

A Critical Study of *Mukhannath's* Law as a Homosexual Argumentation

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Received: 2021-07-23

Accepted: 2021-11-17

Published: 2021-12-30

Abstract

Mukhannath term in the study of Islamic law by Muslim feminists is considered to be a basis for the legitimacy of homosexual behavior. Muslim feminists refer to the meaning of the term as behavior and sexual orientation that is permitted in Islam and not contradictory with divine nature. Therefore, homosexuality is a natural act in Islam and must be accepted as it is. Under the pretext, the feminists distinguish homosexuality with *liwath* that can be applied to homosexual, heterosexual and bisexual perpetrators. This is contrary to Islamic law/shari'a regarding the heresy of the Prophet Luth a.s people or *luthi*, the perpetrators of *liwath*. Likewise, in interpreting the *mukhannath* term, the feminist developed a framework based on gender concept which is not under Islamic study or Islamic perspective. Therefore, the researcher aims to research and analyze the meaning and concept of the *mukhannath* term according to the Islamic worldview. Through the descriptive-analytical method and library research as a database, the research showed the following conclusion: *Mukhannath* means an act of men resembling women in terms of speaking, behaving, and clothing. The definition of the term above does not differentiate between sexual orientation and behavior. That is why it must be returned to the nature of its creation, the original biological sex. Muslim scholars have agreed that the translation of homosexuality in Islam is *liwath* and it is considered as a destroyer of human nature in the Qur'an. The divine nature must be in harmony with eternal destiny. In addition, homosexual law in Islam is *qath'i*, not *mutaghayyirah*. Therefore, it is inaccurate if a gender analysis system that is developed based on relatively social constructs is used in *qath'i* Islamic law discussion.

Keywords: *Mukhannath*, homosexuality, feminists, *fitrah*.

Abstrak

Istilah mukhannath dalam kajian hukum Islam oleh feminis muslim dinilai dapat menjadi landasan dalam legitimasi perilaku homoseksual. Feminis Muslim menyajikan makna mukhannath sebagai perilaku sekaligus orientasi seksual yang dibolehkan dalam Islam dan sesuai dengan kodrat Ilahi, sehingga adanya homoseksual adalah tindakan yang wajar dalam Islam dan harus diterima apa adanya. Atas dasar itu, kaum feminis membedakan homoseksual dengan perilaku liwath yang bisa diterapkan

pada pelaku homoseksual, heteroseksual maupun biseksual. Hal ini bertentangan dengan ajaran/syariat Islam tentang kesesatan kaum Nabi Luth a.s yang oleh para ulama disebut luthi, yakni pelaku liwath. Begitu juga dalam memaknai mukhannath framework feminis terbangun dari konsep gender yang bukan berasal dari khazanah keilmuan Islam ataupun cara pandang Islam. Untuk itu penulis berusaha meneliti dan menganalisa makna dan konsep dari mukhannath, serta meluruskannya sesuai dengan worldview Islam. Dengan menggunakan metode deskriptif-analisis serta menjadikan kepustakaan sebagai basis data peneliti sampai pada beberapa kesimpulan sebagai berikut; makna mukhannath adalah perilaku laki-laki yang menyerupai perempuan dalam hal ucapan gerak-gerik maupun pakaian. Pemaknaan tersebut tidak mengenal perbedaan antara orientasi ataupun perilaku seksualnya, akan tetapi harus dikembalikan kepada fitrah penciptaannya, yaitu jenis kelaminnya yang mutlak. Para ulama telah sepakat, alih bahasa homoseksual dalam Islam adalah liwath, yang dalam al-Qur'an dihukumi sebagai perusak fitrah manusia. Fitrah penciptaan tersebut haruslah selaras dengan takdir Ilahi yang sifatnya azali (kekal), begitu juga hukum homoseksual dalam Islam adalah qath'i, bukan hal yang mutaghayyirah. Untuk itu, tidaklah tepat jika sistem analisa gender yang dibangun atas dasar konstruk sosial yang relatif digunakan pada pembahasan hukum Islam yang sifatnya qath'i.

Kata Kunci: Mukhannath, homoseksual, feminis, fitrah.

INTRODUCTION

As the American Psychiatric Association (APA) dismissed homosexuality from the *Diagnostic and Statistical Manual of Mental Disorders* (DSM) in 1973, the homosexual community have had their victory in the West. Due to the feminist doctrine of *gender*, as well as the concept of *nature* and *nurture* from a western worldview, it claims that homosexual behavior is no longer categorized as abnormal behavior (Ayub, 2017). Even today, anyone who opposes homosexuality is accused of being homophobic, those who have a fear and hatred of homosexual activity. The existence of gay people is becoming the world's spotlight since the United States Supreme Court decision on June 26 in 2015 legalized marriage equality (Chalid & Yaqin, 2021). Although the Netherlands has been a pioneer in recognizing the marriage of homosexual couples since 2001, the legalization from a superpower country like America enables those communities supporting same-sex sexual behavior in various countries, including Indonesia, to experience euphoria.

In Indonesia, campaign movements demanding the legality of LGBT have emerged both in the political and religious fields as supported by academics and feminist activists. In the field of politics, there are efforts to pass a draft of laws supporting the legitimacy of the LGBT community. For example, the Draft Law on Justice and Gender Equality (RUU KKG), which was discussed in parliament until 2014 is trying to legalize LGBT (Saleh & Arif, 2017). Similarly, the Draft Law on Sexual Violence Elimination (RUU P-KS), is also trying to legalize marriage equality (Tamam, 2019). Until now, efforts to legalize LGBT in the name of human rights are still progressing, even in theology.

In theology, feminists attempt to reconstruct religious structures that heterosexuality is the only legitimate alternative to human sexuality through marriage regulated by religious provisions (Husaini, 2012). These attempts have been written in several books, journals, and scientific works supporting the legitimacy of marriage equality by trying to match any argument

and will mislead Muslims to support it if they do not understand the concept well (Aletmi et al., 2019). One of them will be discussed in this article about the meaning of *mukhannath*, in the hadith of the Prophet *sallallahu 'alaihi wa sallam*, from Ibn Abbas: "The Messenger of Allah cursed a man who resembles a woman (*mukhannithin*) and a woman who resembles a man (*mutarajilat*)". In a feminist view, the notion of *mukhannithin* or *mutarajilat* is not only in terms of appearance but also in terms of behavior and sexual orientation resembling the opposite sex (Muhammad, 2011). Indeed, the word *mukhannath* has a limited legal meaning, which only refers to resembling a woman and not sexual orientation. In contrast, *khuntsa* means having multiple sexes (hermaphrodite) and it is recommended to choose one of them (Sarcheshmehpour et al., 2018).

The distorting evidence above actually brings the idea of secular human rights into Islamic law discourse to justify homosexual behavior. Human right is a western ideology that some of its policies are not in line with basic Islamic concepts and the epistemological differences between the West and Islam which will create a different concept (Iskandar, 2017). In the introduction to the Muslim feminist book, Women National Committee stated that they wanted to unite the spirit of secular human rights into a religious vortex or try to extort the parallelism of human rights and the vital elan of religion (Muhammad, 2011). Indeed, homosexuality is a non-negotiable case in Islam. There are many hadiths of the Prophet that prohibit that sexual orientation behavior, such as the hadith narrated by Imam Ahmad, the Prophet said, "*Curse is upon those who have sexual intercourse with an animal, the curse is upon those who commits the sin what people of Luth alaihis salam did.*" He said repeatedly, three times about *liwath* (homosexuality, the actions of the people of Lut alaihis salam). In addition to the hadith narrated by Ahmad, there is a hadith narrated by Al-Tirmidhi from Ibn Abbas, the Messenger of Allah said, "*Allah subhanahu wa ta'ala will not face a man having intercourse with another homosexual man) or (having sex with) a woman from his rectum.*" Another hadith also says the Messenger of Allah said, "*Whoever finds those committing the sin of Luth alaihis salam's people (i.e. homosexuality), kill the sinner.*"

Islamic scholars also agree on the prohibition of this *liwath*. Imam al-Syafi'i and Imam Malik said that the act of *liwath* is like an act of adultery so that the punishment of adultery can be applied for both married and unmarried people. In addition, Imam Abu Hanifah also agreed on the prohibition. He added that the judgement of *liwath* is undertaken with two witnesses and if the sinners are proven to be guilty, then they are sentenced to *ta'zīr* (Al-Ma'arifi, 1971). In Sunnah fiqh, it is explained that the Islamic scholars have agreed on *liwath* prohibition, except for that the degree of punishment which is different in terms of three opinions. The first opinion is that the perpetrators of *liwath* should be killed. The second opinion is that *liwath* punishment is like adultery sin. And the last opinion is that *liwath* punishment is *ta'zīr* (Sabiq, n.d.). The three opinions above strongly affirm the prohibition of *liwath*, sexual deviation behavior. That is why the law regarding homosexual prohibition is considered a *tsawabit* (permanent) concept, unlike *mutaghayyirat* (non-

permanent) that is changeable according to the ijthihad results. Therefore, its applicable law is *qath'i*.

Moreover, in Indonesia, LGBT people are guided to return to the right path as happened in Medan. There are 600 detected cases and guidance, as well as education, was given by religious leaders and local government (Sulaiman, 2019). Indeed, LGBT is strongly rejected from a religious perspective. However, in terms of humanity, Islam has a perfect concept in providing solutions to the existence of LGBT (Puspitasari, 2019). A Muslim is guided to become an *insan kamil*, a perfect personality represented by Muhammad SAW. *Insan Kamil* is a human being who does not go against the divine nature that has been outlined by his God. He is an individual who makes his rational soul as a source of happiness and safety and controls his *hayawaniyah* soul as the cause of trouble if it is not controlled with a rational soul (S. M. N. Al-Attas, 2015). That is why the assertion towards reality and discrimination cases against LGBT people do not necessarily have to be granted in terms of undertaking a legal same-sex marriage and distorting Islamic provision, especially the meaning of *mukhannath* which has been discussed by Muslim scholars.

Looking at previous research, the discussion on the relationship between homosexuality and the concept of *mukhannath* in Islam still revolves in an affirmative attitude. As Rowson, a professor at the University of Pennsylvania states that "there is ample evidence regarding the existence of transgender among men that is publicly recognized and institutionalized in Arab societies during pre-Islamic and early Islamic civilization" (Rowson, 1991). According to him, *mukhannaths* is real. He even appreciates the social life of *mukhannaths* that brings prestige. He said that "That they (*mukhannathin*) had a well-defined role already in pre-Islamic Arab society is suggested by a number of Prophetic hadith... these sources offer a relatively full picture of a society in which the *mukhannathan*, for a period of some two generations, enjoyed a position of exceptional visibility and prestige, and suggest answers to many of the questions posed above" (Rowson, 1991). In addition, he also wrote "Mukhannathun In The Time Of The Prophet: The Evidence From Hadith", to prove their existence in society (Rowson, 1991). He stated that "Based on the hadith itself, we can conclude that in the first/seventh-century *mukhannathi*ins were sometimes, and perhaps customary, accepted in women's quarters, assuming that they had no sexual interest in women" (Rowson, 1991). From this research, it can be understood that *mukhannath* is trying to prove its worthiness in a social system.

In Malaysia, there has been a *mukhannath* study from the perspective of fiqh law discussing four *madhazabs* in Islam (Majid et al., 2020). This research is based on the understanding that *mukhannath* has the same position as *khuntsa* and that is why transgender is allowed by the government and religious authorities (Zainuddin & Mahdy, 2017). Whereas in Indonesia, there are only a few discussions regarding *mukhannath*. However, several studies have been used as a basis for justification to do a transgender to claim a sexual orientation they desire (Hukum, 2019). There is also a thesis discussing homosexuality in Islam in general based on the analysis of *maqasid sharia* to correct the understanding of liberal Muslim scholars towards the interpretation of the Prophet Lut a.s story in Qur'an (Hudiyani, 2017). From these

studies, the authors see that there is no discussion confirming that the existence of *mukhannath* does not mean legalization of the behavior. For this reason, this paper intends to discuss the meaning of *mukhannath* and Muslim feminists' arguments in supporting homosexuality from the perspective of an Islamic worldview.

DISCUSSION

Mukhannath Argumentation Analysis In Feminism View

A detailed explanation of the concept of *mukhannath* as a homosexual argumentation is written in the book "Sexual Fiqh: Islamic Treatise for the Fulfillment of Sexual Rights". When Yuniyanti Chuzaifah served as a chairman of the Women National Commission in 2011, she wrote an introduction section to this book. She said that "this study answers the concerns of the people, friends in anti-mainstream sexual orientation community, uncovers the taboos issue of sexuality, offers a religious point of view through context-based approach and a comparative discussion." This book, as she mentioned, is a normative fundamental for gay and lesbian people who have no place in the Islamic community. She quoted what his gay friend said that "we want to be good Muslims, but we feel like we have been abandoned outside our religious home." Chuzaifah explained the significance of this book; "translating human rights in the Islamic community and seeking for answers to sexuality issues from a religious (Islamic) perspective" (Husein Muhammad, 2011.).

In that book, the term "*mukhannath*" is used to strengthen the argument about the legality of same-sex and LGBT activities in Islam. Husein Muhammad, as the chief of the writing team, used the meaning of *mukhannath* referring to the hadith uttered by Prophet Muhammad SAW as narrated from Ibn Abbas: "The Messenger of Allah curses a man who resembles a woman and a woman who resembles a man ...", while in another editorial, the terms "*al-Mukhannath*" and "*al-Mutarajilah*" are mentioned explicitly. Ibn Hajar quoting Ibn Jarir al-Tabari saying that men resemble women, or vice versa in terms of clothing, using accessories, speaking, and behaving. However, the authors of the book altered the notion of *mukhannath* that the notion is not only in appearance but also in behavior and even sexual orientation to resemble their biological opposite sex (Muhammad, 2011).

Husein bases his argument by quoting a phrase from Surah al-Nur (24): 31 "*ghoiri uuli al-irbati min al-rijali*" meaning that a man who has no sexual desire for a woman. He then relies on several opinions of classical scholars. Ibn Abbas, for example, interprets it as a man who has no sexual desire; Imam al-Tabari explains this phrase as men who have no sexual desire intercourse towards women, no jealousy and these men do not make women afraid to take off their headscarves in front of them. Meanwhile, Ikrimah and a number of scholars from Prophet Muhammad SAW companions called it "*al-mukhannath al-ladzi lâ yaqûmu dzakaruhu*" (men with sexual dysfunction/impotence). This view is also agreed by a number of other scholars such as al-Firyani, Imam Muslim, Abu Dawud, Nasa'i, al-Baihaqi, Sa'id bin Jubair, al-Sha'bi, and Ibn Mardawaih (Muhammad, 2011). Thus, feminists conclude the views of these

Muslim classical scholars that *mukhannath* is a term describing men sexual orientation towards other men as they have no sexual desire for women.

On the other hand, the pro-feminist activists, strengthen their opinion regarding *mukhannath* as a male sexual orientation towards other men as a nature. In fiqh, *mukhannath* is not cursed by Allah SWT, considering that it is God's nature. The classical Muslim scholars divide *mukhannath* into two types; *mukhannath khalqi* (natural homosexuality) and *mukhannath bil'amdi* (fake homosexuality). Husein quoted Ibn Hajar's opinion that *mukhannath khalqi* or *min ashli khilqatihi* (natural homosexuals) should not be teased, stigmatized, or punished. Reproaches and punishments may only be imposed on *mukhannath bi al-qash al'amdi* (fake homosexuality) (Muhammad, 2011). Thus, feminists see *mukhannath khalqi* as a sexual tendency (orientation) that has been divined by God, and not a religious matter.

Furthermore, the term *mukhannath*, which has been deconstructed by feminists, is used as an argument to reject the attribution term of *liwath* to the homosexual community. The refusal is because same-sex sexual orientation, both among men (*mukhannath*) or women (*mutarajilah*) are not cursed as stated in the Qur'an Surah al-A'raf verses 80-81, as well as in the Hadith mentioned above. According to Husein Muhammad, the Qur'an and Hadith only prohibit *liwath*, a sexual activity from the rectum, and this can be performed by either homosexual, heterosexuals, or bisexual people. Meanwhile, both homosexuality, *mukhannath* and *mutarajilah*, are not the same sexual behavior as *liwath* who commits sodomy (Muhammad, 2011). Although this is true, the understanding of the feminists regarding the legality of homosexuality that certainly involves *liwath* by raising the concept of *mukhannath* needs to be studied more deeply as it seems contradictory.

Thus, the explanation above finds various important points about the feminist point of view in understanding *mukhannath* term. They conceive that the classical scholars' discussion of homosexuality is the same as *mukhannath* and has no correlation with *liwath*. *Mukhannath* behavior is not a sexual activity, but it is considered as a sexual orientation. Thus, the conclusion of Muslim feminists that homosexual orientation is not a problem in Islam is because of the concept that *mukhannath* is a special divine nature given to humans who are different from others.

The discussion of homosexuality from an Islamic perspective is closely related to *liwath*. However, the feminists distinguish both term meanings and decided *mukhannath* as homosexuality. Their argument aims to legalize homosexuality because Muslim scholars accept the existence of *mukhannath bi al-khalq* or a man who is born with feminine traits. Those scholars have agreed to refer to it as *liwath* and not *mukhannath* (Ayub, 2017). If it is examined more deeply, the feminist' understanding of *mukhannath* term does not follow the Islamic perspective. Although they quote Muslim scholar opinions, the understanding they built is far different from what Muslim scholars decided in determining the law against the *mukhannath* group.

To clarify Muslim scholars' agreement, we need to re-examine the meaning of *mukhannath* from Arabic dictionaries. *Mukhannath* derives from the word *khannatsa* that means a man who looks like a woman. *Mukhannath* itself is an *isim maful* that means a man behaving like a woman in terms of clothing, behaving, or speaking (Umar, 2008). Similarly, Ibn Mandzur explained that *mukhannath* is a man who resembles a woman. He also explained another derivation, namely *takhannuts*, which means *al bawf-tatsanniy* (becoming a woman) and *al-takatssur* (behaving softly). In Arabic expression, a man who is *takhannuts* is he who performs *mukhannath* (resembling a woman) in terms of speaking, clothing and behaving (Ibn Manzur, 1990).

Similarly, other linguists and fiqh experts have the same definition regarding this term. If a man performs all things that resemble a part of women characteristics such as applying lipstick, wearing a headscarf, speaking softly, coloring fingernails/toes, and wearing earrings is called *mukhannath* (Al-Islāmiyyah, 1404; Mas'ud, 1992). Meanwhile, if a woman resembles a man, it is called *mutarajjilah* or *al-rajilah*. In the Arabic expression, *tarajjalat al-imra'atu* means a woman resembling a man both in appearance and in behavior (Hain, 2004). The term means a woman who resembles a man both in appearance and behavior, just as a man imitates a woman. Not all this imitation behavior is followed by sexual orientation towards the same-sex gender. However, some insist that even though he act womanly it does not mean that he must like a man. Both *mukhannath* and *mutarajjilah*, have definite sex and do not have multiple sexes or *khunstā*, to resemble the opposite sex.

The discussion of *mukhannath* in Islamic law (fiqh) has been formulated by four Imams of Madzhab; Imam Hanafi, Imam Maliki, Imam Shafi'i and Imam Hanbali. The four Imams of madzhabs agree that the problem relies on the fake behavior of *mukhannath* or *mutarajjilah* that will turn this group of people into *fasiq* people. If the behavior is followed since they were born, then there is no sin for them. The important point is how they deal with the opposite sex people with their existed biological sex (Majid et al., 2020). Therefore, the four Imams of Madhhab emphasize that relations between *mukhannath* people and non-*mahrims* must be limited to prevent slander. It is because the existence of fake *mukhannath* people is true while some others are not.

The explanation of the four Imams of Madzhab above is related to the opinion of Imam Ibn Hajar, in his book *Fath al-Bārī* (Al-asqalani et al., 1993), which is previously misinterpreted by Muslim feminists. Husein states that Ibn Hajar allows *mukhannath khalqī* (*mukhannath* by nature) and forbids *mukhannats bil 'amdi* (fake *mukhannath*) (Muhammad, 2011). If it is examined carefully, Ibn Hajar said that both *mukhannath min ashli khilqatihī* and *mukhannath bil 'amdi* should be avoided. Ibn Hajar said: "A reproach resembling speech, the way of walking (*mukhannath / mutarajjilah*) for those who intentionally do it; while those who naturally born as it is, is ordered to slowly leave it before getting addicted to it; and if they still persist to do so, then disgrace is on them; especially if they show approval of it as clearly indicated in lafazh *mutasyabbihīn*. *Mukhannath* by nature or womanlike men are not subject to reproach; it can be understood if they still cannot change the way of walking and talking like

women even after trying to leave it. However, if there is still a possibility to leave it gradually, then leaving it without excuse. Otherwise, it is still subject to reproach (Al-asqalani et al., 1993).” From this statement, this is clear that the feminists have misunderstood the editorial content in his book and caused errors in making conclusions.

In the statement, Ibn Hajar also said that behavior resembling the opposite sex must be avoided. In fact, Ibn Qayyim classifies the act of *mukhannath* or *mutarajjilah* as a major sin (al-Jauziyyah, 1991). For someone who has a trait like the opposite sex since his childhood needs to be treated to return to his original sex gradually, even though sometimes he still acts like a woman after treatment, then it is okay as mentioned by Ibn Hajar. Similarly, Imam al-Sharbini states that *mukhannath* by nature since born is not sinful, but there must be an awareness and effort to treat it and return to the original sex. The Prophet Muhammad SAW also in the above explanation orders to emphasize the natural characteristics of each sex (Al-Syarbīnī, 1994). If so, then *mukhannath khalqi* cannot be defined as homosexuality, such as loving women or undertaking marriage equality. *Mukhannath khalqi* seems inappropriate to be equal with homosexual behavior. What appears a lot is *mukhannath bil 'amdi*. In addition, the term *mukhannath/mutarajjilah* does not accept the distinction between sexual orientation and sexual behavior. Sexual orientation, sexual behavior, or behavior includes in *al-Mutasyabbihūn*. A person who resembles the opposite sex (*al-Mutasyabbihūn*) is different from *mukhannath* that includes both orientation and behavior and cannot be separated from the rules to achieve the benefit.

Moreover, feminists' error in understanding the meaning and law of *mukhannath* behavior is also shown in the way they understood the word *liwath*. Muslim feminists' rejection of the term *liwath* as a representation of homosexuality in Islam is due to the separation between sexual orientation and sexual behavior. The impact leads to an assumption that homosexuality is a natural and lawful behavior because it is a destiny that must be accepted by the perpetrator and must be tolerated by the community (Muhammad, 2011). Some people also admit that homosexual perpetrators and homosexual behavior often concern the community. Some perpetrators even transmit these deviations to the community. Parents should be aware that their children's sexual orientation must agree with their original sex by birth. Even though they do not involve in *liwath*, same-sex sexual orientation is not suitable with parents' expectations or the purpose of building a family (Yanuarti, 2019). This argument is dangerous towards the Muslim's faith and has an impact on a Muslim's perspective towards homosexual behavior.

Feminist misunderstanding in explaining the meaning of *liwath* is a theological problem that needs a deeper and comprehensive explanation. *Liwath* is generally defined as a practice of sodomy or anal sex that can be done to anyone, men or women, including heterosexual or bisexual perpetrators. This understanding is correct but not comprehensive enough that *liwath* is only interpreted as a normal act, or an act that is not related to sexual orientation (Mulia, 2011). In *Mu'jam Manahi*, *liwath* is defined as homosexuality and the perpetrator is called *luthiy*. This term does not only refer to sexual behavior but also to sexual orientation

which is psychologically related to love and attraction (Zayd, 1996). This is shown from the word derivation namely *luth*, in Lisan al-Arab it means to love by heart or feeling preference (Manzur, 1990). From these various definitions, it is clear that the meaning of *liwath* is not only a matter of behavior but also feeling, emotion, and love that all of these are part of human sexual orientation. This is also related to the story of Prophet Luth people as mentioned in al-Qur'an as the people of Sodom.

Homosexuality is illustrated in the story of the Prophet Luth a.s whose story is famous for the sodomites or homosexual people who are cursed by Allah. As stated in Surah al-A'raf: 81: *innakum lata'tuuna al-rijaala syahwatan min duuni al-nisaa'i bal antum qaumun musyrifuuna*, there is love (*al-hubb*) and lust (*al-syahwat*). The position of the word lust (*al-syahwat*) in Surah al-A'raf above is *maf'ul li ajlih* that the meaning emphasizes the element of sexual orientation. This Surah is also full of meaning regarding the early prevention of sexual orientation deviation (Wati, 2020). Bakr bin Abdillah Abu Zayd said that lust (*al-syahwat*) is a form of love derived from the word *la-waw-tha*, representing the sexual orientation of Prophet Luth people (Zayd, 1996). Therefore, the curse and punishment that was passed down was not only because of their sodomy behavior but also related to their sexual orientation. Allah certainly did not punish the people of Prophet Luth a.s if homosexuality is only a matter of desire by heart. However, letting it go and not fighting for it and then following it is a cause of curse from Allah.

Mukhannath bil khalqi is not meant to be referred to as sexual orientation. Muslim scholars refer to it as girly behavior. In contrast, *al-mutasyabbihun* deliberately imitates women's behavior to express their homosexual desires while this is clearly prohibited in Islam. From the meaning, the word *liwath* cannot be separated from orientation and behavior as *al-mutasyabbihun*'s homosexual behavior is the same as *liwath*. Muslim feminists try to put the notion of homosexuality into the understanding of *mukhannath* term and obscure the meaning of *liwath* as homosexuality in Islam.

Homosexuality in Islamic Law

From the discussion above, it is clear that Muslim feminists use the term *mukhannath* as a homosexual argument that it is divine, and this is a different interpretation from what is defined by Muslim scholars. The phenomenon of *mukhannath* is discussed in Islamic law by *fuqaha*, especially in four mahzabs which are the main references of Islamic law. Likewise, how attitudes and behavior of *mukhannath* groups have been explained by Ibn Hajar, al-Syarbini or Ibn Qayyim. They are expected to minimize these attitudes so that they are encouraged to return to the nature of their biological creation. The concept of *fitrah* is a description of the human condition when born on this earth (Muhammed, 1995). By knowing clearly about human nature, it is impossible to violate divine nature and vice versa. The goodness of God's destiny will never violate human nature.

There are several etymological meanings of *fitrah* which are absorbed from Arabic. The origin of the word *fitrah* in Arabic is (*fa-tha-ra*) which means to reveal or to split (Ma'luf, 1997).

Meanwhile, linguists add that *fitrah* is the creation of something for the first time, without any previous form. On the other side, *fitrah* can also be interpreted as the origin of events, holiness, and true religion (Dyayadi, 2009). *Fitrah* is also an innate trait by birth (Munawwir, 1997). Therefore, it can be concluded that the concept of *fitrah* reveals that humans already have a tendency to follow goodness since the beginning.

The discussion above is following what is explained in Surah al-Rum: 30. In that Surah, the phrase *fitratallah* is juxtaposed with *al-din hanifah*, a straight religion with obedience messages to Allah. An interpretation from Ibn Kathir asserts that Allah has indeed created (*faṭara*) his creatures on Islam. Abu Hurairah also quotes this Surah after narrating the main hadith about *fitrah*. This shows that Abu Hurairah understands that *fitrah* is closely related to goodness and Islam (Al-asqalani et al., 1993; Al-Qurtubi, 2003). To achieve obedience to Allah, of course, humans have been given knowledge of Him. Al-Attas reinforces this. In his explanation about *the nature of man*, he states that religion and intrinsic knowledge in the human soul are part of *fitrah* (S. N. Al-Attas, 2001). Therefore, the potential kindness embedded in human beings according to their nature is a potential to obey Allah's rules.

The nature of a human is to obey Allah, to do what is commanded and to avoid what is forbidden as stated in the Qur'an Surah al-Dzariyyat: 56 and Surah al-Baqarah: 30. From the interpretation, to achieve the intended obedience, humans have been given knowledge by Allah since the time of the Primordial covenant (Al-Maragi, 1946). Religion and all the intrinsic knowledge in the human soul is part of the nature of human creation itself. So that obedient humans are formed from human nature itself, which is developed by the heart and mind which is the controller of human actions (S. N. Al-Attas, 2010). Therefore, it can be said that nature is a form and a system that has been created by Allah for humans, and human nature is everything that Allah created for humans, which is related to the spiritual, physical and mental (Baharuddin, 2004).

From the explained concept of *fitrah* above, the context of normality in Islam that is in accordance with human nature is an individual with his nature who tends to do good and obey. From this, it can be clear whether homosexuality is a normal or abnormal state of human origin. Normality from Muslim scholars' perspective is a healthy heart condition (*al-qalb as-salm*). This is explained by Imam Ibn al-Qayyim al-Jauziyah that a healthy heart (*al-qalb as-salīm*) is a condition where it is detached from two things: the first one is the desire to do actions that are contrary to Allah's orders or violate Allah's prohibitions (*syahwah kāzibah/fāhīṣya*), the second one is hesitation about news, orders and also instructions from Allah (*syubhāt*) and both of these things are included in *Fujur* (Al-Jauziyah, 1939). *Fujur* can be interpreted as broken religious protection, which is also interpreted as a destroyer of human nature (al-Isfahānī, 1998). However, even though humans already have an innate nature in themselves, humans still have the potential to commit mistakes.

Concerning the case of mukhannath khalqy, it is necessary to follow the concept of *fitrah* discussed above. Attitudes, behavior, and traits that resemble women naturally still need to be guided to understand his biologically sex as a man. If there is no sexual desire for women,

it still can be treated through education. Unless if the case is khuntsa, who is born with multiple sexes. Then it is advised to examine his hormonal tendencies. The difference between mukhannath and khuntsa is the nature of their creation. This certainly must be separated in meaning. Mukhannath and khuntsa should not be equated. Not even to let them have a feeling towards the same-sex people.

This is in line with what Allah says as Satan's program through His word; "And I will tell them (to change Allah's creation) then they will change it" Q.S al-Nisa': 19. Therefore, a good Muslim who believes and devotes to Allah SWT will follow his nature. What fitrah means here is following what Allah, the creator of the universe, expects in terms of kindness. Homosexuality includes in the category of fujur and this can destroy human nature. Therefore, a Muslim who has faith and piety is unlikely to defend behavior that will break human nature. Likewise, a Muslim man who tends to be feminine will always try to return to his nature and keep himself from falling into the trap of Satan to change his sexual orientation. In line with that, Robert L. Spitzer, states that a person's religiosity factor also plays a significant role in changing his sexual orientation (Spitzer, 2003). If he understands the concept of fitrah, he will always maintain a good relationship with Allah and will not easily plunge himself into fujur, destroying his nature.

As the formulation of the theory of *maslahah* (maslahat) in *maqashid al-shari'ah*, the provisions of Islamic law are to maintain the values of life. In general, the *maslahah* theory is interpreted to realize human welfare in this life by bringing benefits and avoiding harm. Good benefits need to be put forward so as not to damage the structure of life and cause devastating chaos. To be applied in the case of *mukhannath* group, the indicators used are benefits (*manfa'ah*) and harm (*mudllarat*). Imam Ghazali as quoted by Apollo Harahap, *maslahah* is an expression to look for a benefit or to eliminate *mudllarah*. This means that the *maslahah* theory aims to protect human life by using the two indicators above, and legal decisions are sought to provide benefits or eliminate losses in human life (Harahap, 2016).

Furthermore, al-Buthi, quoted by Azizy, provides three benchmarks to determine the legal value of a mujtahid. Firstly, the benchmark for determining *maslahah* is not limited to life in this world, but also the life of the hereafter. For this reason, a mujtahid, in making a legal decision, should also pay attention to the consequences that occur in this world and the hereafter. Secondly, the interests in sharia do not only pay attention to physical elements but also metaphysical elements. Physical and spiritual coverage will have implications for spiritual well-being, peace of mind and inner happiness. This is human nature that cannot be negotiated (Azizy, 2015). Lastly, *maslahah* is not only limited to *maslahah duniyiyah* (world matter) but also *maslahah diniyyah* (religious matter). All legal decisions are made by *ijtihad* which is based on the Qur'an and Sunnah. If there is a conflict between human matter and religious matter, or in the Qur'an and the Sunnah, then what is contained in the Qur'an and as-Sunnah must be followed. As Allah SWT is the owner of all life in this world, His worldly regulations aim for human welfare in the world which can lead to prosperity in the hereafter (Azizy, 2015). The three characteristics above show that *maslahah* in the sense of welfare

requires chemistry both in the world and the hereafter aspects. Thus, the legal products it produces can be useful for all mankind to achieve prosperity in this world and the hereafter.

Therefore, *maslahah* theory formulates some objects that become the place of its implementation. There are at least five important objects in life aspect that need to be protected; 1) religion (*hifdz al-din*); 2) soul (*hifdz al-nafs*); 3) intelligence (*hifdz al-'aql*); 4) descendants/human preservation (*hifdz al-nasl*); 5) property (*hifdz al-mal*). These five objects are used as objects for legal assessment by using two indicators: benefits or disadvantages (Azizy, 2015). Homosexuality or LGBT cases, in general, have destroyed the four of five objects above, Religion, Soul, Intellect, Human Preservation. Therefore, homosexuals or LGBT are clearly rejected in Islamic law. Likewise, if we look deeper into the fourth object, in this case, human sustainability, homosexuality or LGBT behavior is contrary to this that will destroy the human generation. Even in *ushul fiqh* rules, anything that can cause damage must be prevented and avoided "*al-dlhararu yazaalu*". This is also supported by the rule of "*dar'u al-mafaasid muqaddamun 'ala jalbi al-mashaalih*" which means rejecting damage must be overcome first than upholding benefit. If homosexuality or LGBT behavior is legitimized or justified, it will have an impact on undeveloped society. The longer the community in a village get in touch with homosexual behavior the worst it can be without regeneration. Islam clearly prohibits this behavior as discussed in the previous sub-chapters that homosexual behavior includes in the *fujur* category. Similarly, *mukhannath* behavior also needs to be avoided as agreed by Muslim scholars. To maintain human nature, the *ushuliyah* principle "*sadd al-dzari'ah*" or closing any possibilities leading to forbidden acts need to be implemented in dealing with LGBT (Harahap, 2016).

Criticism Of Homosexual Arguments

In addition, the feminists use the gender paradigm as a system of analysis in interpreting the *mukhannath* term. The meaning of gender is not the same as sex. This distinction was firstly introduced by American and British psychiatrists and medical workers there by looking at the cases of transsexual and intersex patients in the 1960s and 1970s (Butler, 2004). Since then, this concept has been widely adopted as a system for analyzing gender development studies of the global feminist movement. Gender is interpreted as socio-cultural sex or role division and responsibilities formed by the local community and culture and then it becomes a basic perspective on sexuality. Sexuality has many dimensions, such as relationships, recreation, procreation, emotion, physical appearance, senses, and spirituality. Therefore, what is needed to maintain sexuality is not only in terms of biological gender but also in terms of gender basis (Muhammad, 2011). The definition above aims to distinguish the meaning between sex and gender as well as to distinguish between biological sex and social sex so that it can be used as a basis to fight for biological factors as destiny.

Therefore, masculine or feminine attributes do not have to be associated with gender as gender is formed socio-historically which is impermanent so that it is changeable across sexes (Butler, 2004). He states that "*Gender is not something we are; rather, it is something we*

do” that in other words, it means that gender is not what we have, but it is what we do. The goal is to differentiate humans from the biological and social aspects. In fact, there are several things related to biological aspects in Islam that will influence social construct, distinguish the roles, functions and strongness between men and women (Britannica, 2005; Khuza’i, 2012). Likewise, cultural issues which are considered as gender-forming aspects are a relative reference, and they cannot be used as a benchmark for truth. If this relative culture is used as a basis for truth, then the impact will be deviant sexual behavior, that was once considered taboo, will actually be considered as a form of modernity and human rights (Shalahuddin, 2012; Zarkasyi, 2009).

In line with that, the efforts of Muslim feminists to legitimize homosexuality by distorting the meaning of *mukhannath* and *liwath* are built through the definition of gender above. Feminist groups try to put a new understanding of *the mukhannath* term referring to a behavior that has nothing to do with gender and can be a law of homosexual legitimacy in Islam. A word or term contains meaning and in meaning, there is a concept, and each of these concepts has a paradigm or point of view. If the meanings have been obscured or misinterpreted, as mentioned by al-Attas, there will be a *confusion of knowledge*, resulting in life deviations (S. N. Al-Attas, 2001). The error made by the feminists is clearly visible, not only following post-modernism culture, but also inappropriate analysis system used in establishing law in Islam.

On the other hand, if homosexuality in terms of *mukhannath* only refers to sexual orientation, then this is contrary to the notion of homosexual itself. S. K. Mangal, a psychologist, defines that homosexuality as sexual pleasure resulting from same-sex relationships “in this type of deviation, sexual pleasure is derived from members of the same sex”. He also explained homosexual activities such as *mutual masturbation, orogenital activity*, and sodomy, in which each partner can alternate roles, between masculine and feminine (Mangal, 2008). This is actually different from what feminists’ state that homosexuality should not be equated with sodomy (*lūthī*). In fact, a homosexual perpetrator can do all those activities. In addition, each partner can alternate roles, between masculine and feminine, and this proves inconsistency in them.

Therefore, the legal provisions regarding homosexuality by the American Psychiatric Association (APA) in DSM IV evaluate those normal criteria for sexual deviation are relative to the norms, social, and culture of human beings (Adolphe et al., 2012). Changes that continue to occur in terms of interest, behavior, and sexual identity in an individual that determines a normal criterion must be based on culture, “It is important to note that notions of deviance, standards of sexual performance, and concepts of appropriate gender roles can vary from culture to culture (Association et al., 2000).” It is better to leave homosexuality issues back to local law (in this context is Islamic law) to determine sexual deviation. Muslims should provide solutions to the LGBT problem from an Islamic perspective by referring to Islamic revelation and studies.

The feminists and gender activists assume that religious doctrines discussing gender or legal provisions distinguishing men and women, especially sexual orientation issues, must be adapted according to gender equality perspective. These demands are commonly based on the accusation that the Islamic sharia that we currently implement is not derived from the will of God, but rather the fabrication of patriarchal culture through the *mufassir* and *fuqaha* who are mostly heterosexual men (Wadud, 1999). If it is examined, Islam does not separate sex with gender and religious provisions cannot be equated with culture. There are not many female *mufassir* and *fuqaha* who have a role in building intellectual traditions in Islamic civilization. Likewise, there are strict requirements in terms of knowledge, etiquette, and morals to become a *mujtahid* or *ijtihad* in determining laws that are relevant to today. This is due to the influence of postmodernism that rejects authority and thus refuses to follow *ijtihad* requirements. The efforts of feminists in legalizing homosexuality are imposing religious arguments overly by updating *mukhannath* law in Islam. Therefore, it is not surprising that the results of feminist *ijtihad* deviate far from previous Muslim scholars' *ijtihad* under the pretext of reforming and upholding human rights that are full of feminism and humanism interests (Zarkasyi, 2009). This does not mean that Islam fully rejects human rights. In fact, Islam highly praises human rights as long as following Islamic values.

One of the basic concepts that distinguish secular human rights and Islam is the concept of freedom. This concept of freedom is related to perspective towards *the mukhannath* category. The secular human right of Western thought is based on the fact that man is the measure of all things (Osborne, 2011). This leads to a problematic concept of freedom and will influence the boundaries of divine law and human law. Indeed, the purpose of human rights itself is universal that support civil liberalism, but it also can blur the boundaries between *taking and giving*. This is what needs to be underlined that these contemporary forms of appreciation for human rights are incompatible in serving human needs (Nurkhalis, 2014). The pretext of justifying homosexuality through *mukhannath* but persuade people who are classified as *mukhannath* to be violators of Islamic law or even stay away from their human values. The freedom concept by the Western perspective is based on human desires/lusts which is neither absolute nor permanent. In contrast, Islam has the same visions as human rights in humanizing humans. It has comprehensive teaching governing all aspects of human life. There is a term *huquq alinsan* (human rights) in Islamic society that cannot be achieved before fulfils the obligations. In other words, Islam emphasizes more on obligations rather than rights. This obligation is Allah' right that precedence over human rights and its provisions are based on Islamic values. (Salam, 2012).

The concept of freedom in Islam consists of three meanings. The First one is *istitha'ah* which means ability. This first concept of freedom symbolizes self-will and desire, as explained in the Qur'an al-Isra': 18-19 and al-Shura: 20. It is explained that every Muslim is free to choose between the life of this world or the life in the hereafter. If he desires only the life in this world today, then Allah will recompense of hell in the hereafter (Zarkasyi, 2010). The second one is *ikhtiyar* that the freedom to choose the right one. This concept of freedom

is introduced by Al-Attas, a contemporary Muslim philosopher. *Ikhtiyar* is derived from the word *khoir* which means kindness. Al-Attas in his *Prolegomena to The Metaphysics of Islam*, states that a Muslim who chooses evil and unclear religious provision will be shackled by his lust (S. N. Al-Attas, 2001). The last one is the freedom that is identical to *fitrah*, namely the nature of human origin before being changed, polluted, and damaged by the surrounding life system. Following the hadith of the Prophet: "everyone is born in a state of purity (*fitrah*), it is his parents who turn him whether a Jew, a Magian, or a Christian". In this case, it is not only the parents who play a role in changing human nature but also the people around them, even the surrounding cultures. Raghīb al-Isfahānī also indicated that freedom (*hurr*) is being free from the surrounding legal provisions that make him a slave of lust. When a person is free from lust restraints, it means he has returned to his nature (al-Isfahānī, 1998). From the three meanings of freedom in Islam, it can be concluded that freedom in Islam is concerned with the purpose of life between the world and the hereafter and manner. Through the Islamic perspective of freedom, an individual who is *mukhannath* should have good thoughts that have an impact on good behavior, know what parts of the body must be covered (*aurat*) or know how to limit interaction with the opposite sex. So that through his daily life he will try to return to his nature.

CONCLUSION

Based on the discussion above, the term *mukhannath* used by feminists to legitimize the permissibility of same-sex sexual activity is unfounded, and irrelevant to the Islamic *worldview*, as well as a thorough understanding of the concepts and *mukhannath* or *mutarajjilah* laws. Islam as a perfect religion has governed the entire life of its people and human beings as a whole. Previous scholars have formulated how they should address the issue of homosexual orientation and behavior. In the literature written by Muslim scholars regarding *mukhannath* or *mutarajjilah*, efforts should be made to return to their nature. *Mukhannath* or *mutarajjilah* only refer to behavior excluding sexual orientation. Attitudes and behavior are meant to be in line with absolute sex by born. In addition, Muslim feminists have also changed homosexuality definition from *liwath* to *mukhannath* term. Even Muslim scholars have agreed that in Islam homosexual behavior is the behavior of the Prophet Lut a.s people or *luthiy*, the perpetrators of *liwath*. Such behavior in Islam is called *fujur*, which means destroying human nature. This objects to the argument that *mukhannath bil khalqi* is a term that supports homosexuality as a divine destiny. Destiny should be interpreted as something that is eternal and should not violate human nature because destiny is Allah's prerogative. If destiny is based on gender in social constructs, then the effort has eliminated the nature of eternal destiny. Likewise, the homosexual law in Islam is *qath'i* (fixed) and not *mutaghayyirat* (not permanent), which is clear in the Qur'an and sunnah that it is prohibited and there is no contradiction in it.

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