

# Marriage Equality in Indonesia? Unruly Bodies, Subversive Partners and Legal Implications

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## Introduction

The Indonesian Constitution guarantees that everybody has the right to establish a family. However the Marriage Law of 1974 restricts this right to a man and a woman. Unruly bodies that don't readily fit the binary division of sex and subversive partners who challenge society's right to deny them their constitutional right to marry complicate this seemingly universal entitlement. I will present two case studies of people who married legally yet whose right to form a family was contested. The first case concerns a women's same-sex couple. One of the partners declared she was a male and was initially accepted as such. The second case concerns a couple of which the biological sex of one of the partners was questioned. In both cases the accusation of document fraud was a major issue. Yet not all people committing document fraud for the purpose of marriage are persecuted. In this article I will analyse the legal implications of these cases. Marriage equality for whom?

## Constitutional Right?

Article 28b of the Indonesian constitution stipulates that every citizen has the right to form a family and acquire offspring via legal marriage. Although the emphasis on acquiring children already points in the direction

of a heterosexual marriage, this is not explicitly spelt out. After all, other means of getting children, such as adoption, would do as well. I know several lesbian couples who have adopted children. However, they cannot marry legally in spite of their desire to do so and the Indonesian Constitution granting them that right. The 1974 Marriage Law restricts marriage to a union of a man and a woman. This law further allows polygyny under certain circumstances and defines the husband as the head of the household and his wife as the manager of that household.<sup>2</sup> No wonder that this law is being debated. However, the opening up of marriage to all Indonesian citizens is not being considered, although the issue has been widely debated of late. The general feeling is that "Indonesian traditional culture" doesn't allow that.<sup>3</sup>

But who defines "traditional culture"? Elsewhere I have argued that "traditional culture" is being redefined by Islamist hardliners who promote a so called "original" Indonesian tradition of gender harmony and happy family (*keluarga sakinah*).<sup>4</sup> Below I will give several examples which belie the idea that Indonesian culture was always-already based on the heterosexual binary model of male and female sexes corresponding with masculine and feminine genders.

## Lesbian Couple on the Run

In Batam, an Indonesian island close to Singapore, the house of Angga Sucipto, 21 and Ninies Ramiluningtyas, 40, was raided in January 2013. They had gotten married in 2012, at the Sei Beduk Religious Affairs Office, in Riau islands. Angga carried papers stating she was male which the official in charge did not doubt. They had followed an express procedure, for which they paid 2 million rupiah (around US \$200) in which it is not necessary to take the long route through the neighbourhood office. The couple settled in Ninies's house and lived there initially without any problem, keeping to themselves. However, Angga did not socialize with other men as was expected of him and the neighbours felt justified in raiding the house of the couple. There they discovered that Angga was female; she was chased out of the house. Ninies was allowed to stay, but she fled with her partner. At present their whereabouts are unknown.<sup>5</sup> The Ministry of Religious Affairs quickly announced that it would annul the marriage and that in order to prevent such things from happening again it would step up its regular pre-marriage counselling sessions.<sup>6</sup>

Two issues are striking in this case. In the first place the role of the neighbours who feel justified in raiding the couple's house. In fact they are stimulated to do just that by the 2008 anti-pornography law, which stimulates communities to take the law into their own hands in issues involving sexual morality.

Secondly the ease with which Angga could pass as a man. Butch (male-identified lesbian) women in Indonesia can indeed quite easily pass as men: short hair, masculine clothes and a masculine swagger are generally enough to convince people that they deal with a man. Some butches are tempted to do

just as Angga did and marry their partners. The danger is that they are found out and are charged with document fraud, which carries a maximum sentence of seven years, as we will see below. Sadly, Angga and Ninies are on the run now, and it is not clear how they will be able to survive. The Ardhanary Institute, an NGO that defends LBT people, has not been able to find them so far, and thus has not been able to help them.

## Alterina Hofan, an Intersex or Transgender Husband?

Under the headline *Alterina latest proof of transgender problems*, the *Jakarta Post* of 14 May 2010 carried the story of Alterina Hofan (or Alter), the husband of Jane Hadipoespito, who was imprisoned on the charge of "identity fraud".<sup>7</sup> Other newspapers also reported on the case, with *Vivanews* of the same date carrying a photograph of the couple in happier days.<sup>8</sup> Jane in a fluffy dress and with half-long hair looks up admiringly at her husband Alter; smart in a jacket, shirt and tie, short hair, square shoulders. The article specifies that Alter smokes heavily and has a baritone voice. Alter looks to all appearances a man and that is the assumption under which the pair married, their "truth". Yet, at birth, Alter was classified a girl and only later diagnosed with Klinefelter syndrome, one of the intersex conditions presently recognised. After operations for gynaecomastia and for hypospadias Alter was happy with his body, and changed the identity on his documents without going through a lengthy legal procedure.<sup>9</sup> When Jane and he fell in love and married nothing seemed to impede their happiness. However Jane's mother objected to the marriage and fielded a case against her son-in-law for "document fraud" as the sex of his birth certificate didn't match that mentioned on his wedding form. The police

originally detained him in the men's prison of Cipinang in January 2010. Not trusting the Klinefelter diagnosis that Alter presented, the police carried out their own investigation and decided that Alter was a woman.<sup>10</sup> In spite of his manly appearance, on 30 April 2010 they moved him to a cell of his own in the women's prison of Rutan Pondok Bambu, awaiting his trial. Jane herself declared that she didn't care how Alter was classified: "All I want is for my husband to be freed as soon as possible."<sup>11</sup> And added Alter: "I'm a real man, I can ejaculate. Sperm is getting out, just ask my wife if you don't believe me."<sup>12</sup>

So far the discussion was waged in biomedical terms. If Alter was declared intersex, the confusion at birth was understandable. He was a "real man" and he would walk free. But if Alter was diagnosed as female and thus after the operations as a transsexual person, he should have received official permission to change his status. In both cases the sex on his birth certificate would have to be changed. In the Klinefelter case, this shouldn't have caused many problems, but still a legal process was required. In the case of a "female" Alter undergoing sex change, the procedure would have been much lengthier, involving psychological testing. In that case, Alter would be called a transsexual person.

His defence team pursued a different line and called upon a member of the National Rights Commission to declare that Alter's rights were violated under the International Covenant on Civil and Political Rights.<sup>13</sup> The court accepted this argument and Alter was provisionally released on 31 May but still had to face trial. In October 2010, the prosecution demanded a sentence of five years in prison on the charge of "document fraud". The prosecutor mentioned three aggravating circumstances. The accused had come up

with all kinds of twisted arguments. Second, he had not shown remorse and third, the accused had denied the fraud.<sup>14</sup> In November, Alter was acquitted from all charges on the ground that he had Klinefelter syndrome and thus, though he had tampered with his birth certificate, this could not be considered a crime in this case.<sup>15</sup>

A number of issues can be gleaned from the newspaper reporting. The first issue is the use of (albeit conflicting) medical "proof" to substantiate the charges against Alter, or conversely to argue for his release. Though Klinefelter is diagnosed as a biological condition, pertaining to one's sex, reporting focused on Alter as a transgender person. This confusion of terminology opens up a totally different discourse, that of human rights and prevailing notions of "normality". The Indonesian Human Rights Commission took this a step further and declared that this case was a violation of Alter's rights and referred to the International Covenant on Civil and Political Rights which was ratified by the Indonesian government in 2005. Josef Adi Prasetyo, the commissioner in charge of the case, declared that Alter "has the right to say he is a man".

This position provides an excellent opportunity for a revolutionary development in the struggle for intersex, transgender, and transsexual people's rights. However in the end, this line was not accepted by the court. Alter was seen as a "true man", and adjusting one's "wrong" birth certificate would simply mean that a perceived mistake was righted. The biomedical argument was in line with the legal verdict. Earlier, a legal expert from the University of Indonesia had explained this position.<sup>16</sup>

In this whole procedure, multiple contradictory concepts were applied to the same

person. The police initially declared that Alter was a “true woman”, so the prosecutor demanded a stiff prison term for document fraud. The intersex team stated he was a man born with an intersex condition, and a school friend declared that Alter always had been a tomboy, although he consented to wearing a school skirt.<sup>17</sup> The association of the word “tomboy” with a butch person is very clear in Indonesia, where male-identified female-bodied persons in same-sex relations are often called “tomboi”.<sup>18</sup> Thus, Alter was variously classified as intersex, transsexual, and homosexual. The marriage between Alter and Jane, depending on which label was applied, would then be either a same-sex marriage, which is illegal, or a heterosexual marriage, which is accepted. In this case, Alter was ultimately seen as an intersex person, so his birth certificate was wrong, for a Klinefelter person is usually classified as a man. Thus, Alter was not condemned for document fraud even though he didn’t follow the required procedure. If, on the other hand, he would have been a biological female, the sex on his marriage paper would be “wrong”, as he had not yet completed the whole court procedure to change his sex and he could have faced a hefty jail sentence (up to a maximum of seven years). Plus, the marriage of Alter and Jane would have been nullified. This is what Jane’s parents had wanted. In both cases Alter had to take sides: he could only be “man” or “woman” – classifying as intersex and marrying Jane on that ground was impossible.

The case of Alter then raises fundamental questions on how important it is to classify human beings as intersex, transsexual, transgender, or homosexual. All these terms at present refer to non-normatively gendered and sexed positions that carry various forms of stigma. The biomedical

discourse has become dominant in juridical and even in religious circles. Human and sexual rights activists deploy a different set of discursive tools.

The cultural discourse on “sacred gender” which I will outline below produces yet again a different set of truth claims. Below I will focus on what is classified as “Indonesian tradition” on the grounds of which an always-already binary heterosexual normalcy is proclaimed. To illustrate my position I will discuss examples of gender variance in Asia in situations in which “sacred gender” was an established worldview. I will then return to the human/sexual rights discourse, which was deployed successfully to get Alter out of jail. But while Alter was saved by his intersex condition, Angga and Ninies have no such recourse.

### **The Cultural Discourse on Gender Variance**

Social stigma has not always been associated with gender variance or intersex. In various Asian countries, pre-colonial people who inhabited a realm of gender and sexual liminality fulfilled certain religious roles. “Gender ambiguity”, or “transvestism”, depending on which concept was used by observers, has played a major role in rituals throughout Southeast Asia; there were reports of hermaphrodites, eunuchs, or transvestites who played important roles in courts and religious festivals, mediating between the world of gods and humans.<sup>19</sup> In some cases “gender switching” only took place in a ritual context; in other cases, it exceeded the sphere of ritual. These people were known as transgendered, such as the *manang bali* of the Iban in Sarawak or the *bissu* among the Bugis in Sulawesi.<sup>20</sup> It is difficult to guess in how many cases such stories referred to people with ambiguous genitalia, as the sources are

often unclear and as such a distinction may not always have played a determining role. It appears that gender liminal positions could be inhabited in various ways. Colonialism and the emergence of monotheistic religions have destroyed or eroded the importance of this so called “ritual transvestism”.<sup>21</sup> *Kathoei* in Thailand, *hijra* in India, *bissu* in Bugis society, and *warok* in Ponorogo, East Java are remnants of what used to be a more widespread tradition.<sup>22</sup> The religious context of the gender switching in the cases mentioned above has often been lost in the course of the intervening centuries.

This development refers to a process that Blackwood, following Andaya, more broadly calls the decline of “sacred gender”.<sup>23</sup> Sacred gender is associated with a worldview in which gender is defined cosmologically in such a way that there is a direct link between sacred powers and (a third) sex/gender.<sup>24</sup> Sacred gender more widely refers to cosmologies that “constitute gendered meanings and practices through sacred beliefs about the nature of the cosmos and the origins of humanity”.<sup>25</sup> Origin myths frequently stress an original unity (a snake, or an egg) from which diverse beings originate. The Bugis myth about creation, La Galigo, speaks of originally “androgynous” deities that produce various sacred beings, including *bissu*.<sup>26</sup> In a later form of creation the primordial unity is split, and female and male beings are created. These became the ancestors of the Bugis dynasties.<sup>27</sup> Thus Bugis cosmology rests upon a primordial oneness, of which the *bissu* are a manifestation. Later, they are split into opposite genders. The *bissu* remain necessary to ensure the original oneness, through their participation in regular rituals.

Ardhanarishvari (also called Ardhanari) is another good example of this.<sup>28</sup> This half-

male, half-female Hindu deity combines male (right side, Siva) and female (left side, Shakti) characteristics and attributes. Originally from India, this god/dess is known in Indonesia as well. The National Museum in Jakarta has three statues of Ardhanarishvari in its central yard.<sup>29</sup> In pre-Islamic Javanese epic court poetry, the so-called *kakawin*, Ardhanarishwari is mentioned in a tantric form of the yoga of love in which the divine union of Siva and Shakti creates the “seed of the world” (*windu*). This cosmic union provides both sexual gratification and the welfare of the land; it ensures abundance of life in general.<sup>30</sup> This fusion of male and female in one form referred both to spiritual prowess and the physical enjoyment of love.

Colonialism with its strongly patriarchal gender division (or communism in the case of Siberia) and monotheistic religions such as Christianity and Islam weakened the sacred origins of gender, resting upon a unity that needed to be periodically reconfirmed. Gender came to rest on individual beings and lost its connection to the sacred world. Sexual bimorphism became fixed and bounded and gender relations divided in a binary and hierarchical way. These binary bodies didn’t allow any space for gender transgression as earlier cosmologies had. These processes have progressed unevenly and in some cases partially. The Sufi tradition which dominated early Islam in Java for instance was able to accommodate the old Javanese goddesses and transgender practices for a long time. The union of Siva with Shakti, his female consort, has led to Siva variously being seen as androgynous, hermaphroditic, bisexual, or ambiguous with respect to sex, gender or both.<sup>31</sup> This seems to suggest that there might have reigned a climate of pluralism concerning sex and gender in several South and Southeast Asian societies, as evidenced

by the many *lingga-yoni* (phallus rising from a vulva) statues found. Another indication of the importance and the recognition of androgyny is the spread of tantric cults in the region with their emphasis on the reconciliation of opposing forces.<sup>32</sup> The predominantly Hindu island of Bali has remnants of these belief systems, with Siva, the prime deity, being considered a hermaphrodite, or *wandu*.<sup>33</sup> Interestingly, the Javanese word *wandu* is still used for an effeminate man who engages in sex with other men.<sup>34</sup> Thus it appears that in several Asian contexts, transgendered ritual specialists symbolized an original unity between heaven and earth and could communicate with the spiritual world in order to ensure the fertility of the land and the prosperity of its people.

### ***Bissu***

A classic example of gender pluralism which is thriving today in Indonesia is the case of the Bugis.<sup>35</sup> Their gender system is not based on a binary division. Indeed, five genders can be distinguished, male, female, *calabai*, *calalai*, and *bissu*.<sup>36</sup> *Calabai* are male-bodied persons who dress like women, perform women's roles, and often have male partners. They are still highly visible in society and perform various functions in marriage ceremonies. *Calalai* are much rarer and much less visible. They are female-bodied and may live with their woman partners and fulfil male roles. They don't perform in ceremonies.<sup>37</sup> Although some *calabai* become *bissu*, this latter category must be regarded on its own. A *bissu* has a much more important ritual function. They used to be the keepers of the sacred royal ornaments and in that function were seen to be bisexual, as these ornaments required communion with the other sex, and the sex of the ornament was generally not known. The *bissu* is thus regarded as the "hermaphroditic partner of the ornament".<sup>38</sup>

The *bissu* fulfilled various ritual roles, for instance in ceremonies related to marriage and childbirth, often entering into a trance.<sup>39</sup> Indeed, these were the functions also described in the Bugis origin myth, La Galigo. One became a *bissu* through a supernatural calling. Both high and low placed persons could become *bissu*. In the spirit world, a *bissu* had two partners, a woman and a man. In Pelras there is no mention of a physical condition, other than psychosomatic symptoms underlying the calling. Kroef used the terms androgyny, bisexuality, and hermaphroditism indiscriminately without referring to genitalia. He describes *bissu* being dressed half male and half female for ritual purposes, similar to the Ardhanarishvari concept.

The ambiguous gender and sexual status of the *bissu* was and still is highly appreciated. As Andaya writes, "...in their ritual roles the *bissu* assume a symbolic androgynous state that re-establishes primordial conditions(...)" Performed by the *bissu*, such rituals are indispensable in ensuring the well being and prosperity of the ruler and the community.<sup>40</sup>

The *bissu* tradition experiences a revival, with the current process of regional autonomy in Indonesia. To justify its claims for autonomy from the national state often local culture is invoked, with the *bissu* symbolizing Bugis authenticity.<sup>41</sup>

There are more examples of gender variance, variously called androgyny, hermaphroditism, or bisexuality in Indonesia. Schärer for instance uses the term "hermaphrodite" to refer to the *basir* or *balian* of the Ngayu Dayak in Kalimantan. These *balian* are powerful healers and diviners; they are male-bodied and dress like women.<sup>42</sup>

In other parts of Southeast Asia, we find similar stories. In Burma transgendered fe-

male bodied ritual specialists, the *nat kadaw*, (“wives of the spirits”), played important roles in local ceremonies, and were even reported to assist in the war against the invading British.<sup>43</sup>

Apart from Bugis society, in Indonesia, ritual transvestism is generally in decline due to political processes and the growing influence of hardliner monotheistic groups who periodically want to purify Indonesian society from pre-Islamic and pre-colonial influences. A major event in this regard was the cleansing of the Indonesian society from all traces of communist and socialist influence, in the political context of the creeping coup of General Suharto in 1965-1966.<sup>44</sup> In order to discredit President Sukarno, he wiped out the communist party and all its associations, including the cultural association.<sup>45</sup> Transgender practices for instance in *reog* and *kethoprak* groups became suspect, their adherents murdered or imprisoned, their practices banned.<sup>46</sup> The space for gender pluralism became constricted; people were encouraged to give up the older rituals and beliefs and to conform to a stricter form of Islam based on a binary sex/gender model. If Alter had been born in Bugis society, or elsewhere, where “ritual transvestism” would still be important, he would not have been punished, but lauded and seen as embodying sacred powers.

### The Rights Discourse

Even if sacred gender is not revisited in its earlier manifestations, new discourses of gender and sexual multiplicity are being advanced by the many sexual rights groups springing up all over Asia. Their voices are as yet not clearly heard everywhere. In fact, conservative discourses, including those of heteronormative feminists, do not welcome their contribution to the rights discourses.

Yet when sexual rights activists manage to link up with human rights activists, there is a higher possibility of the acceptance of gender variance.<sup>47</sup>

The present wave of sexual rights activism has its roots in the struggles for the legalisation of homosexuality and abortion transnationally. The successful UN international conferences on women (Nairobi 1985; Beijing 1995) and on population (Cairo 1994) provided a major impetus. Major international instruments, going back to the 1948 Universal Declaration of Human Rights, provide a critical framework within which to locate struggles for the acceptance of gender variance. These include the already mentioned International Covenant on Civil and Political Rights (1976), which enabled Alter to achieve his release from jail, pending his trial (although it didn't help lift the charges against him). Similarly, the 1979 Convention for the Elimination of all Forms of Discrimination against Women is an important instrument. Debates on population growth and the HIV epidemics are other factors, which resulted in almost all UN agencies discussing several aspects related to sexuality.<sup>48</sup>

At an international seminar of many legal experts that took place in Yogyakarta, Indonesia, at Gadjah Mada University, from 6 to 9 November 2006, the so-called Yogyakarta Principles were drafted. These are a set of principles on the application of international human rights law in relation to sexual orientation and gender identity and they affirm binding international legal standards for all states to comply. The Yogyakarta Principles address a broad range of human rights standards and their application to the issues of sexual orientation and gender identity. As each principle is accompanied by detailed recommendations to the states, they are a very useful tool for sexual rights activists.

National human rights institutions, the media, non-governmental organisations, and other parties are called upon to affirm these internationally binding principles. If these principles would be consistently translated into national laws, gender and sexual pluralism would be a legitimate category. However, conservative social and religious groups strongly oppose the implementation of international principles that would guarantee the rights of people living non-normative lives. Basically, those fighting for sexual human rights advocate the right to engage in safe sex between consenting adults, and the rights to information and association.

If the Indonesian judicial system would uphold this right, the marriage of Alter and Jane would never be criminalised and Alter would not have had to spend many months in jail. Neither would Angga and Ninies have to be on the run at the moment. For although the Yogyakarta Principles do not explicitly call for so called “gay marriage”, the principle of marriage equality for all, as stipulated in the Indonesian Constitution, would imply that no category of people would be excluded.

A related issue is whose fake ID cards are seen to be related to punishable offenses. Men marrying polygynously are known to have false ID cards made. On each of them one of the wives is stated to be “the” wife. This seems to happen particularly if the first wife is not informed of her husband’s marrying again. Although first wives have to give their consent to their husbands’ request to marry another wife, according to the 1974 Marriage Law, in practice this regulation is often ignored and men marry their following wife or wives in a religious ceremony (so they don’t contract a civil marriage, meaning that the new wife and her offspring have no rights at all), without the knowledge of the

first wife.<sup>49</sup> The introduction of electronic IDs complicated the procurement of these fake IDs, but polygamous husbands still tried to have fake e-IDs made at such a large scale (for instance by producing photographs with false beards) that the ministry feared the whole system would collapse.<sup>50</sup> To my knowledge, none of the owners of these fraudulent IDs has ever been charged with document fraud as Alter was and with which Angga is threatened if s/he ever gets caught.

### **Discursive Contestations**

At present, the dominance of the bio-medical discourse results in its appropriation of a large discursive space. In discussions on assigning a body and a gender to persons born with atypical genitalia, often the “wellbeing” of the persons concerned takes central stage. This notion of “wellbeing” is rooted in a heteronormative model of society that may ultimately limit the choices of the people concerned.<sup>51</sup>

In societies which made the transition from a model based on sacred gender with an original sacred unity, the ritual specialists who used to enact the ceremonies to restore the communication between gods and humans and embodied this unity have either disappeared or their importance has been undermined. With it, the possibility for acceptance of transgender people and for children born with ambiguous genitalia has been eroded. The *bissu* tradition is going through a revival in Bugis society, but elsewhere in Indonesia and Southeast Asia at large, tolerance for sexual and gender variance is on the decline.

What relevance does this cultural discourse have on discussions on what is called “Indonesian culture”? It is clear that there cannot be a return to the cosmological system of

sacred gender. Yet the historical and mythical possibility of sacred gender, with its emphasis on gender variance including intersex persons, might stir the imagination towards a society in which the present binary forms of heteronormativity will decline in importance and social stigma related to gender pluralism reduced. To achieve this, a critical dialogue with major social actors, including the religious establishment and human rights groups is necessary.<sup>52</sup> In Indonesia, the present climate is unfortunately not very conducive. There are growing currents of conservative Islam in society, which for instance strongly support the Anti-Pornography law victimising women and criminalising traditional customs based on non-binary and non-heteronormative practices.<sup>53</sup> It is reported that Muslim militias such as the FPI (Muslim Defenders' Front) feel emboldened by this law to harass gay men, lesbian women, and transgenders.<sup>54</sup> Recently a religious group, the Forum of Muslim Schools for East Java, prohibited *waria* (male-bodied transgenders) to cut the hair of women.<sup>55</sup> Another hardliner group, the FPI, dispersed a beauty contest for *waria* in Makassar, the home town of the Bugis.<sup>56</sup>

The rights discourse seems to offer most scope for acceptance of gender pluralism. However, it is not always clear whose rights are being defended. What if parents insist on their "right" to have a "normal" child? Religious specialists have also joined in the rights choir. The human rights discourse is a strongly contested issue in Indonesia, hardliner Muslim groups providing their own interpretations of these rights. Recently the major Muslim militia, the FPI, has arrogated to themselves the right to declare what is "normal". In the first months of 2010, several incidents occurred in one of which FPI members forcibly evicted gays and lesbians from

a conference and interrupted a human rights training of transgenders (on 30 April 2010).<sup>57</sup> Their discourse is based on the *Qur'an* and the *hadith*, the heritage of the Prophet Muhammad. Defending their action to disband a human rights training of transgender people, they declared that: "Islam has a place for people who naturally have double sexual organs but not for those who intentionally exchange their given gender."<sup>58</sup> So in this interpretation, Alter's Klinefelter diagnosis would have won him the acceptance of the hardliner Muslim community, but Angga would never be accepted.

Clerics also use biological arguments to strengthen their case that sexual dimorphism is the preferred state of being. The secretary of the conservative Ulama council (MUI), Ahmad Rofiq, judged that the "tool with which one pees" determines in which sexual category a person must be placed.<sup>59</sup> Progressive Muslim scholars in Indonesia, however, such as Prof. Musdah Mulia, use a different argumentation to maintain that there is a place in Islam for transgenders, intersex persons, and for gay men or lesbian women. Islam is not concerned with sexual orientation but only with sexual behaviour, she argues. The major criterion is that this behaviour cannot be violent or irresponsible. Both hetero- and homosexual persons are condemned if they engage in violent or cruel sexual acts. In a humanist interpretation of Islam, based on the central principles of equality, wisdom, and compassion there is no place for discrimination and hatred.<sup>60</sup> Yet even this liberal interpretation of Islam leaves little space for a plurality of gender and sexual positions, though Mulia mentions that the literature on the Muslim *fiqh* mentions 4 gender variants: women, men, *khunsa* (effeminate men) and *mukhannit* or *mukhannat* (manly women). Another feminist Muslim scholar, however,

Dr Suad Joseph, in her contribution to the *Encyclopedia of Women in Islamic Cultures*, translates *khunsa* as intersex, and *mukhan-nath* as bisexual or effeminate.<sup>61</sup>

## Conclusion

Only when both sex and gender are seen as continua (which do not necessarily run parallel to each other), we can hope for the acceptance of people with non-normative bodies, desires, or social roles. The discursive contestations between biomedical and conservative religious and political leaders on the one hand and feminists, gay and lesbian rights activists and human rights defenders on the other, centres around the definition of what is “normal” gender, a “normally” sexed body and “normal” sex. In this process, gender and other forms of pluralism are under threat and a “history” is being created from which references to sacred gender and gender pluralism have been removed. The early modern ritual centrality of goddesses and transgendered people has faded away, surviving only in very small pockets of the world.

The arena in which these contestations are being enacted has changed. It is no longer the spiritual world of pre-modern times; the struggle takes place in the streets with thugs like the FPI, in the mosques with its religious discourses, in which medical arguments flourish beside religious ones, the court rooms, and the media. Alter was the subject of an elaborate TV programme on 23 May 2010, in which the old medical argument, that he was sick, also surfaced. Angga and Ninies received a lot of media attention; nobody protested to their house being raided, their privacy being invaded and to them have been chased out of their house.

Sexual and women’s rights activists, Muslim militias, human rights advocates, religious

scholars, and biomedical scholars all engage in this fierce debate on who has the right to define what is “normal” in gender and sexuality. In the process, the broad liminal space in which transpeople moved is carved up into neatly defined categories, each with their own medical codes and legal instruments. Political, cultural, religious, and biomedical developments have led to the gradual closing down of the liminal spaces in which transgender people, intersex persons, or those attracted to people of their own gender or sex could move. The consequences are an urge to define and categorise that which used to be diffuse, liminal, and at times sacred; the medicalisation of those persons with atypical genitalia; and the stigmatisation of those who insist on an in-between space, or who refuse to accept the binary sex-gender model. Intersex persons are singled out for treatment to “normalise” them. People who desire to marry their same-sex partner are denied a right that is constitutionally guaranteed to all Indonesians.

A coalition of human rights defenders, sexual rights activists, and advocates of Asia’s cultural heritage of tolerance for non-normative persons has the potential to stop the advance of conservative bio-medical and hardliner religious thinking that is now sweeping over many parts of Asia and which closes down the liminal spaces that once existed. Progressive medical personnel, who do not want to be “moral guardians” and who don’t advocate surgery when none is needed for health reasons, can help.

In the court and in the hospitals, intersex conditions are separated from transgender or transsexual persons, as intersex is seen to be located in biology. Yet the decision to operate is based on a child’s gender identity. If sex and gender cannot be separated so clearly, they should be seen as overlapping.

Consequently, the clear separation between intersex and transgender/transsexual, which was postulated for Alter's case, cannot be upheld. There should be more space for the liminal, the in-between, and the non-heteronormative. The issue is not so much the confusion in relation to the diagnosis of Alter, but the constricted space in which he had to move. Alter and Jane love each other; as do Angga and Ninies. Why should it matter to others whether Alter is classi-

fied as inter- or as transsexual, or whether Angga sees himself as a man, though being born female? Their bodies may be unruly, or their documents subversive, but their love is genuine. Indonesia's Constitution is welcome: all (adult) citizens are allowed to form a family. This right should be upheld in other laws as well – the Marriage Law in the first place. This is in line with Indonesia's tradition of gender pluralism – a heritage Indonesia should be proud of.

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2 Katjasungkana, N., "The Indonesian Family as a Contested Site of Women's Rights: Implementation of the Domestic Violence Act", in Mohamad, M. and Wieringa, S.E. (eds.), *Family Ambiguity and Domestic Violence in Asia: Concept, Law and Process*, Eastbourne: Sussex Academic Press, 2013, pp. 169-192.

3 See, for instance, the worried insistence of Taufan Eko Nugroho Rotosariko, Chair of the Global Youth Forum held in Bali in December 2012, that he would not allow the discussion of same-sex marriage at that Forum. The other delegates had to respect Indonesian culture, he insisted. (By Rohmat. Okezone news. Ada issue aborsi & perkawinan akan dilegalkan? 06 Desember 2012.)

4 See Wieringa, S.E., "Gender harmony and women's rights: the passionate aesthetics of heteronormativity in post-reformasi Indonesia", Mimeo, University of Amsterdam, 2013.

5 The case got wide media coverage. (See, for instance, AFP, "Lesbians chased from Indonesian home for 'marrying'", *InSing.com*, 17 January 2013.)

6 Taufik Budi, "Kemenag akan ajukan pembatalan pernikahan sejenis", *Okezonews*, 10 January 2013.

7 Krismantari, I., "Alterina latest proof of transgender problems", *Jakarta Post*, 14 May 2010.

8 Maryadie, Lutfi Dwi Putji Astuti, Mutia Nugraheni; and Eko Priiliawito, "Alterina with two sexes, a matter of the law or fate?", *VIVAnews*, 14 May 2010.

9 This is confirmed in a letter to me by Prof. Dr Sultana Faradz, head of the intersex clinic of the Kariadi hospital in Semarang, dated 12 June 2010. Gynaecomastia means development of breasts in a male; hypospadias means that the opening of the urethra is located on the lower side of the penis, rather than at the tip.

10 The police carried out a DNA investigation, which apparently did not give this information. As Prof. Faradz explained (above note 9), the police laboratory used a buccal smear (so that is not a DNA test), which cannot detect the Y chromosome. Only a chromosome analysis can give the correct diagnosis.

11 See above, note 7.

12 Mei, E. and Amelia R., "Alter: I am a Man, can ejaculate", *DetikNews*, 4 May 2010.

- 13 See above, note 7. The article did not specify which Covenant articles were invoked. Articles 26 (freedom from discrimination) might apply.
- 14 Novi Christiatuti Adiputri, "Sentence of 5 years in Prison sought for Alter", *Detiknews*, 12 October 2010.
- 15 *Jakarta Post*, "Court acquits Alterina's case", 23 November 2010.
- 16 Saputra, A., "Legal Expert: Changing birth certificate is no legal offence", *DetikNews*, 2 August 2010.
- 17 Siswanto, "Semasa SMS Alter Dikenal Cewek Tomboy" (During high school days Alter was known to be a tom-boy), *VIVAnews*, 9 May 2010.
- 18 Blackwood, E., "Transnational sexualities in one place: Indonesian readings", in Wieringa, S. E., Blackwood, E. and Bhaiya, A. (eds.), *Women's Sexualities and Masculinities in a Globalizing Asia*, Palgrave/MacMillan, 2007, pp. 181-203; Blackwood, E., *Falling into the Lesbi World: Desire and Difference in Indonesia*, University of Hawai'i Press, 2007; Wieringa, S.E., "If there is no feeling...The dilemma between silence and coming out in a working-class Butch/Femme community in Jakarta", in Padilla, M.B, Hirsch, J.S., Muñoz-Laboy, M., Sember, R.E. and Parker, R.G. (eds.), *Love and Globalization: Transformations of Intimacy in the Contemporary World*, Vanderbilt University Press, 2007, pp. 70-93.
- 19 Karsch-Haack, F., *Das Gleichgeschlechtliche Leben der Naturvölker*, Reinhardt, 1911 ; Andaya, L.Y., "The Bissu: Study of a Third Gender in Indonesia", in Andaya, B.W. (ed.), *Other Pasts: Women, Gender and History in Early Modern Southeast Asia*, University of Hawai'i, 2000, pp. 27-47; Andaya B.W., *The Flaming Womb: Repositioning Women in Early Modern Southeast Asia*, University of Hawai'i Press, 2006; Peletz, M.G., *Gender Pluralism: Southeast Asia since Early Modern Times*, Routledge, 2009.
- 20 Less is known about the "hermaphrodite" statues of the Dayak in Kalimantan. (See Kroef, J.M. van der, "Transvestism and the Religious Hermaphrodite in Indonesia", in Dynes, W.R. and Donaldson, S. (eds.), *Asian Homosexuality*, Garland, 1992, pp. 98-99.)
- 21 *Ibid.*; see also Blackwood, E., "Gender transgression in colonial and postcolonial Indonesia", *The Journal of Asian Studies* 64(4), 2005, pp. 849-879; and Andaya B.W., above note 19.
- 22 For *kathoey*, see Jackson, P.A. "Kathoey><Gay><Man: the Historical Emergence of Gay Male Identity in Thailand", in Manderson, L. and Jolly, M., (eds.), *Sites of Desire, Economies of Pleasure*, University of Chicago Press, 1997, pp. 166-191. For a discussion on *reog*, a theatre form in which the leaders, *warok*, had relations with their transgendered male-bodied players, see Boellstorff, T., *The Gay Archipelago: Sexuality and Nation in Indonesia*, Princeton University Press, 2005. For a discussion on *hijra*, see Reddy, G., *With Respect to Sex: Negotiating Hijra Identity in South India*, University of Chicago Press, 2005; Nanda, S., *Neither Man nor Woman: The Hijras of India*, Wadsworth, 1990; and Pande, A., *Ardhanarishvara, the Androgyne: Probing the Gender Within*, Rupa, 2004.
- 23 See Blackwood, above note 21.
- 24 See Andaya, L.Y., above note 19, p. 29.
- 25 See Blackwood, above note 21, p. 857.
- 26 The term "androgynous" was often used conflating a terminology for hermaphroditism and homosexuality. (See Boswell quoted in Herdt, G., "Introduction: Third Sexes and Third Genders", in Herdt G. (ed.), *Third Sex Third Gender: Beyond Sexual Dimorphism in Culture and History*, Zone Books, 1993.) In this case, it probably referred to hermaphroditism only.
- 27 See Andaya, L.Y., above note 19; Pelras, C., *Manusia Bugis*, Nalar, 2006; Graham, S., *Hunters, Wedding Mothers and Androgynous Priests: Conceptualising Gender among Bugis in South Sulawesi, Indonesia*, University of Western Australia: PhD Thesis, 2004.
- 28 See Pande, above note 22.
- 29 The attraction the symbol of Ardhanarishvara still has for transgender and lesbian persons is demonstrated by the establishment of the Ardhanari Institute in Jakarta.
- 30 This is evidenced by inscriptions from the 14<sup>th</sup> century Javanese realm of Majapahit, which was ruled at the time by queen Tribhuwana. (See Creese, H., *Women of the Kakawin World: Marriage and Sexuality in the Indic Courts of Java and Bali*, Sharpe, 2004, p. 204.)
- 31 See Peletz, above note 19, p. 24.
- 32 See also O'Flaherty, W.D., *Women, Androgynes and Other Mythical Beasts*, University of Chicago Press, 1980.

- 33 See Covarrubias quoted in Peletz, above note 19, p. 30. See also Belo J., *Bali: Rangda and Barong*, University of Washington Press, 1949.
- 34 The same goes for the originally Batawi word *banci*. A manly woman also used to be called a *banci* or *wandu*, but both terms are at present hardly used to refer to female-bodied male-identified persons.
- 35 The Bugis are an ethnic group in South Sulawesi.
- 36 Other Asian ethnic groups might have even more genders in pre-modern times. The Chukchi of Siberia for instance counted nine genders, according to their ethnographer Bogoras who lived among them in 1890-1908.
- 37 See Graham, above note 27; and Pelras, *ibid*.
- 38 See Chabot quoted in Kroef, above note 20.
- 39 See Pelras, above note 27, p. 97.
- 40 See Andaya, L.Y., above note 19, p. 36.
- 41 See Graham, above note 27.
- 42 See Blackwood, above note 21.
- 43 See Peletz, above note 19, p. 64 ff.
- 44 Roosa, J., *Pretext for Mass Murder: the September 30<sup>th</sup> Movement and Suharto's Coup d'Etat in Indonesia*, University of Wisconsin Press, 2006; Wieringa, S.E., *Sexual Politics in Indonesia*, Palgrave/McMillan, 2002.
- 45 In 2008, I witnessed a Kuda Lumping performance in Malang, East Java. It is a trance dance, in which some dancers cross-dress; it used to be very popular. The group hardly performs any more after their reputation was linked to communism in the heyday of the anti-communist genocide perpetrated by General Suharto. (See Wieringa, S.E., "The Birth of the New Order State in Indonesia: Sexual Politics and Nationalism", *Journal of Women's History*, 15 (1): Spring 2003, pp. 70-92.)
- 46 *Kethoprak* is a drama form developed in Central Java around the beginning of the 20<sup>th</sup> century. Their repertoire ranges from Javanese folk stories to Indian epics. In East Java, the *ludrug* theatre groups depicted stories from daily life. In both cases, cross-dressing actors participated. Both were discredited after 1965. On *reog*, see Boellstorff, above note 22; and Wilson I., "Reog Ponorogo: Spirituality, Sexuality and Power in a Javanese Performance Tradition", in *Intersections: Gender, History and Culture in the Asian Context*, 1999.
- 47 The decriminalisation of homosexuality by the Delhi High Court in July 2009 is an example of a successful collaboration between human right lawyers and sexual rights activists. (See Narrain and Eldridge, "The right that dares speak its name", *Alternative Law Forum*, 2009, available at: <http://www.scribd.com/doc/18552529/Naz-Foundation-The-Right-That-Dares-to-Speak-Its-Name>.)
- 48 Correa, S., Rosalind, P. and Parker, R., *Sexuality, Health and Human Rights*, Routledge, 2008.
- 49 See Katjasungkana, above note 2; and Wieringa, S.E., "Passionate Aesthetics and Symbolic Subversion: Heteronormativity in India and Indonesia", in *Queer Asian Subjects: Transgressive Sexualities and Heteronormative Meanings, Special Issue, Asian Studies Review*, 36(4), December 2012, pp. 515-530.
- 50 Saragih, B.T., "Rampant polygamy leads to fraudulent e-IDs: Minister", *The Jakarta Post*, 8 January 2013.
- 51 A parallel can be drawn with earlier sexological discourses in which a wish for "sexual progress" resulted in the biological underpinning of patriarchy. (See, for instance, Havelock, E., *Studies in the Psychology of Sex*, Random House, 1936; and Krafft Ebing, R. von, *Psychopatia Sexualis*, Ferdinand Enke, 1912.) This approach was later denounced as "biological determinism" naturalising women's oppression by eroticising male aggression and female masochism. (See Weeks, J., *Sex, Politics and Society: The Regulation of Sexuality since 1800*, Longman, 1981; and Jeffreys, S., *The Spinster and her Enemies: Feminism and Sexuality 1880-1930*, Pandora, 1985.)
- 52 According to Agustina, Islam approves of operations on people with ambiguous genitalia, as it is done for purposes of healing, while it is not allowed in the case of transsexuals, as those operations are related to sexual desire. (See Agustina, N.N., *Penentuan Jenis Kelamin Penderita Ambiguous Genitalia dengan Androgen Insensitivity Syndrome Menurut Islam*, Faculty of Medical Sciences, Diponegoro University, 2007, Mimeo 37.)
- 53 See Katjasungkana, above note 2.
- 54 Author's conversations with various lesbian and gay activists in Indonesia, members of Ardhany Institute, Institute Pelangi, and others.

- 55 Mazaya, H., "Forum Pesantren: waria potong rambut wanita haram" (It is prohibited for waria to cut women's hair), *Arrahmah.com*, 24 May 2010.
- 56 Abdurrahman, M.N., "FPI disperses Waria contest in Makassar", *Detik News*, 1 December 2010.
- 57 4<sup>th</sup> Asia meeting of the International Lesbian and Gay Association, scheduled for 26-28 April 2010 in Surabaya, East Java. At the same time the secretariat of the organising group, Gaya Nusantara, was closed down by the FPI, who wrote on its walls that lesbians and gays were "moral terrorists". (See Jajeli, R., "Office of Gaya Nusantara closed down and called 'moral terrorist'", *detikSurabaya*, 26 March 2010.)
- 58 This was said by FPI leader Habib Idrus Al Ghodri to the police of Depok, who interrogated the leaders of the FPI after their raid on the transgender group. (See *Jakarta Post*, "Raid of Transgender workshop necessary: FPI", 5 May 2010.)
- 59 Rofiudin, "MUI tolak perkawinan waria" (MUI prohibits waria to marry), *Tempo.co. Interaktif*, 17 May 2010.
- 60 Mulia, M., "Understanding Sexuality in Islam: Promoting the Appreciation of Human Dignity", undated, available at: [http://www.asiapacificforum.net/support/issues/sexual\\_orientation/downloads/apf-regional-workshop-may-2009/Understanding\\_Sexuality\\_in\\_Islam.rtf](http://www.asiapacificforum.net/support/issues/sexual_orientation/downloads/apf-regional-workshop-may-2009/Understanding_Sexuality_in_Islam.rtf).
- 61 Joseph, S., "Family Law", *Encyclopedia of Women in Islamic Culture*, Brill, 2003, p. 419.