

## INTISARI

### **PERLINDUNGAN HUKUM TERHADAP KEBEBASAN BERAGAMA BAGI KAUM MINORITAS GENDER BERDASARKAN HUKUM HAM INTERNASIONAL DAN HUKUM ISLAM (STUDI KASUS PENUTUPAN PONDOK PESANTREN WARIA AL-FATAH KOTAGEDE)**

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Seperangkat aturan dan norma hukum yang ada tidak begitu saja mampu menghadirkan jaminan keadilan atas perilaku diskriminasi dalam kehidupan bernegara, di Bantul, Yogyakarta, pondok pesantren Al-Fatah yang didirikan untuk para waria yang ingin mengekspresikan kepercayaannya terhadap agama Islam ditutup dikarenakan dianggap meresahkan warga sekitar.

Penelitian ini dilakukan secara normatif dan didukung dengan wawancara sebagai data penunjang dengan meneliti bahan hukum primer, bahan hukum sekunder dan bahan hukum tersier.

Berdasarkan hasil penelitian, perlindungan hukum terhadap kebebasan beragama bagi kaum minoritas gender menurut Hukum HAM Internasional haruslah dilindungi secara penuh, sesuai dengan ketentuan dalam, Pasal 29 UDHR, Pasal 2, Pasal 18, dan Pasal 21 ICCPR. Hukum HAM dalam Islam mengatur, tidak dibenarkan dalam memeluk agama dan mendirikan pondok pesantren tersebut dimaksudkan untuk menjaga pelestarian komunitas Waria. Di sebutkan dalam Pasal 2, Pasal 18, Pasal 21 ICCPR dan Pasal 29 UDHR ayat (1, dan 2) tentang perlindungan terhadap hak-hak mereka serta tanggung jawab negara. Maka pembubaran pondok pesantren tersebut bertentangan dengan hukum HAM Internasional, serta tergolongnya kedalam konsep *non-derogable rights* yakni sebagai HAM yang tidak dapat dikurangi dalam keadaan apapun dalam Pasal 4 ayat 2 ICCPR. Juga bertentangan dengan Hukum Islam ketika bertujuan untuk mengembalikan golongan Waria kembali sebagai pria seperti dalam Islam.

Kata kunci: *Kebebasan Beragama, Hukum HAM Internasional, Hukum Islam.*

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## ABSTRACT

### LEGAL PROTECTION OF RELIGIOUS FREEDOM FOR GENDER MINORITIES BASED ON INTERNATIONAL HUMAN RIGHTS AND ISLAMIC LAW (CASE STUDY OF CLOSURE OF PONDOK WARIA AL-FATAH KOTAGEDE)

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A set of rules and legal norms that are not just able to bring justice guarantees of discrimination in state life, in Bantul, Yogyakarta, the Al-Fatah Islamic boarding school which was established for transvestites who want to express their belief in Islam is closed because it is considered disturbing local residents.

This research was conducted normatively and supported by interviews as supporting data by examining primary legal materials, secondary legal materials and tertiary legal materials.

Based on the results of the study, the legal protection of religious freedom for gender minorities under International Human Rights Law must be fully protected, in accordance with the provisions in Article 29 of the UDHR, Article 2, Article 18 and Article 21 of the ICCPR. Human rights law in Islam regulates, is not justified in embracing religion and establishing boarding schools is intended to preserve the Waria community. Mentioned in Article 2, Article 18, Article 21 of the ICPR and Article 29 of the UDHR paragraph (1, and 2) concerning the protection of their rights and responsibilities of the state. Then the dissolution of the Islamic boarding school is contrary to international human rights law, and is classified into the concept of non-derogable rights, namely as human rights which cannot be reduced under any circumstances in Article 4 paragraph 2 of the ICCPR. It also contradicts Islamic Law when aiming to return the Transvestite group back to being a man as in Islam.

**Keywords:** *Freedom of Religion, International Human Rights Law, Islamic Law.*

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