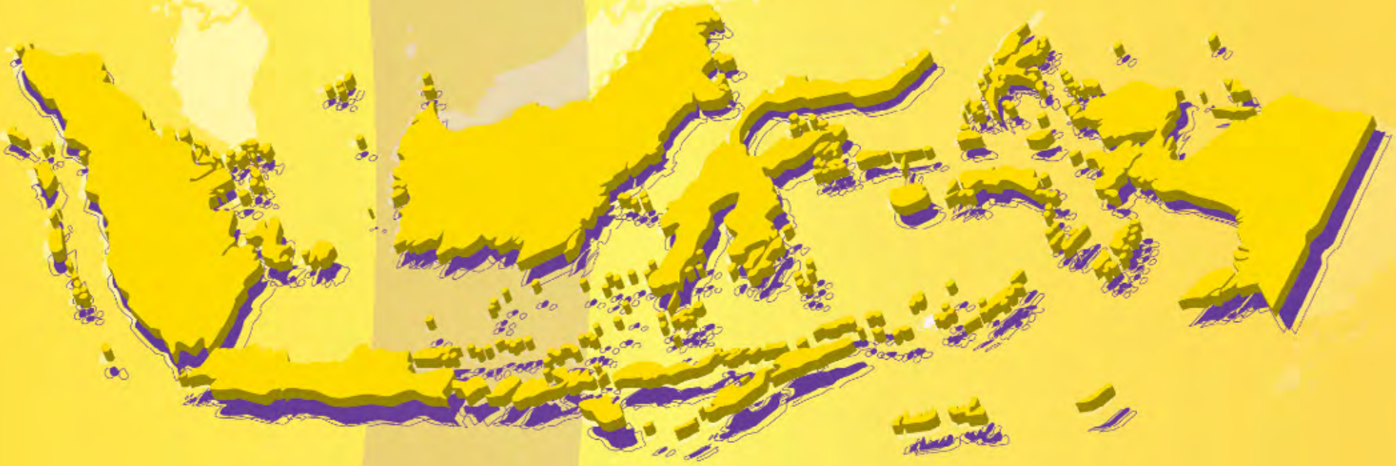
intersex Asia

Intersex Justice in Indonesia

Inspiring Action through Research



Country report on the situation of Intersex Rights in Indonesia

2024

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Suggested citation:
Intersex Asia: Edith and Raiz, "Intersex Justice in Indonesia: A Country Report on the situation of intersex rights in Indonesia" (Taiwan: June 2024).

Available from: *www.intersexasia.org*

This publication has been produced with the financial support of Voice Global. The content of this publication is the sole responsibility of Intersex Asia and can in no way be taken to reflect the views of Voice Global.

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Preface

The research project on legal and policy framework on intersex rights in Indonesia has been undertaken as part of Intersex Asia's effort to cover the standards of protection in Indonesia's legal system and perspective of intersex people in Indonesia. The findings and recommendations of this research will identify the social and gender norms that perpetuate discrimination against intersex people, map strategies to address the negative social and gender norms against intersex people and inform measures to increase the effectiveness of the strategies and accelerate protection and promotion of intersex rights in Indonesia.

Glossary and Acronyms

CAH	Congenital Adrenal Hyperplasia
DSD	Disorder of Sex Development
DSD	Difference of Sex Development
FK UNDIP	Faculty of Medicine, Diponegoro University
ICD	International Classification of Diseases-11
KOWAD	*Korps Wanita Angkatan Darat* or Army Women's Corps Indonesia
LGBT	Lesbian, Gay, Bisexual and Transgender
MUI	*Majelis Ulama Indonesia* or Indonesian Ulema Council
RSPAD	*Rumah Sakit Pusat Angkatan Darat* or Central Army Hospital
SAT	Sexual Adjustment Multidisciplinary Team
UUD	*Undang-Undang Dasar* or Constitution
BPJS	*Badan Penyelenggara Jaminan Sosial* or Social Security Administrator

Acknowledgment

I would like to thank Intersex Asia and Kolektif Interseks for their support throughout the process of research. This project would not have been possible without the guidance of SOGIESC experts in Indonesia.

1. Introduction

1.1 Main Problems and Scope

1.2 Goals and Objectives

The development of intersex as terminology is closely linked to the historical context of the biomedical and political activism discourse in the United States. In 1993, a biologist and historian, Anne Fausto-Sterling introduced the concept of the intersexual body by creating subgroups based on the mixtures of the male and female characteristics: "herms" (so-called true hermaphrodite, who has one testis and one ovary); "merms" (male pseudohermaphrodite who has testes and some elements of female genitalia without ovaries); and "ferms" (female pseudohermaphrodite who has ovaries and some elements of genitalia but lack testes) [1]. Her effort was to challenge the deeply rooted idea of Western culture that human beings only comprise two sexes - male and female. Her concept of five sexes gained a response from Cheryl Chase, an intersex activist who founded the Intersex Society of North America (ISNA). She emphasized the experiences of most intersex people who faced the destruction of their bodily integrity because intersex infants were considered 'defective' and therefore should undergo corrective surgery to fit the cultural definition of binary sex and gender [2].

Furthermore, the classification of intersex based on the idea of hermaphroditism is problematic and harmful. In 1876, Edwin Klebs made a taxonomy for congenital sexual anatomies in five types based on the nature of the gonadal anatomy [3]. Klebs' system is widely accepted in the medical and health setting despite the discovery of the Barr-body [4] which shows the role of chromosome variation as another aspect of sex classification. In 2005, Cheryl Chase and Alice Dreger called for the abandonment of using hermaphroditism which closely aligned with the taxonomy system based on gonadal anatomy because it resulted in the distress of intersex people as they were categorised under their supposed sex but socially labelled and assured as a

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[1] Anne Fausto-Sterling, "The Five Sexes," Reading 5 of What is Sex? What is Gender? (March/April 1993), available at: https://danielwharris.com/teaching/360/readings/FaustoSterling.pdf.

[2] Cheryl Chase, "Letters from Readers. The Sciences," Intersex Society of North America, (July/August 1993), available at: https://isna.org/articles/chase1995a/.

[3] Those types are: 1) females: defined as presenting only standard female sexual anatomy. 2) Males: defined as presenting only standard male sexual anatomy; 3) Female pseudohermaphroditism: defined as presenting some mixture or blurring of standard female and male sexual anatomy with the presence of ovaries (and not testes or ovotestes) and of an 'XX' chromosomal complement; 4) Male pseudohermaphroditism: defined as presenting some mixture or blurring of standard female and male sexual anatomy with the presence of testes (and not ovaries or ovotestes) and of an 'XY' chromosomal complement; 5) True hermaphrodites: defined as presenting at least one ovary and at least one testis, or at least one ovotestis. (The definition of true hermaphroditism does not depend on the presentation of other sexual anatomy or the chromosomal complement).

[4] The association of X as the female-determinative chromosome from a Drosophila research was utilized to conclude the sex determination in humans. Fruit fly chromosomes, namely Drosophila melanogaster, were studied. In the 1920s It was found that the X chromosome is female-determinative and the existence of male flies with XO chromosomes and female flies with XXY. The human genetic research used on male gametes in which sperm cells carry only an X or a Y. The assumption that X chromosome always produces a female and that male individuals inherit their X from mother strengthens the view that femaleness is located in the X and maleness in the Y chromosome. However, in 1948, the Barr-body was founded from the research of female cats. With the XX chromosomes, there will be the Barr-body or sex-chromatic one inactivated X chromosome in the female cell which occurs between 7 to 14 days after fertilization. In XX chromosome, there will be one inactivated chromosome, which is considered as chromatin positive and in XY there will be no Barr body and considered chromatin negative. The invention of the Barr body allows the identification of the variation of the chromosome and is a grounding for the classification of intersex. Excerpts from an article authored by David Andrew Griffiths, "Shifting syndromes: Sex Chromosome variations and intersex classifications," Sage Publications, PMCID: PMC5808814 (9 February 2018), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5808814/.

particular gender, due to surgery [5]. Furthermore, they argued division of 'pseudo' and 'true' created a hierarchy of authenticity of a person's body. Therefore, they offered the new terminology from hermaphroditism to 'disorder sex development'. This proposal was adopted at the Chicago meeting in 2005 attended by fifty experts and two non-medical experts, including Cheryl Chase.

In 2006, the ''Consensus Statement on Management of Intersex Disorders' was published by adopting Chase's suggestions and broadening the medical classification not based on gonadal anatomy. It said:

> *Terms such as intersex, pseudohermaphroditism, hermaphroditism, sex reversal, and gender-based diagnostic labels are particularly controversial. These terms are perceived as potentially pejorative by patients and can be confusing to practitioners and parents alike. The term 'disorders of sex development' (DSD) is proposed, as defined by congenital conditions in which the development of chromosomal, gonadal, or anatomical sex is atypical. (Hughes et al., 2006: 554)*

The 2006 consensus statement also includes '45, X (Turner syndrome and variants)' and '47, XXY (Klinefelter syndrome and variants)' as 'Sex Chromosome DSD'.

However, the terminology of Disorder of Sex Development (DSD) gained rejection from several intersex organisations. Organisation Intersex International (OII) expressed that intersex or atypical sex is not a disorder which requires medical treatment; therefore the term disorder would make the discussion of health issues of intersex people be overlooked because of the emphasis on the "sex disorder" [6]. Other organisations, such as InterACT, also opposed terminology as it pathologized intersex people and decided to use intersex variation in all of their publications. They modified the DSD terminology by replacing "disorder" with "difference" to allow "DSD" to stand for "differences of sex development" and decided to use this term on a case-by-case basis [7]. Furthermore, in 2008 ISNA closed and the work was continued with a new organisation, Accord Alliance, to ensure the appropriate care for DSD people and their families [8]. Accord Alliance also adopted DSD as "differences of sex development" to make the terminology more neutral and to "avoid equating biology with identity" [9].

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[5] Alice D. Dreger, Cheryl Chase, Aron Sousa, Philip A. Gruppuso and Joel Frader, "Changing the Nomenclature: Taxonomy for Intersex: A Scientific and Clinical Rationale," Journal of Pediatric Endocrinology & Metabolism, 18, 729-733 (2005), Freund Publishing House Ltd. London, available at: https://static1.squarespace.com/static/54694fa6e4b0eaec4530f99d/t/5d0904eaf36a1600019cd86d/1560872171875/Changing+the+Nomenclature%3ATaxonomy+for+Intersex-.pdf.

[6] OII FAQ, OII Intersex Network (12 February 2006), available at: https://oiiinternational.com/707/oii-faq/.

[7] InterACT Statement on Intersex Terminology, InterACT Advocates for Intersex Youth, available at: https://interactadvocates.org/interact-statement-on-intersex-terminology/.

[8] A Farewell Message from the Intersex Society of North America, Intersex Society of North America, available at: https://isna.org/farewell_message/.

[9] Our Mission, Accord Alliance, available at: http://www.accordalliance.org/about-accord-alliance/our-mission/.

Intersex activists, scholars, and organisations have continued to use intersex terminology in raising public awareness of the human rights violations faced by intersex people, supporting and advocating the lives of intersex people. There is a dedicated month for intersex which comprises fourteen days - starting with Intersex Awareness Days on October 26th and ending with Intersex Solidarity Day or Intersex Day of Remembrance on November 8th. On October 26, 1996, the American activist group, Hermaphrodites with Attitude (HWA) together with the trans activist group Trans Menace organised a protest against non-consensual cosmetic infant genital surgery to "fix" intersex genitalia. This public protest occurred after the activists were escorted out of the conference of the American Association of Paediatrics. Furthermore, November 8th marks Herculine Barbin's birthday, an intersex person who lived in France in the 19th century and the first intersex person who wrote their biography.

In Indonesia, the terminology of hermaphroditism based on Klebs' system was founded in books that described the life of *waria* [10] (a portmanteau of wanita and pria – woman and man respectively). In 1986, a writer, Kemala Atmojo, wrote *Kami Bukan Lelaki: Sebuah Sketsa Kehidupan Kaum Waria* (We Are Not Men: The Life Sketch of Waria). He pointed out two types of 'sexual disorders' based on the reference of Prof. M.K Tadjudin, a biology lecturer: first, 'chromosomal sexual disorders', such as Klinefelter, turner syndrome, and true-hermaphrodites; and the second was 'non-chromosomal sexual disorder', such as pseudo-male (who possess female gonad but with male physicality, with testes but no sperm and will grow breast with no moustache or beard in adolescent age), pseudo female (who possess male gonad with the female organ but do not menstruate and the breast do not grow in adolescent age), female pseudohermaphrodite (possess female chromosome or XX but have male physicality), and male pseudohermaphrodite (possess male chromosome or XY but have female physicality) [11].

Furthermore, Kemala Atmojo also recorded that in 1985, *Tempo,* one of the Indonesian media, reported the case of Rogayah (pseudonym) from Bandung West Java. Rogayah had a penis (2 cm length with 0,5 cm diameter) with no urinal hole and under the penis there was a hole (1,5 x 1,5 cm) that looked like a vagina. However, when further examination was conducted, it was a urinary tract connected to the bladder. Rogayah also had two testicles of different sizes. In addition, since childhood, they were brought up and enrolled in school as a girl. They never menstruated and their breasts developed for only a short period. At 17, Rogayah started to feel like a man and started dating women. They also admitted to having "wet dreams" and secreted sperm. During an examination, it was proven that they had sperm cells. Afterwards, Rogayah claimed to be a man.

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[10] In 1968, waria, or transgender woman was recognised by Ali Sadikin, a governor of Jakarta. He facilitated waria to form their organisation. The first organisation was Himpunan Wadam Jakarta or HIWAD - The Association of Jakarta Wadam (Wanita dan Adam - Woman and Adam).

[11] page 42-43.

They were diagnosed to have male-pseudohermaphrodite. However, according to Dr. Oderwald, surgeon of Eindhoven Hospital in the Netherlands, attending a small seminar in Hasan Sadikin Hospital in Bandung, because Rogayah's penis was too small, they "should be" a woman.

The public debate on intersex people in Indonesia is confused between sex characteristics and gender identity. In 2010, under the headline *Indonesian in transgender wedding 'fraud' trial,* BBC media captured a story about Alterina Hofan, a man who faced trial due to the accusation of falsifying documents in order to marry a woman [12]. The media highlighted that Alterina is a transgender man. However, Alterina Hofan's mother explained that he has Klinefelter's syndrome, where he has an additional X chromosome which makes him more feminine. Hofan was registered as a girl when he was born, but when he reached two years old, his male genitalia developed. On March 29th 2010, Jayapura District Court No. 12/Pdt.P/2010/PN.JPR granted his request to change the legal document (birth certificate) to a man.

In 2018, Tirto.id, an Indonesian media, interviewed a 26-year-old intersex individual named Tony (not their real name) who had just undergone a mastectomy [13]. Tony was assigned female at birth but identified as male. Tony stated that they were an intersex person and not a trans person. Tony had PAIS or Partial Androgen Insensitivity Syndrome - some of their cells were unable to respond to androgens produced by the body, and this affected the masculinization development of their genitalia. Tony was born with a vagina but did not have a uterus or ovaries. However, their body produced testosterone, so the sperm was secreted.

Tony was identified as female at birth because their vagina was more visible. The doctor recommended surgery to remove their penis. Tony felt angry with their parents' decision who followed the doctor's advice. Furthermore, when Tony did not experience menstruation in adolescence, their parents gave them alternative medicines and herbs in an attempt to "cure" the issue. Despite feeling different, Tony did not have the opportunity to discuss their feelings with their parents and felt alone in their struggle. In high school, Tony learned about the term "intersex" and was able to connect with open-minded friends and gain information about their condition. This helped them accept themselves for who they were. Tony wanted to undergo phalloplasty surgery in the future although they realised that the cost was expensive and the process was difficult. Legal gender identity change was also a challenge due to the gender-binary worldview that dominates legal, social, and medical systems.

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[12] KSAD Andika Perkasa: Sersan Manganang Bukan Iterseks Atau Transgender, KumparnaNEWS (10 March 2021), available at: https://kumparan.com/kumparannews/ksad-andika-perkasa-sersan-manganang-bukan-interseks-atau-transgender-1vKIgVpFKHD/full;Indonesian in transgender wedding 'fraud' trial, BBC NEWS (17 May 2016), available at: http://news.bbc.co.uk/2/hi/asia-pacific/8687691.stm.

[13] Aulia Adam, "Menderngar Langsung Certia Seorang Interseks," tirto.id (28 February 2018 (Terbit)), available at: https://tirto.id/mendengar-langsung-cerita-seorang-interseks-dhMo.

In March 2021, Aprilia Manganang's decision to change their legal gender and name gained public attention. Manganang is a member of the Army Women's Corps (Kowad). She was recruited by the Indonesian Army in 2016 due to her achievements as a national volleyball athlete. On 9 February 2021, Manganang underwent a medical examination at the Central Army Hospital (RSPAD) Gatot Soebroto in Jakarta. Dr. Guntoro, a reconstructive plastic surgeon from the Army Hospital, stated that Manganang's physicality was masculine, with a broad chest, small hips, and flat breasts [14]. The genital examination results informed that he had a penis and testicles, and when his internal organs were checked, it was discovered that Manganang did not have a uterus and ovaries. At a press conference held by the Army Forces Headquarters on March 9, 2021, the spokesman for the Indonesian Army, Andi Perkasa, stated that Manganang was not transgender or intersex [15]. The Indonesian Army supported Manganang in undergoing ‘corrective surgery’ to refine the appearance of their male genitalia.

In the civil trial for Aprilia Manganang's name and sex change on March 19, 2021, Dr. Guntoro stated that Aprilia Manganang had a congenital disorder, namely a severe type of hypospadias known as scrotal hypospadias. He explained that "Hypospadias is a congenital anatomical disorder which happens to males. The urethra is not in its normal position. Aprilia's urethra position is under the testicles, and this informs a severe category." The judge granted the request for the change of name and sex status for Aprilia Manganang, who was registered as a woman, to Aprilio Perkasa Manganang as a man. When the judge announced his new name, Manganang cried; however, the judge told him not to cry because he was now a man [16]. The judge's statement gained criticism from a psychologist who stated that crying had nothing to do with one’s gender; she also expressed that Manganang was intersex, not transgender [17].

Klinefelter's syndrome, PAIS, and hypospadias are variations of a person's sex characteristics, ranging from hormones, and chromosomes to internal and external anatomy, and can be referred to as intersex. However, many people with variations in these sex characteristics may not use the term intersex or may not be familiar with the term. The use of words is important in recognizing and naming these variations of sex characteristics. Intersex Aotearoa strongly advocates that society use the word "variation" instead of "condition" for intersex [18]. This is an ongoing struggle to break down the stigma that continues to invisibilize the bodily autonomy and integrity of intersex people, which, in turn, has impacted various aspects of their lives.

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[14] Tussie Ayu, Iman Firdaus, “Kesaksian Dokter di Persidangan: Aprilia Manganang Alami Hipospadia Tipe Berat, Kompas TV (19 March 2021), available at: https://www.kompas.tv/nasional/156665/kesaksian-dokter-di-persidangan-aprilia-manganang-alami-hipospadia-tipe

[15] Ibid., page 10.

[16] Aditya ka Prawira, “Judge: Don’t Cry, Managing is Now a Man,” Liputan 6 (19 March 2021), available at: https://www.liputan6.com/health/read/4510694/hakim-jangan-menangis-manganang-sekarang-laki-laki.

[17] Dkpamungkas, “Perjalan Aprilio Perkasa Manganang,” qbukatabu.org (27 April 2021), available at: https://qbukatabu.org/2021/04/27/perjalanan-aprilio-perkasa-manganang/.

[18] All About Intersex, Intersex Aotearoa; available at: https://www.intersexaotearoa.org/all-about-intersex.

The above media reports have described stories of the struggles of intersex people in facing multiple layers of violations because intersex people are not recognized under the legal system. The government in Indonesia uses *jenis kelamin* (sex) as one of the required population data in various identity documents, such as identity cards, family cards, and birth certificates [19]. This situation creates a barrier for intersex people to recognize variations in their sex characteristics. They continue to live based on a legally recognized binary gender or have no choice. Furthermore, because of this binary system of sex and gender, intersex people have limited rights to access justice and remedies for various violence and discrimination they faced as children, adolescents, and even adults before they realized the variations in their sex characteristics.

1.1 Main Problems and Scope

This research attempts to answer questions, such as:

- How does Indonesian law guarantee the rights of intersex people with regard to legal gender recognition?
- What are the social and gender norms in society that are supporting or inhibiting factors for fulfilling the rights of intersex people in Indonesia?
- What is the experience of intersex people when it comes to accessing health services?
- How do medical practitioners contribute to the process of legally determining gender for intersex people in Indonesia?
- What is the experience of intersex people when it comes to asserting autonomy over their bodies?
- What are the experiences of discrimination and violence faced by intersex individuals and its impact on their lives? How were these incidents handled and what remedies were available?
- What is the current state of the intersex movement in Indonesia?
- What are the existing and available mechanisms to support intersex human rights defenders in handling the safety challenges because of their work?

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[19] It is based on the Law Number 23 of 2006 on the Administration of the Population.

1.2 Goals and Objectives

Intersex Asia's research agenda aims to cover legal protection standards for intersex people. In this process, the perspective of the community is considered as the point of reference in acknowledging the diverse experiences of intersex people [20]. The findings and recommendations of this research report will identify the legal, social, and gender norms that perpetuate discrimination against intersex people, map strategies to address the negative social and gender norms against intersex people, map the key areas and challenges faced by intersex people in applying human right based approach and inform measures to increase the effectiveness of the strategies to counter negative social and gender norms and accelerate protection and promotion of intersex rights in Indonesia.

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[20] Public Statement, Asian Intersex Movement, Bangkok, Thailand (11 February 2018), available at: https://intersexasia.org/wp-content/uploads/2019/08/IA-Stat_English_pages.pdf.

2. Methodology

2.1 Literature Search

In conducting the literature research, a review of several documents was carried out.

- Review of the existing literature available for intersex issues in Indonesia
- Review of existing laws and regulations in Indonesia that may affect intersex people
- Review of court decisions regarding gender reassignment and name changes in population documents by intersex applicants
- Review of the historical context of the terminologies of Disorder of Sex Development (DSD) and its implication in International Classification Disease (ICD), and various regional or international advocacy works in addressing the human rights violation against intersex people.

2.2 Meetings and Interviews

In this research, 8 (eight) individuals were interviewed. Out of the eight, there were two State representatives and two were strong figures in civil society with a particular focus on gender in Islam and human rights. The remaining four key informants were intersex individuals who shared various backgrounds and contexts, such as activists and artists, three of them were based in Indonesia (such as West Java, North Sumatera and Special Region of Yogyakarta) and one person was part of Intersex Asia board. The details of the key informants are provided in Table 1:

Table 1 - Key Informants

Date	Name	Designation	Institution	Topic of Discussion
10 April 2023	Husein Muhammad	Activist on gender and Islam; a religious leader.	Fahmina Institute	Social and gender norm
14 April 2023	Teguh Setyabudi	Direktorat Jenderal on Population and Civil Registry	Home Affairs Ministry	Regulation on Population Administration and Civil Registry
18 April 2023	Nova Atnike Sugiro	Chairperson	National Commission on Human Rights	Legal and policy aspects, social and gender norms, crisis response mechanism
30 April 2023	AS	Board Member	Intersex Asia	Lived experienced on intersex people
1 May 2023	T	Intersex Activist from West Java	Intersex Collective *(Kolektif Intersex)*	Lived experience with intersex people
1 May 2023	AA	Intersex Activist from North Sumatera	Cangkang Queer	Lived experience with intersex people
5 May 2023	Nursyahbani Katjasungkana		Feminist lawyer and human rights activist	Legal and policy aspects
28 May 2023	CR	Intersex individual	An artist, teacher and. He is based in Yogyakarta.	Lived experience with intersex people

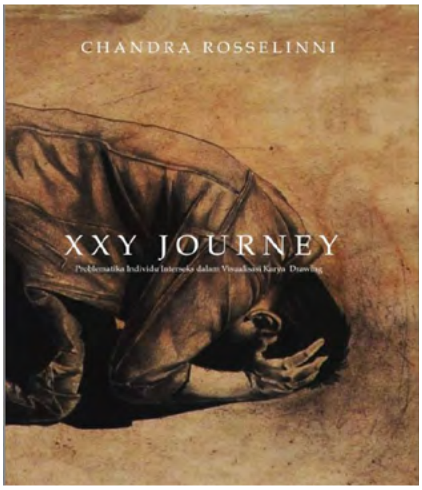
Please refer to Appendix A for details*

3. Current Civil Society and Government Efforts

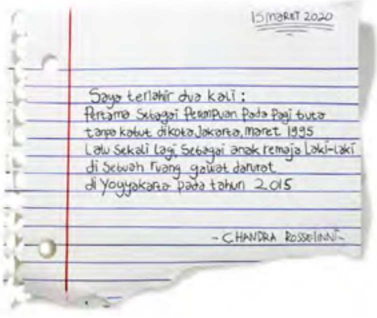
3.1 Civil Society, Intersex People Efforts

In 2005, the intersex community, in consultation with Prof. Sultana M. H. Faradz (the Sexual Adjustment Team) and Dr. Peter Ivan Hadiprajitno, established an information portal called "Wadah Karib" [21]. This portal was created in response to the lack of public information about intersex issues and the lack of representation of the intersex community on a national level in Indonesia.

In October 2020, *Koletif Interseks* (Intersex Collective), initiated by three intersex people, was formed to address the need for intersex people to gather and support each other. The founders were connected through Intersex Asia's COVID-19 Emergency Support Grant [22]. After several meetings and sharing of information, the founders realised that they shared similar concerns regarding their sex characteristics. Subsequently, they formed an intersex collective to bridge the knowledge gap about it. However, for security reasons, they limit their visibility due to the increasing negative perception towards issues of gender and sexuality diversity.



Picture 1


15 maret 2020

Saya terlahir dua kali :
Pertama Sebagai Perempuan Pada Pagi buta
tanpa kabut dikota Jakarta, Maret 1995
Lalu Sekali Lagi Sebagai anak remaja Laki-Laki
di Sebuah ruang gawat darurat
di Yogyakarta pada tahun 2015

- CHANDRA ROSSELINNI -

Selembar Catatan Interses #1
106 x 76 cm
Ink on Paper
2020

Picture 2 [23]

Besides the collective, intersex artists contribute to raising awareness about intersex variation through art. CR, an artist and owner of an art studio Drawing Home Studio in Yogyakarta, organised his first online exhibition entitled “XXY Journey: The Problem faced by Intersex Individuals through the Visualisation of Drawing Art” in 2020. CR, who liked to draw since they were a child, expressed

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[21] The website was established in December 2022. In the website, the terminology of DSD is defined as differences of sex development, available at:e: https://wadahkarib.com.

[22] In April 2020, the initiators were introduced by Edith, a queer activist and independent researcher. They worked together to collect information on the situation of intersex people during the COVID19 situation. There were 11 intersex people with 7 of them were from Central Java; and the rest were from DKI Jakarta and West Java. Almost half of them gained around $35 for the monthly income. Furthermore, COVID impacted their mental health, particularly the feeling of loneliness in which also the feeling was increased for the intersex people who felt uncomfortable sharing their stories to their family

[23] The English translation: “I was born twice. First, as a woman on a fogless morning in Jakarta, March 1995. Then I was born again, as a teenage boy in one of the emergency rooms in Yogyakarta in 2015.

that he used the drawing to express their experiences as an intersex individual with XXY chromosomes. They used the medium of charcoal to draw themselves because the character of charcoal is vulnerable; which corresponds to the situation of intersex people. CR said: "Every intersex baby and child is sensitive, vulnerable and seeking protection. You can trust no one. When the world is lying to you saying that you are a woman, things become so vulnerable". He also stated that their artwork also uses the grey tone to symbolise the between-ness of man and woman; similar to what he experienced both as a female and male artist in their different life phases.

For CR, art is an inseparable medium from his bodily experience as an intersex individual. Every artwork he creates reflects those experiences. Through paintings, drawings, or other forms of art, he is able to express the emotions, struggles, and uniqueness possessed by intersex individuals. His works serve as a mirror that reveals the depth and complexity of the experienced needs. His artwork serves as a voice for the community, advocating for recognition, equality, and the protection of his rights as an intersex person. Additionally, CR also serves as an inspiration for others who are going through a similar journey of facing challenges and discovering their identities through art. Furthermore, the art produced by CR has made valuable contributions to raising awareness and driving positive change for intersex people in society. CR became a figure who enriches the art community and shapes a more inclusive social order for intersex people.

MySelf The Rebis
100 x 140 cm
Charcoal, pencil and watercolor on canvas
2020

My self control;control my self, over control,
130 x 100 cm
Charchoal, pencil and watercolor on canvas
2019

In the area of research, Saskia Wirienga wrote an article titled *Discursive contestations concerning intersex in Indonesia: Stigma, Rights and Identities*. She described her experience on a research project between Sophia Hospital (intersex clinic in Rotterdam) and Kariadi Hospital (assigned with the Sexual Adjustment Team) in Semarang, Central Java. She did not feel comfortable with the way the team referred to the individuals as “patients' and classified them as “disorders” since beginning. Furthermore, as Wirienga suggested the idea of a rights-based NGO in Semarang, it was dismissed by highlighting that the Semarang team had a peer group for their own “patients”. The team also pathologized intersex people by describing that “the members made every effort to enable their patients to establish normal sexual relations - penovaginal contact. If normal sex was not possible, surgery was proposed.”

When Wirienga visited the Semarang team in 2007, the Kariadi gender clinic had been operating for two years with 169 intersex people brought from different places in Central Java. Sophia's team was happy to work with the Kariadi team because it was relatively older, while in the Netherlands intersex people of the same age would have undergone an operation so that their body turned “normal” as soon as possible. However, Wirienga also noted that the medical team expressed their experience of “losing a patient” which strongly showed her heteronormative stance: “She was brought up as a woman and felt comfortable being a woman, yet the doctor’s diagnosis pointed out that she was a man hormonally, and the doctor offered to adjust her body to fit his diagnosis.”

In October 2008, the Indonesian Urological Association organised a meeting in Semarang in collaboration with Kariadi and Sophia hospitals. The participants were mostly from biomedical backgrounds with many presentations on ambiguous genitalia and hypospadias. Wierienga’s and Sophia’s hospital presentations brought some debates. While Wirienga presented changing cultural perceptions of intersex and trans people to fight stigma, the Sophia team presented a case study of parents of intersex children who wanted their child to be masculinized and resisted medical intervention to address this stigma. Kariadi’s team also affirmed Sophia’s team position as they were “genuinely concerned with their patients and sincerely tried to achieve what they consider the best outcome of their interventions” and “both the patients and their parents had the right to have normal bodies and to live normal lives”.

Sophia’s team advised medical treatment after a child has developed his or her own gender identity which occurs around puberty. Kariadi team also used this protocol. However, the foundation of gender identity development was also based on how the genitalia were associated with the existing two genders at the beginning of the long process of any medical treatment or intervention. Sophia's team also advised to perform surgery, such as phalloplasty and vaginoplasty, and vaginal dilation (to make the vagina fit for penetration of the “normal” penis).

3.2 Government and NHRI Efforts so far

In Indonesia, Article 9 of Law No. 10/2004 (replaced by Law No. 12/2011) on the Process and Procedure for Making Regulations describes the hierarchy of Indonesian legal instruments in which the 1945 Constitution becomes the highest legal instrument [24]. The 1945 Constitution specifically ensures the protection of human rights under Chapter XA on Human Rights [25]. Despite the 1945 Constitution explicitly committing to the protection of human rights, those articles should be interpreted further to cover citizen rights. The words, "every person" and "every child" in the chapter do not specifically address particular gender and sex.

Furthermore, Law No.12/2011 also states that the regional law at the bottom of the hierarchy cannot contradict the law and regulation on the higher level. However, since Law No. 32/2004 on Regional Governance was adopted, 318 regional laws were identified by the Commission on Violence against Women that restrict women's rights and have impacted transgender people because of the imposition of night curfew, regulation of attire and explicitly criminalisation of persons with same-sex orientation and transgender people [26]. The logic of these discriminatory regional laws follows the Law on Pornography No. 44/2008 which uses 'deviant sexual relations' to explain the pornographic contents. Under this law, 'deviant sexual relations' is defined as 'sexual relations or other sexual activities with a corpse, an animal, oral sex, anal sex, and lesbian and homosexual sex'. It shows that the regional regulations are contradictory with the higher law, such as the 1945 Constitution and the Law on Human Rights.

Realizing the inconsistencies of regional laws with the 1945 Constitution and national regulation, Law No.23/2014 on Regional Governance was enacted. In this current law, paragraph 251-2e explicitly states that "regional policies are not allowed to contradict higher level regulations and common interests nor can they be allowed to discriminate based on ethnicity, religion, belief, race, gender and relations among groups" [27]. There is no explicit ground to address discrimination based on sexual orientation, gender identity, gender expression, and sex characteristics.

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[24] The hierarchy is described as follows:

1. The 1945 Constitution
2. The People Consultative Decrees
3. Laws or Government Regulations that replace laws
4. Government Regulations
5. Presidential Regulations
6. Provincial Regional Regulations
7. District Regional Regulations

[25] The 1945 Constitution of the Republic of Indonesia, The Office of the Registrar and the Secretariat General of the Constitution Court of the Republic of Indonesia, Fifth Edition (February 2015), available at: https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf.

[26] Creeping Criminalisation: Mapping of Indonesia's National Laws and Regional Regulations That Violate Human Rights of Women and LGBTIQ People, page 9-10.

[27] Ibid., page 16.

Besides national law, Indonesia has ratified the major international human rights conventions [28] and has actively engaged in the Universal Periodic Review (UPR) process since 2008. There are two international commitments related to intersex people that Indonesia is obliged to fulfil. First, the CEDAW committee's concluding observation on the eight periodic reports of the Convention on Discrimination against Women (CEDAW) in 2021. In paragraphs 47-48, the committee addressed the concern about the discriminatory practices against lesbian, bisexual, transgender women and intersex people, such as social exclusion, acts of hate speech, and abuse. Therefore, the committee recommended Indonesian government to

1. Adopt legislative and policy measures to combat violence and discrimination against lesbian, bisexual and transgender women and intersex persons, including hate speech and physical, verbal and emotional abuse.

2. Protect the human rights of lesbian, bisexual and transgender women and intersex persons in all areas covered by the Convention and conduct awareness-raising activities to address their stigmatization in society [29].

The Indonesian government also supported one recommendation during the 4th-cycle of the Universal Periodic Review (UPR) in 2023. Despite the Indonesian government admitting that there is no national regulation that refers to LGBTIQ people, the State supported recommendation no. 140.254 to repeal discriminatory laws against LGBTI+ persons and enact comprehensive anti-discrimination legislation to ensure the protection of human rights and prevention of any form of discrimination, harassment or abuse [30].

Indonesia's National Commission on Human Rights (Komnas HAM) and National Commission on Violence against Women (Komnas Perempuan) are two national human rights institutions with specific mandates to support the conducive environment of the implementation of human rights, including gradually

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[28] Indonesia has ratified eight international human rights conventions. They are International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on Elimination of Racial Discrimination (CERD), Convention on Discrimination against Women (CEDAW), Convention Against Torture (CAT) and Optional Protocol to the CAT (OPCAT), Convention on the Rights of the Child (CRC), Convention on Migrant Worker (CMW) and Convention on the Rights of Person with Disabilities (CPRD). Further information in the Special Issue, UN Human Rights Mechanism (6 April 2019) available at: : https://kemlu.go.id/portal/en/read/87/halaman_list_lainnya/un-human-rights-mechanism.

[29] Concluding observations on the eighth periodic report of Indonesia, Office of the High Commissioner, United Nations Human Rights, CEDAW/C/IDN/CO/8 (24 November 2021), available at: https://www.ohchr.org/en/documents/concluding-observations/cedawcidnco8-concluding-observations-eighth-periodic-report.

[30] For the Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review, document with "Addendum" as the file name available at: https://www.ohchr.org/en/hr-bodies/upr/id-index.
The report of the Working Group on the Universal Periodic Review of Indonesia, available at: https://documents-dds-ny.un.org/doc/UNDOC/GEN/G22/608/14/PDF/G2260814.pdf?OpenElement.

recognising the rights of intersex people. In 2015, Komnas HAM published and translated the 2007 Yogyakarta Principles (YP) to call on the State to take effective measures to address the violence and discrimination based on sexual orientation, gender identity, and expression (SOGIE) [31]. Although the 2007 YP does not specifically elaborate on the rights of intersex people, it mentions that intersex people are part of social groups that suffer from human rights violations[32]. Komnas Perempuan also does not have a specific section about intersex people in their annual note on violence against women. However, in 2022, Komnas Perempuan released the *Manual on Security for Women Human Rights Defenders in Indonesia*. Komnas Perempuan also includes intersex people as human rights defenders [33].

3.3 International human rights expert's efforts on Yogyakarta Principles

In 2017, the Yogyakarta Principles +10 (YP +10) was adopted by a group of 33 international human rights experts to supplement the Yogyakarta Principles by recognising the distinct violation based on gender expression and sex characteristics to not only eliminate the violation but also to the reparation of the damages [34]. There are some additional principles, such as:

- Principle 30: The right to state protection. Everyone, *regardless of sexual orientation, gender identity, gender expression, or sex characteristics, has the right to State protection from violence, discrimination, and other harm, whether by government officials or by any individual or group*
- Principle 31: The right to legal recognition. *Everyone has the right to legal recognition without reference to, or requiring assignment or disclosure of, sex, gender, sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to obtain identity documents, including birth certificates, regardless of sexual orientation, gender identity, gender expression, or sex characteristics. Everyone has the right to change gendered information in such documents while gendered information is included in them.*

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[31] The Indonesia translation of Yogyakarta Principles, available ate: https://www.komnasham.go.id/files/20151130-prinsip-prinsip-yogyakarta-$O9YQS.pdf. Ibid., page 2.

[32] Ibid., page 2.

[33] Theresia Sri Endras Iswarini, "Manual Perlindungan Keamanan Perempuan Pembela Ham Di Indonesia," National Commission on Violence Against Women, ISBN: 978-602-330-084-3, Page 6 (2002) available at: https://komnasperempuan.go.id/download-file/918.

[34] One of the signatories is Kamala Chandrakirana from Indonesia, from Urgent Action Fund Asia Pacific and also member of UN Working Group on the issue of discrimination against women in law and practice (2011-2017), available at: https://yogyakartaprinciples.org/principles-en/yp10/.

- Principle 32: The right to bodily and mental integrity. *Everyone has the right to bodily and mental integrity, autonomy and self-determination irrespective of sexual orientation, gender identity, gender expression or sex characteristics. Everyone has the right to be free from torture and cruel, inhuman, and degrading treatment or punishment based on sexual orientation, gender identity, gender expression, and sex characteristics. No one shall be subjected to invasive or irreversible medical procedures that modify sex characteristics without their free, prior, and informed consent, unless necessary to avoid serious, urgent, and irreparable harm to the concerned person.*

- Principle 33: The right to freedom from criminalisation and sanction based on sexual orientation, gender identity, gender expression or sex characteristics. *Everyone has the right to be free from criminalisation and any form of sanction arising directly or indirectly from that person's actual or perceived sexual orientation, gender identity, gender expression or sex characteristics.*

- Principle 34: The right to protection from poverty. *Everyone has the right to protection from all forms of poverty and social exclusion associated with sexual orientation, gender identity, gender expression and sex characteristics. Poverty is incompatible with respect for the equal rights and dignity of all person, and can be compounded by discrimination on the grounds of sexual orientation, gender identity, gender expression, and sex characteristics.*

- Principle 35: The right to sanitation. *Everyone has the right to equitable, adequate, safe and secure sanitation and hygiene, in circumstances that are consistent with human dignity, without discrimination, based on sexual orientation, gender identity, gender expression or sex characteristics.*

- Principle 36: The right to the enjoyment of human rights in relation to information and communication technologies. *Everyone is entitled to the same protection of rights online as they are offline. Everyone has the right to access and use information and communication technologies, including the internet, without violence, discrimination, or other harm based on sexual orientation, gender identity, gender expression, or sex characteristics. Secure digital communications, including the use of encryption, anonymity and pseudonymity tools are essential for the full realisation of human rights, in particular the rights to life, bodily and mental integrity, health, privacy, due process, freedom of opinion and expression, peaceful assembly and association.*

- Principle 37: The right to truth. *Every victim of a human rights violation on the basis of sexual orientation, gender identity, gender expression, or sex characteristics has the right to know the truth about the facts, circumstances, and reasons why the violation occurred. The right to truth includes effective, independent, and impartial investigation to establish the facts, and includes all forms of reparation recognised by international law. The right to truth is* *not subject to the statute of limitations and its application must bear in mind its dual nature as an individual right and the right of the society at large to know the truth about past events.*

- Principle 38: The right to practice, protect, preserve and revive cultural diversity *Everyone, individually or in association with others, where consistent with the provisions of international human rights law, has the right to practise, protect, preserve and revive cultures, traditions, languages, rituals and festivals, and protect cultural sites of significance, associated with sexual orientation, gender identity, gender expression and sex characteristics. Everyone, individually or in association with others, has the right to manifest cultural diversity through artistic creation, production, dissemination, distribution, and enjoyment, whatever the means and technologies used, without discrimination based on sexual orientation, gender identity, gender expression, or sex characteristics. Everyone, individually or in association with others, has the right to seek, receive, provide, and utilise resources for these purposes without discrimination on the basis of sexual orientation, gender identity, gender expression, or sex characteristics.*

Those additional principles also contribute to setting the legal basis for the human rights violations that intersex people experience under different thematic areas below.

4. Thematic Areas of Intersex Rights

Intersex people have experienced stigmatisation and multiple violations because of the deeply rooted binary normativity of sex and gender in many settings, from cultural, religious, legal, and medical beliefs and practices. This consequently has brought stigmatization and multiple violations. This part will discuss the legal and policy provisions and some findings based on literature and key informant interviews on the thematic areas of intersex rights.

4.1 Protecting Intersex People's Bodily Integrity

The right to bodily integrity is part of the right of security of the person that is protected under Article 3 of the Universal Declaration of Human Rights and Article 9 of ICCPR on Liberty and Security of Person [35]. It is normatively aligned with Article 3 of ICCPR which was adopted in Indonesian law through Law 12/2005 on the Ratification of ICCPR [36].

Despite no specific reference to intersex people, Article 28B of the 1945 Constitution protects the right to be entitled to viability, to grow up, and to develop. Article 21 of Law No. 39/1999 on Human Rights protects the right to personal integrity, both physical and spiritual; and Article 9 point 3 secures the right to be safe, peaceful, happy and gain physical and emotional well-being.

The violation of intersex people's bodily integrity includes forced and coercive medical intervention in which intersex infants, children, and adolescents are subjected to medically unnecessary surgeries, hormonal treatment, and other procedures in an attempt to forcibly modify their appearance or physical development to be in line with societal expectations about female and male bodies [37]. Consequently, forced and coercive medical interventions violate the rights to the highest attainable standard of health as described in ICESCR which has been adopted by Indonesia under Law No.12/2005.

Furthermore, the protection of intersex children from torture, ill-treatment, and other inhuman or degrading treatment, should also be seen as per the framework of the Convention of the Rights of the Children (CRC). Normatively, Indonesia adopted CRC through Presidential Decree No.36/1990 on the Ratification of Convention on the Rights of Children (CRC) article 37a; Law No. 23/2002 on Child Protection, Article 16a; and Law 39/1999 on Human Rights article 58. The

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[35] Background Note on Human Rights Violations against Intersex People, page 8, available at: BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf

[36] https://www.dpr.go.id/doksetjen/dokumen/-Regulasi-UU-No.-12-Tahun-2005-Tentang-Pengesahan-Kovenan-Internasional-Tentang-Hak-Hak-Sipil-dan-Politik-1552380410.pdf

[37] Background Note on Human Rights Violations against Intersex People, page 10, available at: BackgroundNoteHumanRightsViolationsagainstIntersexPeople.pdf.

right against torture is one of the human rights which cannot be limited under any circumstances, as mentioned in Law No. 39/1999 Article 4 [38] and 1945 Constitution in Article 28I point 1 [39].

Despite the absence of national laws giving specific reference to intersex people, the role of religious edicts (fatwa) issued by Indonesia's peak clerical body, the Indonesian Council of Ulama (MUI) has played a significant role in encouraging the forced and coercive medical intervention for intersex people. MUI released a fatwa No.3/2010 on the Sex Change and Sex Refinement. MUI decided that "sex change" which refers to sex reassignment to help people transition to their self-identified gender is forbidden *(haram)*; however, "sex refinement" or corrective surgery is allowed or eligible choice *(mubah)* for intersex persons *(khuntsa),* based on the recommendation of the expert doctors. Although the fatwa stated that "sex refinement" is a choice, the determination of the status of khuntsa is based on the physical indication, not psychological [40]. The corrective surgery aims to "cure defects or diseases" of the body disorder, such as the condition of the genitals being "less perfect in shape" or "in accordance to the genital organs inside the body" [41].

Bambang and Edy Suyanto from Dr. Soetomo Hospital in Surabaya, East Java, use the terms "disorder", "patients'' and "ambiguous genitalia" in describing intersex variation [42]. He used Klebbs system classification based on the gonadal system (as explained in the previous sub-section above) and also quoted Sultana's writing, his counterpart of the doctor who led the Kariadi team in Semarang.

Additionally, based on an article written by Prof Sultana, on *Multidisciplinary Management of Disorders of Sex Development in Indonesia, A Prototype for Developing Country* [43], she divided DSD into three primary roots: first is based on

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[38] See Law No. 39/1999 on Human Rights, available at: https://www.komnasham.go.id/files/1475231474-uu-nomor-39-tahun-1999-tentang-%24H9FVDS.pdf.

[39] See The 1945 Constitution of The Republic Indonesia, avaialble at: https://www.mkri.id/public/content/infoumum/regulation/pdf/uud45%20eng.pdf.

[40] There are two types of khuntsa; they are al-khuntsa al-musykil and al-khuntsa ghairu al-musykil. Al-khuntsa al-musykil is an intersex whose status is difficult to be determined because it is difficult to know which sex is more dominant since the two sexes are obscure and problematic in deciding the dominance between the male or female sex; therefore sometimes it will be clearer to wait until the puberty phase to see the changes in voice, mustache and which genital functions. Al-khuntsa ghairu al-musykil is an intersex whose status is easier to be determined, such as before the puberty, this can be seen from the way out in which urine is more dominant or after puberty can be seen from the physical body development, for example: if the breast grows and menstruation comes, then the person is a woman. Source: Perfection of Sex for the Intersex (Khunsa) to Get Married, *Maqāṣid Syarīah* Perspective on Corrective Surgery, Muhammad April, *Al-Aḥwāl*, Vol. 14, No. 2, Tahun 2021 M/1442 H. page 176.

[41] Ibid., 178.

[42] Legalitas Perubahan Jenis Kelamin Pada Penderita Ambiguous Genetalia Di Indonesia, Bambang Widhiatmoko, Edy Suyanto, Jurnal Kedokteran Forensik Indonesia, Vol. 15 No. 1 (Januari – Maret 2013), available at: http://journal.unair.ac.id/filerPDF/ikfml5427baf863full.pdf.

[43] Multidisciplinary Management of Disorders of Sex Development in
Indonesia, A Prototype for Developing Country, Journal of Biomedicine and Translational Research, Faculty of Medicine Diponegoro University and Indonesian Doctor Association, Central Java Region(2017).

karyotype namely 46, XY DSD; 46, XY DSD and Sex Chromosome DSD; secondary root is depicted based on hormone assessment and imaging while the tertiary root is obtained based on molecular and/or histopathology examination. However, she wrote that complete diagnosis is difficult due to the limitations of health care services.

Bambang and Edy Suyanto also described that "corrective intervention" should be started with an evaluation to decide the gender of the child. This "evaluation" can be done by an expert in endocrinology or andrology. He also stated that the "sex reassignment surgery" was seen as appropriate to be undergone before the child reaches two years of age.

In Indonesia, there is not even a single case of forced and coerced medical intervention which was reported to the State or national human rights institution. The perpetuation of binary gender and sex through the national laws and reinforced through the fatwa is most likely to contribute to the unreported cases.

4.2 Protecting Intersex People from Discrimination in All Areas

The recognition of discrimination based on various grounds, such as sex, gender, gender identity, race, age, religion, disability, health, sexual orientation, and economic status are recognised in various international human rights laws, such as UN High Commissioner for Human Rights Council Report on Discrimination and Violence against Individuals based on Sexual Orientation and Gender Identity[44]; General Recommendation No.28 of CEDAW on Core Obligation of States Party under Article 2 of CEDAW.

In Indonesia, there is recognition of the protection for all people. In general, the right to feel secure and be entitled to protection is guaranteed under the 1945 Constitution, article 28G point 1; and Law No. 39/1999 on Human Rights Article 30; the right to be free from torture or treatment that humiliates human dignity (Article 28G point 1; Law No. 39/1999 Article 33); right to be free from discriminative treatment (Article 28I point 2; Law 39/1999 Article 3 point 3); and Right of children for protection against violence and discrimination (Article 28B point 2, Article 28I point 2)

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[44] Discrimination and Violence against Individuals Based on their Sexual Orientation and Gender Identity, UN Human Rights Council Report, available at: https://www.ohchr.org/sites/default/files/Documents/Issues/Discrimination/LGBT/A_HRC_29_23_One_pager_en.pdf.

Concerning the ground of discrimination, Indonesia has reference to gender, race, ethnicity, and religion which is guaranteed under Law No.40/2008 on Ratification of the Convention on the Elimination of All Forms of Racial Discrimination; Law No.7/1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women; Right of religion and embrace a religion and to worship according to religion (1945 Constitution Article 28E point 1,2; Article 29 point 2; Law No. 39/1999 Article 22). Furthermore, the right to decent work and living for humanity, including decent treatment in work relationships is protected under the 1945 Constitution, article 27 point 2 and 28D point 2; Law No. 39/1999 article 38.

Furthermore, Law No. 39/1999 in Article 5 point 3 also ensures the guarantee of protection for the more vulnerable group, with a specific focus on the elderly, children, the poor, pregnant women, and disability.

The absence of a distinct discrimination ground based on sex characteristics continues to be a serious challenge for intersex people. Consequently, intersex people and their families remain silent or choose the surgery to "refine" the body as a 'solution' for intersex people. This approach is taken to avoid problems in their social life. It is also important to mention that the advice to remain silent 'for the sake of safety and avoid social judgment' is also reiterated by the medical profession [45].

4.3 Legal recognition, including registration at birth

The rights of a child to be registered immediately after birth, to have a name, and to acquire nationality are protected under international human rights law, such as Convention on the Rights of Child, article 7; and ICCPR article 24. Yogyakarta Principles +10, principle 31, also addresses the right to legal recognition, obtaining identity documents, and changing information in the documents, regardless of the sex characteristics.

However, identity documents in Indonesia only have two options: man or woman. Law No. 23/2006 on Population Administration (and revised by Law No.24/2013) in article 58 states that the population data includes sex (jenis kelamin) as one of the information in the population documents; article 59 informs that the population documents consist of family card, identity card,

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[45] Learn from Intersex Friends, Interview with an Indonesian intersex activist (14 August 2019)article accessed at: https://qbukatabu.org/2019/08/14/belajar-dari-kawan-interseks/.

certificate of residency, and civil registration deeds. Following that, article 61(1) and Article 65 specifically mention that family cards and certificates of residency should contain information on sex; Article 64(1) also requires information on sex with the option of man or woman in the identity card. Furthermore, Regulation of Minister of Home Affairs No.109/2019 on Forms and Book Standard in Population Administration specifies the information needed for the civil registration reporting form (code F-2.01) [46]. Furthermore, the birth certificate form (code F-2.14) also requires information on sex with the options of man or woman.

Regarding legal recognition, there is no specific law on this. There is protection in the 1945 Constitution in article 28D and Law No. 39/1999 article 4 ensuring the right to be recognised before the law both as a person and to get equal treatment.

The first application to the court to change gender marker and name was initiated in September 1973. Vivian, a transgender woman, with her lawyers, requested the same to the District Court of West and South Jakarta. Vivian had undergone surgery. Based on the Law on Judicial Power No. 14/1970 Article 14, the court could not refuse to investigate and adjudicate a case for the reason that there was no law or the law was not clear. Therefore, the case proceeded.

The judge required Vivian to provide some proof. At first, Vivian provided a Statement from the hospital where she underwent the operation. The letter stated that, after the examination by two psychiatrists, Vivian was a woman. The sex surgery aimed to ‘conform her physicality as a woman’ [47]. However, the judge required more proof. Several individuals came to the court as witnesses. One of them was an expert from the Medical School of the University of Indonesia/Cipto Mangunkusumo Hospital. The witness confirmed that Vivian underwent surgery and showed their personality as a woman. A religious leader was also brought to the court as a witness. The person was Eka Dharmaputra from the Indonesian Church Council. He stated that he was in favour of Vivian's request as it was the only way to free her from her prolonged suffering. Vivian’s mother and a social worker who knew Vivian also testified in court. Based on those testimonies and proof, the court granted Vivian's request.

Law No. 23/2006 on Population Administration (and revised by Law No.24/2013) states in Article 56(1) that the registration of “other important events” should be conducted by the civil registration officer upon the request of the citizen based on the court decision [48]. In the explanatory article of Article 56(1), the definition of “other important event” refers to the event, based on the court decision,

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[46] See page 48; https://jdihn.go.id/files/963/2019PERMENDAGRI109.pdf.
[47] Kami bukan Lelaki, Kemala , 1983.
[48] Page 29, https://www.dpr.go.id/dokjdih/document/uu/UU_2006_23.pdf

that should be registered, including the change of sex marker. The reports also include the form of registration for the other important events which records the changing gendered information with the available option of changing gender from man to woman or vice versa. Furthermore, Regulation of Minister of Home Affairs No.109/2019 on Forms and Book standard in Population Administration provides the civil registration form for 'other important event' which requires information regarding the change of sex marker with two options: from man to woman or vice versa.

4.4 Access to Justice

International human rights instruments protect victims of an act of torture to obtain redress and the right to fair and adequate compensation, including the means for rehabilitation as well (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14) [49]. The Yogyakarta Principles +10, principle 37, recognise the right to truth from a victim of human rights violation based on sex characteristics, such as the truth about the facts, circumstances, and reason why the violation occurred.

The right to recognition, guarantee, certainty, and equal treatment before the law is protected under Article 27(1) and 28D (1) of the 1945 Constitution and Article 3 of Law No. 39/1999.

Article 3 of Law No. 16/2011 on Legal Aid states that legal aid aims to ensure and fulfil the right of the recipient of the legal aid to obtain access to justice [50]. However, the law has limited the recipient of the legal aid only to the low-income people by providing the proof through the letter as the justification. There is no specific measure to address other groups based on their vulnerability.

Law No.23/2004 on the Elimination of Domestic Violence in article 3 states that the law aims to ensure the protection of the victim of domestic violence, from physical, psychological, sexual violence and economic neglect. Article 10 of the law also addresses the victims' rights, such as temporary protection, health care, and case assistance.

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[49] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 14), Adopted by General Assembly resolution 39/46 on 10 December 1984; available at: convention-against-torture-and-other-cruel-inhuman-or-degrading.

[50] Undang-Undang Republik Indonesia, Nomor 16 Tahun 2011; available at: http://bphn.go.id/data/documents/11uu016.pdf.

Law No.12/2022 on Sexual Violence Eradication specifically addresses the rights of the victim and victim's families. Article 4 of this law also describes various forms of sexual violence, such as sexual harassment, forced contraception, forced sterilisation, forced marriage, sexual torture, sexual exploitation, sexual slavery, and online gender-based violence.

4.5 Health

In 2019, the World Health Organisation (WHO) approved the International Classification of Diseases 11 (ICD-11) which pathologizes intersex variations as "disorders of sex development" and introduces the medical classifications that promote early surgery aiming to "fix" intersex bodies [51]. There are ICD-11 Foundation codes for the intersex variation which explicitly promote surgical intervention, as mentioned below [52]:

- "The ICD-11-MMS code for congenital adrenal hyperplasia notes that: "Genital anomalies may be noted at birth in affected females," while ICD-11 Foundation code information remarks that genital surgery may be required without specifying why or under what conditions, stating: "Genital anomalies in females may require surgical intervention(s)."
- The ICD-11 Foundation code information for 5a-RD2 deficiency remarks that surgery is necessary, with the type of surgery dependent on sex assignment and the likely outcomes of masculinizing surgery: *Gender assignment is still debated and must be carefully discussed for each patient, depending on the expected results of masculinizing genitoplasty. If female assignment is selected, feminizing genitoplasty and gonadectomy should be performed. Prenatal diagnosis is available for the kindred of affected patients if the causal mutations have been characterized.*
- The ICD-11 Foundation code information for 17ß-HSD3 makes similar assertions: *If the diagnosis is made at birth, gender assignment must be discussed, depending on the expected results of masculinizing genitoplasty. If female assignment is selected, feminizing genitoplasty and gonadectomy must be performed. Prenatal diagnosis is available for the kindred of affected patients if the causal mutations have been characterized.*

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[51] Morgan Carpenter, "Media statement – International Classification of Disease 11 and intersex people," Intersex Human Rights Australia (13 May 2019); available at: https://ihra.org.au/35321/media-statement-icd11-intersex/

[52] Morgan Carpenter, "Intersex Variations, Human Rights, and the International Classification of Diseases,"Health and Human Rights Journal, PMCID: PMC6293350 (December 2018); available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6293350/#r30.

Despite the specific protection mentioned in the 1945 Constitution which states the right to live prosperous physically and spiritually (Article 28H point1), the right to obtain health care (Article 28H point 1); and Law 39/1999 informs the right to acquire health care and social security, based on the physical, mental and spiritual need. (Article 62), there is no reference to stop the pathologization of intersex bodies.

The surgical intervention for intersex people was discussed in a seminar organised by the Government Health Department in 1978. The seminar discussed the sex surgery performed on transgender and *khuntsa* (intersex people). One of the religious leaders, Buya Hamka, gave the opinion that the advancement of medical technology should benefit to end the prolonged mental suffering of people. Therefore, in the case of Vivian Rubianti, sex surgery was considered aligned with the Islamic teaching [53]. Furthermore, Buya Hamka also acknowledged the reality of *khuntsa musykilah* as a term given for a man with a personal trait as a woman but having physical characteristics as man, such as deep and loud voice, the firm body shape but the genitalia was not sufficient [54]. Moreover, an expert staff from the Ministry of Religion stated that *khuntsa musykil* was used to refer to hermaphrodite, and the sex surgery should be aimed to “make one’s genitalia in a perfection” so that it can corroborate their gender and “cure their physical and mental state” [55]. This view was reiterated by the Health Advisory Council on Law and Syara which stressed that the surgery might become mandatory with the aim of ‘repair or improve the genitalia in accordance to their sex identity so that the ‘hermaphrodite’ can live in a normal way" [56]. The 1978 Seminar has become a point of reference for the medical institutions to perform surgeries on intersex bodies.

Two years after the seminar, the Health Ministry released a Regulation of Health Ministry No.191/Menkes/SK/III/1989 on the appointed Hospital and Sexual Adjustment Surgery Implementation Team. The team consists of urological surgeons, plastic surgeons, obstetricians and gynaecologists, anaesthesiologists, paediatric and adult endocrinologists (internists), geneticists, andrologists, psychiatrists/psychologists; pathologists, lawyers, religious leaders and medical social workers. In 2003, the name of the team changed to Sexual Adjustment Multidisciplinary Team (SAT). The team also specified the role of only performing the sex reassignment surgery for “intersexual patients”, not “transsexual patients”[57].’

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[53] Legal Studies on Gender Changes through Court Decisions on the Distribution of Inheritance (Comparative Study of Islamic Law and Civil Code), Budapest International Research and Critics Institute-Journal (BIRCI-Journal) Volume 5, No 1, February 2022.

[54] Ibid., page. 86.

[55] Ibid.,

[56] Ibid., page 87.

[57] Prof. Dr. Sultana MH Faradz, “Bisexuality is a , Disease or Gender Deviation (2008),” available at: http://fakultas-kedokteran-undip.blogspot.com/2012/12/kelamin-ganda-penyakit-atau.html.

Based on the regulation of the appointed Hospital and Sexual Adjustment Surgery Implementation Team, the Sexual Adjustment Multidisciplinary Team (SAT) was formed as the only team available in Indonesia with members from Dr. Kariadi Hospital and Faculty of Medicine Diponegoro University (FMDU). The SAT clearly states that the medical management approach to DSD (disorders of sex development) is based on the foundational belief that DSD is pathological and devalues the experience of the individuals [58]. The SAT also expressed the lack of advanced molecular testing and no health insurance being covered by the National Health Insurance (JKN) scheme for diagnostic testing and treatments [59].

In 2015, the SAT team released research on the emotional and behavioural problems in late-identified Indonesian patients with disorders of sex development. They compared 118 DSD patients with 118 healthy control subjects; the finding was that 'DSD patients' have lived with very little knowledge about their 'condition' and no sufficient medical help.

"Almost half of the patients (48%) had never received any information about their DSD condition nor had received medical or surgical treatments prior to the study. The remaining 52% of the patients had received some treatment, but almost all patients never received complete medical care. Often patients could not afford surgery or medication, or medication was not available regularly. All patients had to live with ambiguous genitalia and/or an ambiguous body appearance following puberty. We assume it is difficult to cope with these ambiguities, particularly when such conditions are not understood. For some of the patients, it is difficult to cope, and it may lead to the development of emotional problems such as depression and anxiety."

The research also concluded that the "DSD condition is congenital and can't be cured", it was important to immediately refer "DSD patients" to the SAT - not only to offer diagnostic evaluation and medical treatment but also education counselling [60].

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[58] Multidisciplinary Management of Disorders of Sex Development in Indonesia, A Prototype for Developing Country, Nurin Aisyiyah Listyasar, Ardy Santosa, Achmad Zulfa Juniarto, Sultana MH Faradz, Journal of Biomedicine and Translational Research 01 (2017) 17 - 22; page 18.

[59] Ibid.,

[60] Ibid.,

4.6 Data collection: addressing research gaps

Data collection is a key aspect of research methodology that ensures the respect and acknowledgement of the rights of intersex individuals. InterACT and Intersex Human Rights Australia (IHRA) developed a few guides for the data collection on a form or survey while conducting research [61]. First, the term intersex focuses on the innate sex characteristics that don't fit medical and social norms for females or male bodies. This definition does not imply any gender identity or sexual orientation. Innate sex characteristics consist of variations in sex anatomy, reproductive organs, chromosomes, and/or hormone functions. Furthermore, other terms used to refer to intersex are differences in sex development. Framing of intersex variations as "disorders of sex development" violates the human rights of intersex people. Secondly, there needs to be a separate question on sex characteristics because the words that intersex people choose to use for themselves can sometimes reflect the misconceptions rooted in social and medical norms. Furthermore, asking questions on "sex assigned at birth" to collect health information does not help understand the variation that a person has. Third, in collecting information on sex of gender identity, intersex terms should not be put under gender identity or sex marker options. Therefore, use gender identity or sex marker options (such as male, female, nonbinary, other), pronouns (such as she/her, he/him, they/them, other), and sexual orientation (same gender, different gender, other). Fourth, in data collection on the medical or health information of intersex communities, it is reasonable to ask for any available diagnosis. Also, asking about the inventories of sex characteristics - without repeatedly asking about the body parts that intersex people don't have - is appropriate with the goal of ensuring the need to access healthcare services.

Furthermore, IHRA also addresses key aspects of understanding intersex populations in research to prevent systematic exclusion or tokenism [62]. Therefore, if the LGBTIQ+ data contains an insignificant number of intersex people, the data should be framed as "LGBTQ" data. Informing the study as for "people identifying as LGBTIQ" shows a clear indication that the study is not inclusive of intersex people because it will not attract heterosexual and cisgender intersex. In researching intersex studies, the involvement of intersex-led organisations and academics with intersex lived experience is critical.

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[61] Hans Lindahl, "Intersex Data Collection: Your Guide to Question Design," interACT Advocates for Intersex Youth (24 August 2020), article accessed at: https://interactadvocates.org/intersex-data-collection/ and Forms and data collection: https://ihra.org.au/forms/

[62] Morgan Carpenter, "Researching intersex populations," Intersex Human Rights Australia (15 May 2012), available at: https://ihra.org.au/research/.

5. Results and Discussions

5.1 Findings from the literature

Legal Approach to Protecting Intersex Rights

Intersex bodies have been mostly constructed in medical settings with the absence of law. The legal silence has legitimated the medical paradigm that often positions intersex bodies as bodies that should be 'fixed' or 'normalized' through surgical intervention or other medical treatment. Therefore, to analyse the State's responses to intersex bodies from the legal aspect is needed to challenge the medical and societal norms that strongly uphold the binary model of sex and gender.

Vulnerability theory is a framework to critique the neoliberal legal theory which situates legal subjects as an autonomous and independent subject and consequently focuses only on achieving formal equality [63]. The theory, as explained by Marta Fineman, stems from the ground that all people are vulnerable, both universal (such as vulnerable to disease or disaster), and particular (such as in accessing services due to an imbalance of power resulting in becoming the oppressed group). Consequently, vulnerable theory challenges the neoliberal legal theory which fails to address the underlying root cause of inequality because it frames injustice in terms of recognition rather than redistribution. Therefore, vulnerability theory serves as a framework to investigate state response in addressing injustice and inequality, including for intersex rights. States are not only responsible for ensuring the recognition of subjects but also for the redressal of social and legal inequalities.

However, state responses to intersex people mostly use formal equality instead of a substantive equality approach. Fae Garland and Mitchell Travis divide the state responses into three themes, they are [64]:

- **Non-responsive:** It means that the state response does not aim to distribute the power between medical and intersex individuals.
- **Status-based:** It means that the state response focuses on recognising intersex within the law, such as in the anti-discrimination law or using specific markers to recognise intersex.

  For example: Australia has a specific anti-discrimination legislation that recognises intersex people, allows 'X' markers on passports for intersex individuals, and allows birth certificates to omit sex where the child's sex has been indeterminate. This approach was followed by other States, such as South

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[63] Martha Albertson Fineman, "The Vulnerable Subject: Anchoring Equality in the Human Condition," Yale Journal of Law & Feminism, Vol. 20, No. 1 (2008), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1131407.

[64] Fae Garland, Mitchell Travis, "Legislating intersex equality: building the resilience of intersex people through law," Cambridge University Press, Volume 38, Issue 4, (2018), available at: https://www.cambridge.org/core/journals/legal-studies/article/legislating-intersex-equality-building-the-resilience-of-intersex-people-through-law/BB549327C202B084186C0FA5B0BE2AB4.

Africa which also has specific anti-discrimination legislation that includes sex characteristics as a protected ground, Greece and Bosnia Herzegovina which prohibit discrimination and hate crimes based on sex characteristics under the amended Law on Prohibition of Discrimination. Such approaches also advance the basic rights of intersex individuals in various areas, such as employment, education, and beyond. Although it does not address the existing power of the medical institution, the legal acknowledgement brings the visibility of intersex individuals to challenge the power of medical professions and institutions. In short, it is the intersex individuals or their parents who should openly challenge the medical discourse.

- Holistic. It means that the state response focuses on challenging the power imbalance between medical institutions and intersex individuals. Malta specifically regulates unnecessary sex assignment surgery on intersex minors through the Gender Identity, Gender Expression and Sex Characteristics Act 2015 (GIGESC). It states that any medical intervention that is driven by social factors without individual consent will breach the act. Furthermore, Malta allows individuals to change their gender identity without medical evidence and considers sex characteristics as a protected ground in the anti-discrimination law and hate crime legislation.

Furthermore, Garland and Mitchell Travis interviewed intersex activists to understand their response to the status-based law on the protection and building of the resilience of intersex people. Some important lessons documented in their work are [65]:

- The power imbalance between medical professions or institutions with intersex people is an embedded, structural, and systemic inequality because the medical approach fails to understand intersex as a variation and has a strong intention to “fix” because intersex is deemed as a “disorder”. Consequently, this medical approach is often accompanied by a rhetoric of secrecy which erases intersex from the discourse; and this rhetoric causes difficulties in mobilising intersex communities as intersex people are always surrounded by their prolonged individual trauma and fear that can’t be articulated because it is framed as a shameful secret.

- Some intersex activists expressed that the status-based approaches failed to tackle the day-to-day concerns of intersex people. However, they were slightly more positive in using anti-discrimination laws as a tool to empower intersex individuals. Intersex activists who expressed rejection of both anti-discrimination law and third gender markers argued that it fails to challenge the medical construction and continues to silence the reality of Infant Genital Mutilation (IGM). In the case of Germany, the activists argued that the gender marker law resulted in ‘othering’ and ‘exposure’ of the intersex people in the document and could lead to an increase in medical interventions.

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[65] Ibid.

- Intersex activists were also concerned that policymakers continue to conflate trans and intersex issues. New Zealand allows ‘X’ on passports for ‘indeterminate/unspecified’ sex but no intersex term is mentioned. In Bangladesh, the third gender is used for trans, intersex, or third-gender individuals. Furthermore, the gender marker law that is not accompanied by integrating sex characteristics as protected ground in the anti-discrimination law will decrease the resilience of intersex people.

Intersex Variations, Human Rights and the International Classification of Diseases

This literature review is taken from an article published in 2018 by Morgan Carpenter [66]. In the International Classification of Diseases-11 (ICD), published by the World Health Organisation (WHO) in June 2018, intersex variation remained pathologized by introducing the language as “disorders of sex development”. The objection to the usage of the term started soon after the 2006 “Consensus Statement on management of intersex disorders”. This term has caused distress amongst the affected individuals. A survey in the US found that from almost 600 respondents with congenital adrenal hyperplasia (CAH), more than half of them expressed that they would not choose to receive care or participate in research studies that use the term. Furthermore, an Australian research-based survey which surveyed 272 people born with variation of sex characteristics found that 21% of them used the term so that they could access medical services.

In May 2019, Intersex Asia released a joint statement to call WHO to reform the nomenclature and classifications, publish a clear policy on intersex people’s health and rights to ensure the treatment is fully aligned with human rights norms and ensure access to reparative treatments and to promote universal health coverage [67].

The ICD 11 contains a description that explicitly promotes the surgical intervention for the intersex variations that are associated with genital characteristics at birth. The ICD-11-MMS code for congenital adrenal hyperplasia notes that: “Genital anomalies may be noted at birth in affected females,” and the ICD-11 Foundation code informs that genital surgery may be required without further conditions. The ICD-11 Foundation also informs that surgery is also necessary for 5-alpha-reductase 2 deficiency (5a-RD2) deficiency and 17-beta-hydroxysteroid dehydrogenase 3 deficiency (17ß-HSD3) and the surgery depends on sex assignment with the outcome mostly is a masculinizing surgery or genitoplasty. It is said as follows:

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[66] Morgan Carpenter, “Intersex Variations, Human Rights, and the International Classification of Diseases,” Helath and Human Rights Journal, PMCID: PMC6293350 (December 2018), available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6293350/.

[67] Joint Statement on the International Classification of Diseases 11 (23 May 2019), avaialble at: https://intersexasia.org/joint-statement-on-the-international-classification-of-diseases-11/

46, XY disorder of sex development due to 5-alpha-reductase 2 deficiency:

Gender assignment is still debated and must be carefully discussed for each patient, depending on the expected results of masculinizing genitoplasty. If female assignment is selected, feminizing genitoplasty and gonadectomy should be performed. Prenatal diagnosis is available for the kindred of affected patients if the causal mutations have been characterized.

The ICD-11 Foundation code information for 17ß-HSD3 makes similar assertions:

If the diagnosis is made at birth, gender assignment must be discussed, depending on the expected results of masculinizing genitoplasty. If female assignment is selected, feminizing genitoplasty and gonadectomy must be performed. Prenatal diagnosis is available for the kindred of affected patients if the causal mutations have been characterized.

Court decision on the gender marker change of intersex people in Indonesia

In Indonesia, the court decision on the gender marker change for intersex people is solely based on the opinion of medical professionals. Therefore, the evidence of medical records or letters informing the result of the chromosomal test is sufficient to make an application without the testimony from the expert witness in the court. The courts also didn't provide any commentary or opinion for any medical treatment or surgical intervention. Both of them are viewed as the consequences or necessary steps after the chromosome of the applicant is determined and the examination of external genitalia is considered as not 'normal' by the medical institution.

Furthermore, experts who testified before the court used the terms 'disorder', 'sexual adjustment surgery', 'reconstructive surgery', 'genitalia perfection surgery', 'abnormal chromosomes, or 'normality' in describing the external genitalia of applicants. It affirms the power relations between the medical profession or institutions and intersex individuals. It is also important to address that the psychological examination is also not counted as evidence to understand how the medical result and the change of external genitalia and physical characteristics affected the mental health of intersex people, particularly when they undergo medical treatment and surgical intervention.

5.2 Finding from the fields and gap analysis

The Indonesian legal system has always used a binary model of sex and gender which consequently has ignored and perpetuated the inequality experienced and suffered by intersex people. Teguh Setyabudi, the Directorate General on Population Administration and Civil Registry of the Ministry of Home Affairs, stresses that the population data and the civil registration system only accommodates two options- man or woman in the sex column of legal documents: “We only know man and woman, no (gender) in the middle. As long as the person can show the decision of the court ruling, then we can proceed to change their sex status” [68]. Although there is a provision on “other important events” that informs about the change of sex/gender marker in the Law on Administration and Population, the Ministry of Home Affairs is non-responsive in building the resilience of intersex people's lives.

Furthermore, the state also imposes the rhetoric of secrecy towards intersex people. Article 58EE on the Revision of Law of Population Administration in 2013 talks about a population data element that contains someone's ignominy. There is no written explanation in the Law on what is considered as ignominy. The Directorate General explained that this data refers to certain events which should not be known to other people., which include children with unknown origins, sex or gender marker change, and children born outside wedlock [69].

This rhetoric of secrecy of the sex/gender marker change has impacted the lives of intersex people on a daily basis because the social norms have also erased the discussion about intersex people in society, including the experience of harmful and non-consensual medical intervention on intersex people. The Chair of Indonesia’s National Commission on Human Rights said that the Commission hasn’t received any reported cases of intersex people yet, therefore, the situation of intersex rights in Indonesia remains unknown [70]. Furthermore, the Commission addressed that the harmful and non-consensual medical intervention on intersex people should be integrated with the existing Law on Child Protection: “That children have a right to be protected from the unnecessary and unknown medical intervention. The principle of “the best interest of the child” shouldn’t be twisted as a foundation for parents of the intersex children to decide the medical intervention for their children. The feeling of shame of having intersex children as a result of the existing gender norm shouldn’t be a basis of the parents in making such a decision” [71].

However, the principle of “the best interest of the child” which continues to give authority to the parents to decide is still not contested. Article 45 of the Law on Marriage states that: “Children who have not reached the age of 18 or have never

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[68] Based on an in person interview, on ….
[69] Ibid.,
[70] Based on the interview with Nova Atnike Sugiro, on 18 April 2023.
[71] Ibid.,

been married are under the authority of their parents as long as their authority is not revoked. Parents represent their children regarding all legal actions inside or outside the court" [72]. A feminist lawyer explains: "It means that the children's future, the decision for their education, and in this particular situation- their body, is solely determined by their parents. Therefore, in the practical or day-to-day experience of exercising this authority, the decision to undergo medical intervention is largely dependent on the parents' awareness and understanding of the child's rights. I was consulted by one of the SAT team when she expressed her interest in building a social foundation on intersex people. I think that consultation with intersex children is very crucial. Depending on the parents' voice violates the child's rights, especially the principle of the best interest of the children" [73].

Binary models of sex and gender, as an underlying cause of the erasure of intersex lived experience, have been embedded as a social norm and entangled with the religious norm. Often, this situation puts us in a difficult position as religious norms are often perceived as "God's words that can't be changed." However, a progressive religious leader in Indonesia, responding to the lived reality of intersex people in Islam, explained that religious texts always have a limited understanding when it comes to current developments. "In Al-Qur'an, we have the universal texts and particular texts. The particular text talks about a particular case that is related to the law – which is very few. The universal text talks about the general principles of respecting humanity. For a particular text, it is always located in a certain context. Therefore, the decision can change because the context is also changing" [74]. He also mentions that in Islam, there are different terminologies for specifying body and traits, "For body part, there is *zakr* and *untsa*. The first one was defined by a male body which is often linked to penis, and the second one is the *untsa* or the female body which is often linked to the vagina. The other part is *rijaal* which shows masculine traits and *nisaa* which shows feminine traits. There is also *khuntsa* as terminology that was introduced by the Islamic scholar (not written in the Al-Qur'an). *Khuntsa* is someone who has more than one genitalia in one body. The classical jurists determined the gender based on the genitalia from which urine came out" [75]. Therefore, it is important for religious institutions to be open to the current context and developments which aligns with the Islamic universal principle of respect for humanity. He said, "The important value in Islam is that the person who is in *taqwa* – it means the human ability to have a self-restraint from things that can harm them and also an ability to be happy" [76].

In this following sub-section, the gap analysis between existing government efforts and the actual needs of intersex people in Indonesia will be discussed based on the thematic areas of intersex rights.

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[72] https://www.dpr.go.id/dokjdih/document/uu/742.pdf
[73] Based on the interview with Nursyahbani Katjasungkana, on 5 May 2023.
[74] Based on the interview with Husein Muhammad, on 10 April 2023.
[75] Ibid.,
[76] Ibid.,

Protecting Intersex People's Bodily Integrity

The State should take necessary steps to address the substantive inequality faced by intersex people by protecting their rights from discrimination in all areas and protecting the bodily integrity of intersex people. The Commission expressed that: "This right includes the right to decide medical treatment for their bodies. Also, everyone has the recognition as an equal person before the law. Therefore, the state should recognise intersex people by protecting their rights, including the right for legal recognition, right to health, and to be protected from discrimination in the educational institution and working place" [77]. Moreover, the Commission disagrees with the existing medical terminology of intersex people as 'disorder', and 'abnormal', because abnormality is a social construction. "Using normality (or abnormality) as a term has further consequences that someone should be 'repaired or fixed' in order to be normal. In fact, intersex is about a different characteristic that an individual has" [78]. She elaborated that the situation of the intersex people as rights holders requires affirmative action: "The framework in approaching the intersex rights should be centred on the challenging body and gender construction that has been internalised in system and norms, including State. The State should guarantee the right of people to decide their gender identity and body" [79].

The Sexual Adjustment Team (SAT) from Karyadi Hospital Semarang, the government-appointed hospital for case management of intersex people in Indonesia, still uses the terminology of 'disorder of sex development' in academic journals and expert testimonies in the court on the case of the change on gender markers of intersex people. A feminist lawyer addressed this concern: "Intersex bodies are often perceived as a health problem which should be 'fixed'. The Karyadi Hospital team still has this heteronormative and binary conception. In determining the sex or gender status, the parents' preferences are mostly heard instead of the voice of the intersex children" [80]. Therefore, the regulation of the gender marker change in the Law on Administration and Population instead of challenging the existing power imbalance between medical institutions and intersex people, has become a tool to decrease the resilience of intersex people through the imposition of the binary model of sex and gender.

The existing power imbalance between medical institutions and intersex people also takes form in giving medical treatment or medical advice. Coercion to consume hormones before the intersex individual reaches puberty because the treatment is based on the notion of 'correcting' or 'normalizing' intersex bodies as early as possible to prevent further negative psychological or social consequences [81]. The doctors also have a significant influence on intersex people in making decisions

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[77] Based on the interview with Nova Atnike Sugiro,, on 18 April 2023.

[78] Ibid.,

[79] Ibid.,

[80] Based on the interview with Nursyahbani Katjasungkana, on 5 May 2023.

[81] Based on the interview with T, an intersex activist on 1 May 2023.

on which gender to choose. It is due to their medical authority - through their diagnosis, medical treatment, and surgical intervention procedure - which positions intersex people as merely ‘patients’ with no capacity to understand their atypical sex characteristics, and therefore they should comply with the medical procedure. Furthermore, the power imbalance also occurs when doctors provide medical advice to intersex people by nudging them to have particular gender expressions to ‘be aligned with’ the gender [82]. The terms ‘patients’ and ‘disorders’ have also become offensive language because those terms positioned intersex people as lacking agency [83].

Protecting Intersex People from Discrimination in All Areas

In areas of employment, intersex people have faced rejection and continuous bullying in the working environment. In accessing work opportunities in the educational field, an intersex individual’s application as an Art lecturer was rejected because, during the interview process, he disclosed his intersex variation. It was said that his variation was inextricably linked with his work as an artist[84]. The repeated rejection from different universities led him to create his own Art school. A similar situation happened with a person working in a factory. An intersex worker faced continuous bullying from her co-worker with no response from her supervisor, as if the acts never happened [85]. She then decided to resign from the factory.

In areas of education, intersex people have experienced being questioned about their “real gender” by school authorities due to the difference in their physical appearance and traits. A teacher asked her whether she was a girl or boy because the teacher felt strange with her heavy deep voice and her confession that she didn’t menstruate; the teacher also concluded that she had a problem, and never spoke to her again [86].

Not only the State should protect the rights of intersex individuals, but the State also has an obligation to protect human rights defenders. Regarding the protection of the rights of human rights defenders, there are three national commissions in Indonesia where intersex rights defenders can register their complaints. They are the National Commission on Human Rights, the National

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[82] Ibid.,
[83] Based on the interview with CR, an intersex artist and teacher on 28 May 2023.
[84] Ibid.,
[85] Narrinda Niarassati, “My Different Life,” Youth&I, Issue 2 (2 December 2021), available at: https://youthandi.org/my-different-life/.
[86] Ibid.,

Commission on Violence against Women and the National Commission on Child Protection. However, most of these institutions don't have a specific complaint mechanism or disaggregated data on violence and discrimination based on sex characteristics. Cases of intersex people mostly come into light through media exposure. Lately, the Commissions have expressed the importance of civil society to address the State's obligation to the protection of intersex rights in the policy-making process. "There should be a collective action (in Indonesia) to urge the rights of intersex people through various ways, such as research, violence cases documentation and present them to national human rights commissions, ministries, religious leaders, etc; otherwise, it will be just an individual case. Therefore, it is important to look at the capacity of the intersex group in organising and advocating their rights" [87].

Legal recognition, including registration at birth

The current system of birth registration in Indonesia is based on the binary model of sex and gender. Regulation of Minister of Home Affairs No.109/2019 on Forms and Book standard in Population Administration states that a birth certificate requires information about sex with two options- man or woman. Therefore, once the baby is born, based on the Regulation of Ministry on Home Affairs No. 9/2016 on the Acceleration of the Birth Certificate [88], Article 3 informs that the doctor or midwives should provide the letter with birth-related information. The letter also contains information on the sex of the born baby. This legal approach poses challenges for intersex individuals because the sex is required to be recorded immediately.

Legal gender recognition, in particular on changing gender markers and names for intersex people, requires a series of processes. It consists of communication between parents and family members, medical interventions, court proceedings, and the change of the gender marker and name in civil registration based on the court's approval. While there is a specific legislation related to this issue i.e. Law 23/2006 on Population Administration (and revised by Law No.24/2013), it only serves a limited purpose. It has no implication on the power imbalance that can most likely occur between the medical institutions and intersex people, especially due to existing medical and social norms that force intersex people to choose from the binary model.

Although Law No. 23/2006 allows the change of gender marker, the implication of registering the gender marker still raises a concern. In registering the new gender marker in the birth certificate, for example, the existing birth certificate will be accompanied by the 'additional note' informing the change of the gender marker. This form of registering can cause stigma and discrimination against intersex people, including their right to pursue education and work.

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[87] Based on the interview with Nova Atnike Sugiro,, on 18 April 2023

[88] Regulation of the Minister of Home Affairs (Permendagri) Number 9 of 2016, Acceleration of the Increase in Coverage of Birth Act Ownership, BN. 2016, No. 325, Jakarta, available at: https://peraturan.bpk.go.id/Home/Details/138580/permendagri-no-9-tahun-2016.

Access to Justice

Although Indonesia has several laws that aim to provide access to justice, such as through Law No.16/2011 on Legal Aid, Law No.23/2004 on the rights of victims of domestic violence, and Law No. 12/2022 on Sexual Violence Eradication, none of the laws specifically address the violation of rights of intersex people. It requires legal consultation between intersex people and lawyers with a human rights perspective to construct argumentation when the case needs to be brought to the court.

While there is no documented case of intersex people seeking remedies for non-consensual medical treatment or surgical intervention, it is an experience of intersex people that should be well documented and therefore, intersex people have the right to seek the truth regarding any medical intervention. A feminist lawyer said that she heard about this experience: “There was a case that parents requested a doctor to perform surgery on their 12-year-old child because the parents wanted their child to be a ‘normal boy’. After the surgery, the doctor required the child to consume regular hormones. The child protested and asked the reason why they should consume the hormones regularly. The child was so confused seeing the growth of their body. However, the child did not get an adequate explanation from the parents” [89]. Furthermore, the experience of the intersex child can be categorised as sexual torture under Law No.12/2022 on Sexual Violence Eradication [90]. The law specifies that sexual torture is a form of sexual violence which is carried out to humiliate or degrade the dignity of an individual [91].

Health

Medical institutions still strongly position intersex people as ‘patients’ who have ‘disorders’ and therefore, need to be ‘fixed’. It can be traced from the core focus of the government, through the Health Ministry Regulation, to the appointed hospital to specifically provide case management on intersex people through the ‘Sexual Adjustment Team (SAT)’. Consequently, when intersex people access a medical service, the medical profession has the authority to determine whether intersex people choose their gender between woman or man which impacts further medical treatment.

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[89] Based on the interview with Nursyahbani Katjasungkana, on 5 May 2023

[90] Ibid.,

[91] Ibid.,

The power imbalance that the medical profession and institutions have in providing health care services to intersex people resulted in the decreasing resilience of intersex people in exercising their basic human rights and achieving their capacity to live fully without shame and guilt in family and wider social spaces. Because of the dependency of intersex people on medical systems to some degree, medical professionals are expected to ensure that their medical and health needs are given based on the consent of intersex people with the full realization of the embedded heteronormative norms which consequently resulted in biases, stereotypes, and values in addressing the atypical sex characteristics. These medical and health services consist of counselling, chromosome examination, reproductive health care, such as monitoring of sexual development, management of health risks related to the specific intersex characters, and informed consent of the intersex people prior to receiving any medical treatment or surgical intervention [92].

Furthermore, the access to healthcare for intersex people is still uneven, especially for intersex people who live outside Java Island. Karyadi Hospital in Semarang Central Java is one of the appointed hospitals for the diagnosis and management of intersex cases. Despite the affordable cost of examination services, intersex individuals who live outside Semarang City face challenges in bearing the transportation and accommodation costs to reach the hospital and should bear some costs for further examination.

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[92] Based on interview with AA, an intersex activist on 1 May 2023

WE DEFEND Intersex
HUMAN RIGHTS IN ASIA

Intersex Asia Timeline

Intersex movement in Asia started in the 1990s from Japan, develops internationally since 2008 from Taiwan.

6. Conclusion

Despite the fact that the Indonesian legal system has adopted human rights norms, including the core international human rights mechanisms into the national law, legal protection is still limited to a few protected grounds, such as gender, race, ethnicity, religion, and minority groups (restricted to women, children, and disability). Furthermore, Indonesia applies a binary model in terms of legal gender recognition, including birth certificates. It has become the underlying cause of the erasure and prolonged human rights violations faced by intersex people in Indonesia, which occurs throughout intersex people's lives. Consequently, the current legal system is non-responsive towards intersex people's rights. Although there are existing laws that mention gender marker change, none of them intervene or challenge the root cause of injustice towards intersex people. As a result, intersex bodies have always been situated as "not normal", "disorders'' and "required to be fixed". It violates the right to bodily integrity and has affected their resilience on a daily basis.

Furthermore, there is no comprehensive anti-discrimination law which includes sex characteristics as a protected ground. However, there are existing laws that aim to recognise the various forms of violence and the rights of victims of violence, particularly Law No.23/2004 on Domestic Violence and Law No. 12/2022 on Sexual Violence Eradication.

The terminologies, such as "disorders", "abnormal", "ambiguous genitalia", "hermaphroditism", "corrective surgery", and "perfection surgery" have perpetuated the stigma on intersex bodies and continue to invisibilize their struggle to protect the bodily autonomy and integrity of intersex people. These terminologies have consequently created a rhetoric of secrecy in which shameful feelings have shaped intersex people's state of mind on a daily basis. Furthermore, these terminologies are still used in medical settings where doctors and medical institutions exercise their power to determine the sex and gender of intersex people through medical treatments and surgical intervention.

In addressing the stigma and erasure of intersex bodies which are also rooted in the social and cultural norms, the dialogue with progressive religious leaders on gender and bodily integrity is important. The terminology used by intersex people also has a similar meaning to khuntsa, a terminology that is used by religious leaders. Realising that the terminology of intersex in global discourse has developed rapidly over the past three decades, it is then important to develop deeper awareness among religious leaders and scholars to learn and gain a holistic understanding of intersex rights.

In accessing health care services, intersex people who are not familiar with their variation should be provided the information and diagnosis without being stigmatised and stereotyped. Furthermore, any medical treatment and surgical intervention that is performed without the consent of intersex people violates the right to bodily integrity. The use of grounds like "best interest of the children" to validate those treatments and interventions for intersex people before they reach puberty needs to be investigated further. Medical treatments and surgical interventions on intersex infants and children without their consent should be addressed to ensure the medical institution and profession implement a human rights-based approach in providing information and services for intersex people. Intersex people also face challenges in accessing health care services because there are only a few hospitals that provide services for intersex. Therefore, intersex people living on Java Island should prepare for transportation and accommodation costs as the services are located outside the city. This situation will make intersex people living outside Java Island bear more costs to travel. Furthermore, not all the cost related to health services for intersex people is accommodated under national health coverage or other private insurance. The high cost of medical examination and treatment has become a challenge for intersex people and their families.

Medical professionals and institutions have played a significant role for intersex people in changing the gender markers of the court. In several court decisions that approve the request to change the gender marker, the judge relies on medical records and documents that inform the result of chromosome examination and the change of physical appearance and external genitalia. Furthermore, psychological records or examinations of intersex people are not considered relevant evidence to be presented to the court.

Furthermore, doctors or medical institutions also have a significant influence in determining the gender of intersex people since intersex people or their families only have little information about it. Medical diagnosis, treatment, and surgical interventions have become available means for the management of intersex cases. It is, therefore, important to acknowledge the power imbalance between doctors or medical institutions and intersex people in order to ensure that any medical step or action is taken based on the consent of intersex people. It is so important to realise that, based on the interview with intersex people, intersex people do not feel comfortable with the medical terminologies which consider them as 'patients' who should be 'fixed' from 'disorders.

Due to the State’s non-responsive legal approach, intersex people continue to experience discrimination and violence because of their sex characteristics. In employment, intersex people have faced rejection and bullying in the working environment. Such issues have resulted in intersex people resigning from the workplace or forcing them to build their own enterprises or institutions. A similar situation occurred in the educational setting where a school authority questioned the “real gender” because of the difference in physical appearance that the intersex person has. Those discriminatory acts impacted intersex lives in pursuing decent work and education and the right to work and study in a safe environment.

Despite the State's non-responsive legal approach to addressing intersex people’s rights, intersex communities also have grown gradually. There are at least two community-led groups that focus on raising public awareness of the variation of sex characteristics. First is Wadah Karib, founded in 2005, a DSD (differences of sex development) community facilitated by Prof. Sultana M.H Faradz (the Sexual Adjustment Team at Karyadi Hospital). Wadah Karib mainly focuses on providing medical information. Second, is Kolektif Interseks, founded in 2020 by three intersex people. Kolektif Interseks mainly focuses on capacity strengthening and the development of knowledge platforms for intersex people and allies. Furthermore, there is also initiative from intersex individuals who use fine art as the medium to raise public awareness of their sex characteristics among their family, friends, and the general public. The different approaches that the intersex groups and individuals have utilised, from producing artworks and organising art exhibitions to developing platforms to distribute basic information on intersex people and build community support, are important modalities to build the resilience of intersex people.

Furthermore, as the intersex community grows, there are two National Human Rights Institutions (NHRIs) that have the mandate to ensure that the state adopts a conducive environment for human rights defenders, including intersex human rights defenders. Both Commissions (National Commission on Human Rights and National Commission on Violence against Women) have closely worked in addressing the violence and discrimination on the basis of gender identity and sexual orientation although they don’t have specific experience yet in relation to intersex cases.

7. Recommendations, Scope, and Strategy for Implementation

7.1 Recommendation 1

Laws and policy frameworks on the protection of intersex people should be guided by the human rights framework and address the underlying cause of discrimination and violence, including the power imbalance between medical institutions with intersex people. The laws should ensure that intersex people can exercise their right to autonomy and bodily integrity. To move forward with this recommendation, the following measures need to be taken:

- The State should develop anti-discrimination laws and policies including sex characteristics as a protected ground. Such a step would also be aligned with the commitment to implement the 2023 Universal Periodic Review and 2021 CEDAW Concluding Observation.
- The State should review the implementation of Regulation of Health Ministry No.191/Menkes/SK/III/1989 on the appointed Hospital and Sexual Adjustment Surgery Implementation Team. The review should investigate how the human rights principles were implemented in performing medical treatment and surgical intervention.
- National human rights institutions should adopt the Yogyakarta Principles +10 that specifically address the variation of sex characteristics in their research, monitoring, and advocacy strategy framework, including the existing documents of Standar Norma dan Pengaturan (SNP - Standard of Norm and Regulation) which aims to provide the detail technical and practical guideline to implement human rights mechanism. The existing related documents include SNP No. 4 on the Right to Health, SNP No. 5 on Freedom of Speech and Expression, SNP No. 6 on Human Rights Defenders SNP No. 8 on Access to Justice,
- The National Human Rights Institutions, in active consultation with intersex groups, should monitor cases of violence and discrimination, including harmful, forced, or involuntary medical intervention on intersex people.

7.2 Recommendation 2

The development of knowledge resources to increase public awareness about intersex issues in general and specifically related to challenges regarding access to employment and education settings.

- Human rights organizations should take the lead in organising awareness initiatives and observe Intersex Awareness Day and Intersex Day of Solidarity through various local, national, and international human rights-related celebrations.
- Religious leaders and interfaith communities should organise regular dialogues to hear the lived experience of intersex people in a safe and non-judgmental environment and to encourage the inclusion of intersex people in society by challenging the use of discriminatory terms and narratives.
- Art institutions and communities should provide space for intersex people and their families to express, explore themselves, and improve their mental health through creative processes, such as through art therapy, to strengthen their resilience.
- Educators and employers should develop guidelines on addressing sexual violence on the grounds of variation of sex characteristics in the workplace and educational setting based on Law No. 12/2022 on Sexual Violence Eradication.

7.3 Recommendation 3

Increasing the accessibility of health care services for intersex people, in terms of cost and location. Furthermore, the health care service providers should apply an affirming approach and respect the rights of autonomy and bodily integrity of intersex people in providing services.

- Medical institutions and health care services develop guidelines on regulating medical interventions and ensuring primary health care for intersex people with input from intersex people and their parents and caregivers, advocacy and peer support groups, and human rights organisations.
- The state should accommodate the health care needs of intersex people under the national health coverage, particularly for necessary emergency procedures.

7.4 Recommendation 4

Strengthen the capacity of intersex individuals and intersex-led community organisations in community organizing, public awareness, policy, and cultural advocacy works to increase the resilience and amplify the voice of intersex people.

- Regional and international intersex organisations facilitate training, fellowships, mentorship, network building, and funding support for newly established intersex groups and initiatives.
- Include well-being practices and programs within the organisational strategy of intersex groups to build organisational sustainability, including developing well-being guidelines for the community members.
- Develop a space of dialogue and collaboration between intersex individuals and intersex community-led organisations to consolidate actions, and strategies and share various resources and modalities in the national and local movement organising.

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9. Appendix A

Meetings and Interviews

Interview with Husein Muhammad, activist on gender and Islam and religious leader

Date: 10 April 2023

Time: 11.00 JKT Time

Duration of Discussion: 60 minutes

Discussion:

1. Concept of intersex in Islam
2. Islamic response on the non-consensual medical treatment and surgical intervention to intersex people
3. Response towards the Islamic Ulama Council fatwa on the surgical intervention to “normalise” intersex body.

Interview with Teguh Setyabudi, Directorate General on Population and Civil Registry, Ministry of Home Affairs

Date: 14 April 2023

Time: 11.00 JKT Time

Duration of Discussion: 30 minutes

Discussion:

1. Explanation on the “other important events” in the Law No. 23/2006 on Population Administration (and revised by Law No.24/2013)
2. The scope of the Law related to changing gender marker
3. Birth registration consequences for intersex people

Interview with Nova Atnike Sugiro, Chair of National Commission on Human Rights

Date: 18 April 2023

Time: 13.00 JKT Time

Duration of Discussion: 30 minutes

Discussion:

1. Law and policy framework in protecting intersex people
2. The role of National Human Rights Commission in the addressing the rights violation of intersex people
3. Human rights defenders’ protection mechanism, including intersex human rights defender
4. Response National Human Rights Commission on the terminology intersex as “disorders”, “patients” and “abnormality”, “should be fixed”

Interview with AS, an intersex people, from Indonesia, Board of Intersex Asia

Date: 30 April 2023

Time: 15.44 JKT Time

Duration of Discussion: 47 minutes

Discussion:

1. Self-identification and terms used by the community.
2. Access to intersex-related information.
3. Body autonomy and integrity as an intersex individual,
4. Experiences accessing healthcare services and other public services.
5. Discrimination, violence, and efforts towards recovery experienced.
6. Intersex movement in Indonesia

Interview with AA, an intersex people, activist from North Sumatera

Date: 1 May 2023
Time: 09.00 JKT Time
Duration of Discussion: 55 minutes
Discussion:

1. Self-identification and terms used by the community.
2. Access to intersex-related information.
3. Body autonomy and integrity as an intersex individual,
4. Experiences accessing healthcare services and other public services.
5. Discrimination, violence, and efforts towards recovery experienced.
6. Intersex movement in Indonesia

Interview with AA, an intersex people, activist from West Java

Date: 1 May 2023
Time: 16.00 JKT Time
Duration of Discussion: 77 minutes
Discussion:

1. Self-identification and terms used by the community.
2. Access to intersex-related information.
3. Body autonomy and integrity as an intersex individual,
4. Experiences accessing healthcare services and other public services.
5. Discrimination, violence, and efforts towards recovery experienced.
6. Intersex movement in Indonesia

Interview with Nursyahbani Katjasungkana, feminist lawyer

Date: 5 May 2023
Time: 19.00 JKT Time
Duration of Discussion: 60 minutes
Discussion:

1. Law and policy framework in protecting intersex people
2. Legal gender recognition of intersex people
3. Access to justice for intersex people who didn’t give consent when surgical intervention performed

Interview with CH, an intersex individual, artist, teacher who is based in Yogyakarta

Date: May 28th, 2023
Time: 15:00 - 16:30 Western Indonesian Time (WIB)
Duration of Discussion: 1 hour and 30 minutes
Discussion:

1. Art as medium to express and build discourse on body and identity
2. Art as medium of public education on experience and body autonomy
3. Online art exhibition on XXY Journey in 2020
4. Process of producing XXY Journey art works
5. Building own Art studio, resistance against discrimination

Intersex Asia is an autonomous regional network of intersex-led organizations and individuals from Asian countries that work to support, educate and advocate for the rights and lives of intersex individuals and raise awareness on human rights violations and discrimination faced by intersex communities. It envisions a world where the beauty of intersex people is celebrated, and where intersex persons can love themselves and grow together as a community. It seeks to create a space for intersex people where they can come forward and act as a stakeholder of the global intersex rights movement.

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