modification of the fetus will have an impact on congenital defects in the baby born.

Congenital defects are abnormalities acquired by the baby since birth which can contribute to life-long disability and health conditions. This condition is caused by disturbances during the period

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<sup>55</sup> QS al-Tīn (95): 4. Ali.p.1670

<sup>56</sup> QS al-Baqarah (2): 195. Ali. p. 78

<sup>57</sup> Ahmad Muhtadi Anshor & Muhammad Ngizzul Muttaqin, "The Implementation of Gender-Responsive Fiqh: A Study of Model Application of Women-Friendly and Child Care Village in Post-Covid-19 Pandemic," *Justicia Islamica: Jurnal Kajian Hukum Dan Sosial* 19, no. 1 (2022): 133-152.

<sup>58</sup> Maggie Getz, "When Are Sex Organs Formed in a Fetus? How Your Baby's Genitalia Develops," *babycenter.com*, n.d.

of fetal development in the womb. Congenital defects may cause babies to be born with functional impairments or disabilities in many organs or certain organs. WHO's data in 2019 showed that more than 8 million babies worldwide were born with congenital defects annually. Of that number, about 295,000 babies died within a few days to 4 weeks of being born.<sup>59</sup> Congenital defects could develop in any pregnancy phase. However, the majority of cases of congenital defects occur in the first trimester of pregnancy, which is when the organs of the fetus are just starting to form.

#### *Hifz al-nasl (preservation of offspring)*

One prominent contemporary *ulema*, Hasan al-Turabi, explains that the preservation of the earth has something to do with human existence, therefore, saving the human species from extinction is necessary. One way to save them is allowing them to live in pairs, a man and a woman as a husband and a wife, to have descendants (*tawallud*) and to breed (*tanāsul*).<sup>60</sup>

Meanwhile, ideas brought forward by postgenderism contradict to the purpose of preserving human offspring since it does not prioritize the importance of having a normal family but rather to please oneself without the obligation to think about future generations. It is evident from the statement of postgenderism advocates saying that in case of postgender humans want to have a baby, "the baby will be born to same-sex couples or from three different parents to create a single fetus." Such statement clearly illustrates how postgenderism perceives human babies.

To them, having babies is only a matter of 'preference' by which its process can be handled by technology.<sup>61</sup> If the postgender movement succeeds in its major goal of establishing a society without gender, particularly through procedures to stop genital development while the infant is still in the womb, the babies born in this manner will be no different from hermaphrodite animals. This condition, in

<sup>59</sup> World Health Organization (WHO), "Congenital Disorders". [https://www.who.int/health-topics/congenital-anomalies#tab=tab\\_3](https://www.who.int/health-topics/congenital-anomalies#tab=tab_3).

<sup>60</sup> Iffatin Nur, Syahrul Adam, M. Ngizzul Muttaqien, "Maqasid Al-Shari'at: The Main Reference and Ethical Spiritual Foundation for the Dynamization Process of Islamic Law," *Ahkam: Jurnal Ilmu Syariah* 20, no. 2 (2020): 331-360.

<sup>61</sup> Freebase, "Postgenderism," *definitions.net*. STANDS4 LLC, 2019, <https://www.definitions.net/%0Adefinition/postgenderism%0A>.

Islamic context, contradicts to the conception of humans in which they, as the best creatures,<sup>62</sup> should become useful human beings who are capable to perform their function as *khalifah fi al-ard* well.<sup>63</sup> To do so, the physical and psychological aspects of humans must be nurtured and developed simultaneously so that they become the noblest creatures. His/her physique is looked after by providing balanced nutritious food and drink so that the body's immune system can be well-maintained.

One way of preparing such people is by continuing the birth of good offspring (*durriyyatan tayyibah*).<sup>64</sup> Taking care of one's body can be conducted, among others, by not having genital surgery when there are no physical or psychological abnormalities in one's biological body and soul. Apart from risking one's physical safety, gender alteration can also risk human psychological safety. Therefore, to the authors' analysis, such extreme idea of postgenderism is contrary to the concept of *hifz al-'ird* (preserving the human dignity).

Additionally, childfree, another notion of post-genderism, is contrary to the Islamic perspective in which children occupy a high regard and have a very important role in household life. In the perspective of *maqāshid sharī'ah*, childfree is not in accordance with religious teaching and violates the purpose of marriage,<sup>65</sup> especially *hifz al-nasl*, unless the safety of the mother's soul is at stake. To the authors' opinion, the childfree notion has a common thread and continuity with postgenderism, one of which is to free women's biological functions from reproductive obligations.

Employing *uṣūl fiqh iftirādi* in viewing postgenderism is based on an argument that the methodology in the study of Islamic law must be able to predict turmoil and problems in people's lives. This is

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<sup>62</sup> QS al-Tin (95): 4. Ali, *The Meaning of the Holy Quran*.p. 1670

<sup>63</sup> QS al-Baqarah (2): 30. Ali.p.24

<sup>64</sup> A hadith narrated by Imam Muslim no. 2664. The Prophet Muhammad said: "A strong believer is better and more loved by Allah than a weak one. However, both of them still have goodness". Imam Muslim, *Ṣaḥīḥ Muslim* (Riyadh: Maktabatur Rusyd, 2001).

<sup>65</sup> Sayful Islam Ali, "Keputusan Bebas Anak (Childfree) Perspektif Maqasid Syari'ah Jamaluddin Athiyyah: Studi Kasus Penganut Childfree Victoria Tunggono", *Dissertation*, (Malang: UIN Maulana Malik Ibrahim Malang, 2023); Dania Nalisa & Syaifuddin Zuhdi, "The Childfree Phenomenon in the Perspective of Human Rights and Maqashid Al-Shari'ah," in *Proceeding of the International Conference on Community Empowerment and Engagement (ICCEE, 2021)*, (Paris: Atlantis Press, 2021), pp. 222-231.

because in the study of *ushūl fiqh*, there are three patterns and methodologies in the study of Islamic law, namely *bayānī* (linguistics), *ta'līlī* or *qiyyāsī* (causatic), and *istiṣlāḥī* (theological). The three methods and patterns in the study of *ushūl fiqh* are a general pattern used in formulating and shaping fiqh civilization from the classical era to the contemporary era.<sup>66</sup> Thus, further development with patterns and methodologies on an empirical-predictive-progressive basis is expected to be able to build branch derivations in formulating Islamic law in the contemporary era.<sup>67</sup>

In the study of *uṣūl fiqh iftirāḍī*, the post-humanism ideology, which is the next step of postgenderism, implicates human extinction. On the other hand, according to Islamic law, humans as God's creation are tasked with carrying out religious rules and commands. Al-Ghazali states that humans are the principal actors in realizing the religion's existence. To him, religion can exist when human existence is maintained.<sup>68</sup>

In principle, to this context, the formulation of *uṣūl fiqh iftirāḍī* through *maqāṣid sharī'ah* is to provide a preventive aspect to various possible impacts that may occur due to postgenderism.<sup>69</sup> In this aspect, the embodiment of *ḥifẓ al-dīn*, *ḥifẓ al-nafs*, *ḥifẓ al-nasl*, and other preservations in the *maqāṣid sharī'ah* principle becomes an important aspect in conducting *ijtihād* in the model of *uṣūl fiqh iftirāḍī* to prevent harms and attain benefits.<sup>70</sup> Additionally, in *uṣūl fiqh iftirāḍī*, predicting the potential of having *maḍarāt* (harms) is the main focus of its methodology. In its application, postgenderism, in the perspective of *uṣūl fiqh iftirāḍī*, is an ideology that eventually implicates the extermination and elimination of various aspects of *maṣlahah* and protection for humans.

<sup>66</sup> *Ijtihād istiḥṣānī* is not considered as a pattern of *ijtihād* that stands alone on the grounds that some parts of its application fall into the discussion of *ijtihād qiyyāsī* and some others fall into the category of *istiṣlāḥī*. Read further: Ghazali, *Al-, Al-Mustasfā Min 'Ilm Al-Uṣūl*.

<sup>67</sup> Read further: Ghazali.

<sup>68</sup> Ghazali.

<sup>69</sup> Nur, *Uṣūl Fiqh Iftirāḍī: Membincang Diskursus Postgenderisme Dan Posthumanisme*. p. 204

<sup>70</sup> Iffatin Nur & Muhammad Ngizzul Muttaqin, "Reformulating The Concept of Maṣlahah: From A Textual Confinement Towards A Logic Determination," *Justicia Islamica Jurnal Kajian Hukum Dan Sosial* 17, no. 1 (2020): 73-91.

### Conclusion

Postgenderism is a notion about humanity that has, among other things, a mission to eliminate gender labeling. It emerges because of scientific and technological advancement and aims to eliminate social stratification and discrimination caused by gender. In the aspect of *fiqh*, the postgenderism seems to have an impact on the disruption of social system and religious order regarding humans and humanity. The *ulema* of MUI and KUPI perceive that scientific and technological developments must be accompanied by ethical aspects and essential values of *maqāṣid shari'ah* as the basis to show the existence of Islamic law in order to prevent harms and bring benefits to society. Having such a condition, they perceive that postgender ideologies and movements which threaten the existence of humanity eventually risk the establishment of *ḥifẓ al-dīn*, *ḥifẓ al-nasl*, and *ḥifẓ al-'ird*. The preventive paradigm against postgenderism is formulated through *uṣūl fiqh iftirāḍi* method as an anticipatory *ijtihād* towards various possible harms it may cause. It considers postgenderism as an ideology that allegedly violates *sunnatullah* and threatens human existence and humanity. According to its limitation, this research suggests that postgenderism can be observed using broader perspectives, such as medical, anthropological, sociological, pshychological, demographical, and others, with more relevant context in the Indonesia as research locus.

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