

The Social Construction of Transgender in Jember Regency After the Jember Fashion Carnival Event: a Human Rights Perspective

Konstruksi Sosial Transgender di Kabupaten Jember Pasca Acara Jember Fashion Carnival: Perspektif Hak Asasi Manusia

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ABSTRACT: The issue of discrimination and negative stigmatization of transgender people in the Jember Regency is considered an obstacle to the freedom of expression for every individual. This study aims to analyze the views of the people of the Jember Regency in regard to transgender women's right to freedom of expression after the Jember Fashion Carnival event. This research utilizes an empirical juridical research method with sociological approach and legal approaches. The results of this study indicate that the community's social construction of the rights of transgender expression after the Jember Fashion Carnival event is demonstrated through the community's appreciation of the transgender people's works at the event and the provision of space for their expression to develop creativity. Although the government of Jember Regency has not implemented specific policies to protect the rights of transgender people in expressing themselves and developing their potential, the government and residents of Jember have recognized the transgender community as citizens with equal rights and positions to express themselves and contribute to the progress of Jember Regency.

ABSTRAK: Isu diskriminasi dan stigmatisasi negatif transgender di Kabupaten Jember dinilai menghambat kebebasan berekspresi setiap individu. Penelitian ini bertujuan untuk menganalisis pandangan masyarakat Kabupaten Jember terhadap hak kebebasan berekspresi transgender pasca acara Jember Fashion Carnival. Penelitian ini menggunakan metode penelitian yuridis empiris dengan pendekatan sosiologis dan pendekatan hukum. Hasil penelitian ini menunjukkan bahwa konstruksi sosial masyarakat terhadap hak berekspresi transgender pasca gelaran Jember Fashion Carnival ditunjukkan melalui apresiasi masyarakat terhadap karya transgender di ajang tersebut dan pemberian ruang ekspresi mereka untuk mengembangkan kreativitas. Meskipun pemerintah Kabupaten Jember belum menetapkan kebijakan khusus untuk melindungi hak transgender dalam mengekspresikan diri dan mengembangkan potensinya, namun pemerintah dan warga Jember telah mengakui komunitas transgender sebagai warga negara yang memiliki hak dan posisi yang sama untuk berekspresi dan berkontribusi. kemajuan Kabupaten Jember.

Keywords:

discrimination;
human rights;
Jember;
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Kata Kunci:

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1. Introduction

Humans are diverse creatures, which can be identified through gender differences, namely between men and women.¹ However, when it comes to transgender communities, there appears to be a distinct understanding in regard to their gender roles. For example, a biological man might feel like a woman trapped in a male body and showcase rather feminine traits, or vice versa. This makes them stand out because they are considered abnormal and different from the others.² They are considered to have a gender identity and sexual orientation that deviates from their assigned sex. Despite these differences, as Indonesian citizens, transgender communities have the same obligations and enjoy equal protection of their rights.³

The provisions of Indonesian Human Rights Law⁴ state that “rights, which are a gift from God Almighty, must be respected and protected by the state and everyone to uphold human dignity.” Furthermore, based on MPR Decree No. XVII/MPR/1999 on Human Rights, the state “must guarantee the survival, independence, and development of humans and society, ensuring that these rights cannot be ignored, confiscated, or contested by anyone.” However, in certain situations, some individuals do not have their basic rights fulfilled. In such cases, violation of human rights can be attributed to both the individuals and the state. From the perspective of an individual as a rights holder, human rights violations occur when individuals fulfill their own basic rights by violating the rights of others. This can be attributed to feelings of revenge, egoism, intolerance, and lack of awareness of respecting the rights of others. A study conducted by Tahir revealed discriminatory treatment towards transgender people at the Paikang Heroes Cemetery in Makassar, manifested through verbal violence, physical violence, subordination, and negative stereotypes.⁵ Furthermore, based on the LBH Masyarakat’s 2017 Annual Report, in cases of persecution and discrimination, the majority of victims were from transgender communities of 715 people, followed by gay communities of 225 people, and lesbian communities of 29 people. The remaining four victims were categorized as other victims.⁶

On the other hand, from the perspective of the state as a duty bearer, human rights violations occur because the state is unwilling and unable to respect, uphold, fulfill, and protect the human rights of every citizen.⁷ This phenomenon leads to discrimination, preventing individuals from enjoying their basic rights as human beings, including the right to worship, socialize and engage in politics.⁸ Specifically for Indonesian transgender communities, these issues include difficulties obtaining or using an identity card (KTP), limited access to public facilities, and even hindering their ability to secure professional employment.⁹ The existence of human rights violations is contrary to the Human Rights Law, as stipulated in Articles 67-70, which mandate that both individuals and the state are obliged to recognize and respect the human rights of every citizen. Additionally, Article 28J Paragraph (2) of the 1945 Constitution emphasizes that exercising rights and freedoms should be subject to statutory restrictions so that every citizen can exercise their rights and fulfill their obligations proportionally.

- 1 Fitri Meliya Sari, “Konstruksi Media Terhadap Transgender,” *Profesional: Jurnal Komunikasi Dan Administrasi Publik* 3, no. 1 (2016): 25–34.
- 2 Muh. Bahrul Afif, “Islam and Transgender (A Study of Hadith about Transgender),” *International Journal of Nusantara Islam* 7, no. 2 (2019): 185–89, <https://doi.org/10.15575/ijni.v7i2.6138>.
- 3 Abdul Rokhim, “Tinjauan Hukum Mengenai Kasus Pergantian Jenis Kelamin Berdasarkan Undang-Undang Ham Dan Perspektif Hukum Islam,” *Jurnal Focus UPMI* Volume 3, no. 3 (2019): 115–16.
- 4 Undang-Undang Republik Indonesia Nomor 39 Tahun 1999 tentang Hak Asasi Manusia
- 5 Muhammad Imran Tahir, “Tindakan Diskriminasi Terhadap Waria Pekerja Seks Komersial (PSK) Di Taman Makam Pahlawan Panaikang Kota Makassar” (Universitas Muhammadiyah Makassar, 2021).
- 6 Cut Irda Puspitasari, “Opresi Kelompok Minoritas: Persekusi Dan Diskriminasi LGBT Di Indonesia,” *Takammul : Jurnal Studi Gender Dan Islam Serta Perlindungan Anak* 8, no. 1 (2019): 83–102, <https://jurnal.ar-raniry.ac.id/index.php/takamul/article/view/5644>.
- 7 Setiyani and Joko Setiyono, “Penerapan Prinsip Pertanggungjawaban Negara Terhadap Kasus Pelanggaran HAM,” *Jurnal Pembangunan Hukum Indonesia* 2, no. 2 (2022): 1–14.
- 8 Yaris A. Fajrin, Ach Faisol, And Moh Aziz Ma’ruf, “Double Track System For Criminals Against Homosexuality Background (Ideas In Criminal Law Reform),” *Negara Hukum: Membangun Hukum Untuk Keadilan Dan Kesejahteraan* 11, No. 2 (2020): 167–90.
- 9 Rr. Siti Kurnia Widiastuti, Farsijana Adeney Risakotta, and Siti Syamsiyatun, “Problem-Problem Minoritas Transgender” 10, no. 2 (2016): 2548–477.

The development of Jember from a suburban city to an urban city has brought major changes to the socio-cultural and economic conditions of its people. The progress of the Jember Regency, in turn, triggers people's behavior that is different from cultural expectations on gender identities, specifically, in this case, the emerging transgender community. Based on the findings of the Jember Health Service in 2014, there is an LGBT community with 256 registered members. In 2019, this number increased significantly to 1,500 people, as revealed through preliminary research and interviews conducted with the head of the Jember LGBT community.¹⁰

The existence of transgender people in Jember cannot be separated from discriminatory behavior and negative stigmatization. For example, the involvement of transgender people in prostitution activities near Jember station is often met with resistance from the local community, as it disrupts public order and contributes to the spread of HIV/AIDS.¹¹ However, it should be noted that not all transgender people in Jember work as commercial sex workers; some pursue careers in beauty salons and even work as radio announcers. Discrimination against transgender people affects the fulfillment of their basic rights, such as access to education, obtaining suitable employment, and enjoying other basic rights.¹² This was exemplified in the case of R (initial name), a transgender person who was forced to drop out of school due to persistent bullying from her friends as she was considered to behave differently than normal men.¹³

Various efforts have been made by the transgender community in Jember to break the negative stigma associated with them. One notable initiative is their participation in the Jember Fashion Carnival (JFC), which was initiated in 2003 by Dynand Fariz, a fashion designer from Jember. JFC is an annual artistic performance that seamlessly blends dance, theater, and fashion shows. This grand event has transformed Jember Regency, a place with no prior background in carnivals and fashion, into a pioneering city for fashion carnivals and a key barometer of carnival culture in Indonesia. JFC has been honored with the distinction of being Indonesia's best carnival and has earned the fourth position as one of the world's most unique and vibrant carnivals, trailing behind prestigious events such as the Mardi Grass in the United States, Rio De Janeiro in Brazil, and The Fastnacht in Germany.¹⁴

Recognizing the significant impact of the JFC on the transformation and development of Jember Regency into a world-class tourism and fashion city, the transgender community seeks to participate, showcasing their role in the development of the region. Through their involvement in the JFC event, they aim to challenge public perceptions, an attempt to fight against discrimination and negative stereotypes associated with those who are seen as deviating from heterosexual norms. This endeavor has indirectly enabled the LGBT community to assume a social role, opening up opportunities for the creative industry and providing inspiration for the wider community.¹⁵ Evidently, after JFC was widely known, a number of cities also held similar events,¹⁶ including Jakarta with Jakarta Food and Fashion Festival, Probolinggo with Probolinggo on the Stand and Stage, Banyuwangi with Banyuwangi Ethno Carnival, Solo with Solo Batik Carnival, Belitung with Belitung Beach Festival and many more.¹⁷

Numerous studies have been conducted on the safeguarding of transgender rights in Indonesia. However, previous research has primarily concentrated on the acknowledgment of human rights in Indonesian law in accordance with moral and religious values. One such article by Febby Shafira Dhamayanti argues that recognizing human rights for transgender people in Indonesia should be based on the concept of universal human rights. To

10 Interview with Chairman of LGBT Jember, April 10th, 2022.

11 Galih Septian Isnayanto, "Respon Masyarakat Terhadap Keberadaan Prostitusi Waria Di Kawasan Stasiun Jember" (Universitas Jember, 2014).

12 Mahbub Djunaidy, "Waria Jember Minta Tidak Ada Diskriminasi Pendidikan," *Koran Tempo*, May 2, 2010, <https://nasional.tempo.co/read/244895/waria-jember-minta-tidak-ada-diskriminasi-pendidikan>.

13 Interview with Rosi, a member of WAGAYO (Waria and Gay Organization), Jember, 2022.

14 Chandra Ayu Proborini, "Jember Fashion Carnaval (JFC) Dalam Industri Pariwisata Di Kabupaten Jember," *Mudra Jurnal Seni Budaya* 32, no. 2 (2017): 262–74, <https://doi.org/10.31091/mudra.v32i2.116>.

15 Laporan Pemetaan Awal Pemberitaan LBGTI Di 20 Media Cetak Dan Online Periode 15 Juli-20 Agustus 2015, [https://Aji.Or.Id/Upload/Dokumen/Laporan Pemetaan Awal Pemberitaan LBGTI.Pdf](https://Aji.Or.Id/Upload/Dokumen/Laporan%20Pemetaan%20Awal%20Pemberitaan%20LBGTI.Pdf)

16 Akfa Nasrullohaq, "Jember Fashion Carnaval Jadi Barometer Event Street Fashion," *01 August*, 2019, <https://travel.detik.com/travel-news/d-4648678/jember-fashion-carnaval-jadi-barometer-event-street-fashion>.

17 Nuning Yanti Damayanti Adisasmita Lois Denissa, Pribadi Widodo, "Catwalk Jember Fashion Carnaval Sebagai Fenomena Ruang Ketiga," in *Prosiding Internasional Conference on Nusantara Philosophy* (Yogyakarta: Universitas Club Universitas Gajah Mada Yogyakarta, Indonesia, 2013).

ensure compatibility with religious values, implementation involves collaborative efforts aimed at healing and rehabilitating transgender people from what is deemed as deviant sexual behavior, with the participation of all relevant stakeholders.¹⁸ Another article by Sukma Aristya similarly focuses on the recognition and protection of human rights for transgender people in Indonesia while taking into account the boundaries regulated by law, moral teachings, community ethics, and religious values. While discussions regarding the protection of human rights for transgender people in Indonesia have often been raised, there has been a lack of empirical research specifically examining the community's construction of transgender rights in terms of expressing their talents and creativity in terms of national and international human rights regulations.¹⁹

In contrast to prior research, this study does not aim to reinforce the arguments made by previous researchers regarding the implementation of human rights protection for transgender people in Indonesia through efforts to rectify deviations from gender identity and sexual orientation. Instead, the focus of this article is on ensuring the fulfillment of transgender people's rights to develop their talents, foster self-creativity, and contribute to the nation's progress. Particularly, there has been no research that focuses on protecting the right to freedom of expression for transgender women in the Jember Regency. Therefore, this study aims to explain the public's perspective on the freedom of expression rights of transgender people after the successful event of the JFC.

2. Method

This research employs an empirical-juridical research methodology with a sociological approach because it examines the construction of the right to expression of transgender women in Jember Regency after the JFC event, which is analyzed using the social construction of Peter L. Berger and Thomas Luckmann. Additionally, a legal approach is employed to examine the legal protections afforded to transgender people's rights to expression in both national and international legal frameworks.

The research informants were selected using a purposive sampling technique. The researchers took three samples of transgender informants and three samples of community informants with different relationship characteristics with transgender people. Each informant from the community has provided consent for their names to be published in this study. As for transgender informants, they agreed to use pseudonyms and remain anonymous. The data collection techniques in this study were conducted by interviewing transgender women and community informants. Documentation and visual observation were carried out to find out the activities and contributions of transgender women participating in the JFC event. Data analysis was carried out through three stages, namely data reduction, data presentation, and conclusion.

3. Finding and Discussion

3.1 Recognition of Transgender Rights to Expression in Jember Regency

To understand the social construction of transgender people in Jember, the researcher took six samples of informants. Three informants were identified as transgender people, while the other informants are people who have developed different relationship characteristics with transgender people.

In building interpersonal communication with the Jember community, transgender people have actively sought to establish communicative relationships with their neighbors. Efforts have been made to raise awareness among people so that discrimination and negative labeling can be avoided. The following is the result of an interview with Fagus (pseudonym) as the first informant, a transgender person who works as a salon entrepreneur and costume designer for the JFC. Regarding the pattern of communication with the community, Fagus explains:

I am always open and act as it is, I have nothing to hide from others. To the neighbors, I also try to say hello and occasionally invite them to chat like people in general. Neighbors are important because I can't live alone. The next-door neighbor said, if I wasn't there, the environment would feel lonely. When I get together with them, I always make a scene and make people laugh. But

18 Febby Shafira Dhamayanti, "Pro-Kontra Terhadap Pandangan Mengenai LGBT Berdasarkan Perspektif HAM, Agama, Dan Hukum Di Indonesia," *Ikatan Penulis Mahasiswa Hukum Indonesia Law Journal* 2, no. 2 (2022): 210–3.

19 Sukma Aristya, "Perlindungan Hukum Terhadap Kelompok Minoritas Penyimpangan Orientasi Seksual" 10 (2022): 143–59.

still, there are limits of decency that I adhere to. Don't let me hurt my joke instead, it makes other people hurt. Apart from that, I also teach mothers who want to learn to sew and do make-up for free. But sometimes even though it's open like that there are still unpleasant conversations. Yesterday a neighbor accused me of stealing mangoes. Even though I didn't touch the leaves. I can buy it myself without having to steal. Yes, it's okay that I was slandered, and I just kept quiet to reduce my sins.²⁰

Like the first informant, Aurela, the second informant, is also a transgender person who works as a bridal make-up artist. He tries to socialize with neighbours, although sometimes the inclusive attitude he shows is still seen as negative behaviour by his neighbours. Aurelia's communication pattern as the second informant is illustrated in the interview results as follows:

Transgender is different from gay or lesbian. They are a limited closed community. Pretending to be a normal person but being a hypocrite. If we're not like that. From the appearance and the feminine side is visible. Our openness in appearance and behavior also influences socialization. the important thing is that I don't overreact that make other people uncomfortable. Even if someone doesn't like it, I just let it go. It's known as polite, sissy still says too much and for me, it doesn't matter. The most important thing is that I have tried to open myself up through outreach. Even in events held by residents, such as the commemoration of Independence Day, I have also participated. Especially as someone who lives in a boarding house. Don't have anyone so it's neighbors who can be asked for help. And vice versa if there are neighbors who are having trouble, as long as I can help, I will help as much as I can.²¹

The third informant's communication style was not considerably different from that of the other informants. Apart from working as a salon entrepreneur, Miranda also designs costumes for JFC. She always tries to open herself up in building communication with her neighbours, although realizing that causing it doesn't always result in positive responses. Miranda explains her communication patterns with her neighbours as follows:

When meeting neighbors I try to say hello, but sometimes many respond indifferently. It doesn't matter to me, the most important thing is that I said hello. Whether they care or not is not my business. More importantly, I don't hurt them and interfere with their lives. I feel that sometimes there are still many who look down on transgender people. Maybe it's because transgender people are already labeled bad. After all, people think that transgender people are synonymous with selling sex, like oral and anal sex, which have the potential to contract AIDS, so people keep their distance. Even though many transgender people don't work like that. I openingopened a salon business and was able to design costumes for the Jember Fashion Carnival, which other people may not have the same expertise as me.²²

From a different perspective, the researcher explored information from three informants from the community who had different characteristics of relationships with transgender people. This is carried out to explore how society perceives and constructs the existence of transgender people in the Jember Regency.

The first informant, named Fitri, is a make-up artist who frequently interacts with transgender people. Apart from being busy as a bridal make-up artist, Fitri has also provided make-up training for transgender people. Intense relationships with transgender people have allowed the informant to know more deeply not only about transgender personality and behavior but also about their potential and talents. Regarding his views on transgender person, Fitri argues:

I consider a sissy to be a person who has deviant behavior from the habits of men in general. You could say it violates nature. Apart from that they also deserve to be appreciated and humanized. I often interact with them. I happen to have bridal make-up skills and there was a sissy who studied make-up with me. While studying with me, I see that it is not too difficult because he said he was also used to make-up, so his skills had been honed since childhood. Her make-up skills are also not inferior to professional female make-up. After leaving me, it was proven that he got a lot of fancy

20 "Interview Results with Fagus (pseudonym) a member of transgender community, May 3rd, 2022 at 13.15 WIB."

21 "Interview Results with Aurela (pseudonym) a member of transgender community."

22 "Interview Results with Miranda (pseudonym) a member of transgender community, on May 9th, 2022 at 19.00 WIB."

jobs from bridal make-up to carnival make-up. Even at the annual event, Jember Fashion has also dared to participate. It's creative because apart from doing make-up, he can also make carnival or Jember Fashion Carnival costumes. I saw that he had a passion for learning. I support that he can do positive things and have a lawful job.²³

From informant Fitri, it can be inferred that even though essentially transgender behavior is considered to deviate from the cultural construction of society, it is crucial to respect and protect transgender people as part of the Indonesian community. They also have the same rights as Indonesian citizens in general. They have the right to develop all the potential that exists within them, along with the expertise they have. As stated by the first informant, her transgender pupils are creative, exceptional learners.

The second informant, Setiawan, has never personally interacted with transgender people. However, Setiawan had witnessed the JFC, where transgender people participated as Fashion Carnival costume designers and exhibitors. Setiawan argues:

There have been many transvestites in Jember Regency since I was young. In the past, people thought that sissies were just a job as prostitutes. Society sees more negatives than positives. If you hang out in a carriage near Jember railway station, it means you will have same-sex relationships. Such a deviant sexual orientation has an impact on HIV/AIDS. So people will look at it as ugly and bad. Stay away even to the point of bullying. But since The Jember Fashion Carnival, I think that the negative stigma has started to change. Sissy is not always identified with negative actions. Jember Fashion Carnival began to change people's minds who always looked down on sissies. Now transvestites can also excel and contribute to developing Jember tourism. The average person who has the creativity to make Jember Fashion Carnival costumes is dominated by sissies. Now Jember is known to the world thanks to the annual Jember Fashion Carnival performance which of course cannot be separated from the participation of sissies. The creativity of the sissies not only produces carnival costumes that are modern-ethnic but also can combine them with modern make-up that comes out of the norm.²⁴

From the explanation of the second informant, it becomes evident that the existence of transgender person is not necessarily a new phenomenon, as he has been aware of it since a young age. His perception of transgender people has been influenced by the past reality of seeing transgender prostitution every night around Jember station. This experience has shaped his perception that a transgender person is always synonymous with sexual deviance, which has an impact on the spread of infectious diseases such as HIV/AIDS.

However, his perspective started to change after he saw the JFC. He asserts that while transgender people may deviate from societal norms, they possess a remarkable creative spirit that deserves recognition. Their participation in the annual JFC event proves that they also have an important role in advancing the development of Jember. Their creativity in designing JFC costumes has contributed to introducing Jember to the international scene, as seen through the large number of foreign and local tourists who attend the JFC festival annually. This represents a significant step in challenging the negative stigma associated with transgender communities, who have often been devalued and wrongly blamed for the spread of HIV/AIDS.

The third informant, Wahib, never had a direct interaction with transgender people and has never witnessed a JFC event. He is an academic as well as an Islamic religious figure who grew up with an Islamic Boarding School education. His views on transgender are as follows:

We have to see that transgender in Jember Regency is a social reality that cannot be denied. But for me, the existence of transgender must be rejected. Because in essence most of them are men whose appearance and behavior resemble women, or in Arabic, they are referred to as muhannits (men who resemble women) and mutarajjilat (women who resemble men) are haram. Unless they are indeed in a condition that has a congenital genetic disorder from birth so that they are multiple (khuntsa musykil) then the law is still given the right to choose according to the dominant tendency they feel. Whereas for transgender people who do not have genetic disorders (khutsa ghayra musykil) then the law is unlawful. So they have to be made aware of their true nature. As part of Indonesian citizens,

23 "Interview Results with Fitri, a resident of the Jember Regency on May 11th, 2022 at 09.30 WIB."

24 "Interview Results with Setiawan, a Resident of the Jember Regency on May 13th, 2022 at 13.30 WIB."

they have the same rights and obligations as citizens in general. So there should be no discrimination or marginalization. What was forbidden was his deviant behavior and appearance, not his existence as a human. I don't agree with the existence of the Jember Fashion Carnival because it enriches the existence of transgender and LGBT people even though the motivation is to elevate Jember to the international stage. More harm than benefit. So I disagree. It's better to just show a carnival that is following the original culture of Jember.²⁵

The statements provided by the informants above could describe the perspectives of the Jember community towards transgender people in the Jember Regency. While they have never provided justification for transgender deviant behaviour and sexual orientation, they argue that, as fellow citizens, transgender communities have the same rights and positions in obtaining and recognizing human rights. This especially applies in terms of freedom of expression in developing talents and expressing their artistic souls through the JFC event.

After the JFC was held, the existence of transgender people in the Jember Regency gained widespread recognition from the community. Those who were negatively stereotyped are now no longer considered to be the triggers of "social illness that must be eradicated by the government." JFC has provided a platform for transgender people to freely express their artistic talents in designing and creating carnival costumes. They have been trusted as part of the festival organizers as well as mentors who provide assistance to prospective JFC participants in designing costumes according to the theme determined each year. Changes in the perspective of the people of Jember on the right to expression for transgender people also have an impact on increasing public interest in using transgender bridal make-up services.²⁶

3.2 Social Construction of Transgender Expression Rights after the JFC Event

In understanding the social construction of transgender people in Jember Regency, the researcher uses Berger and Luckmann's analytical tools of social construction theory. According to this conception, human behavior is formed based on experiences in everyday life. This daily life presents an objective reality that is interpreted subjectively by each individual.²⁷ Thus, the will of the individual plays an important role as a determinant in constructing their social world. Individuals act as creative agents in producing and reproducing their social reality.²⁸

The term "social construction of reality" is defined as a social process through actions and interactions in which individuals continuously create a reality that is shared and experienced subjectively.²⁹ Social construction is a sense-making process that is carried out by each individual to understand their environment and their own external existence. It involves attributing subjective meaning to the objective reality within the consciousness of individuals engaged in daily life activities. Berger and Luckman put forward a dialectical view when looking at the relationship between humans and society, suggesting that humans shape society while society, in turn, shapes humans through externalization, objectivation, and internalization.³⁰

To give further context, JFC is an annual, international event held by the Jember Regency government by bringing the genre of mass performing arts that combines the creativity of fashion make-up designs and is presented theatrically supported by various elements and branches of the arts, including dance, theater, music, and arts. As a product of performing arts, JFC has various supporting elements that are incorporated into a unified form of performance that is very distinctive and has specific stylistic characteristics aligned with the annual theme. This event is funded independently by involving all elements of the Jember community, including international contributors, thereby providing an inclusive space for everyone, including transgender people. There are no specific requirements related to gender or sexual orientation for participation in the event, as the emphasis lies on creativity in clothing design and alignment with the theme set by the JFC organizers.

25 "Interview Results with Wahib, a Resident of the Jember Regency on May 15th, 2022 at 11.45 WIB."

26 "Interview Results with Several Transgender Participants in the Jember Fashion Carnival on April 17th, 2022 at 16.10 WIB."

27 Peter L Berger, *Tafsir Sosial Atas Kenyataan : Risalah Tentang Sosiologi Pengetahuan* (Jakarta: Pustaka LP3ES, 2012).

28 Margaret M. Poloma diterjemahkan oleh Tim Penerjemah Yasogama (Yayasan Solidaritas Gadjah Mada), *Sosiologi Kontemporer* (Jakarta: Rajawali, 1987).

29 NN, "Pemahaman Teoritik Teori Konstruksi Sosial," *Jurnal Inovasi* 12, Nomor2 (2018): 1–25.

30 Margaret M. Poloma diterjemahkan oleh Tim Penerjemah Yasogama (Yayasan Solidaritas Gadjah Mada), *Sosiologi Kontemporer* (Jakarta: Rajawali, 1987).

3.2.1 The Externalization Process

Externalization is the continuous expression of oneself into the socio-cultural world through both physical and mental activities. It is inherent in human nature and an anthropological imperative that individuals project themselves into the world they inhabit. In this stage, transgender people express themselves through feminine appearances, graceful gestures, and a speech style that reflects their identity as women despite having a male body. Such behavior is then considered to deviate from the institutionalized cultural construction of society, giving rise to a negative stigma for transgender people.³¹ The externalization stage in this study is demonstrated by the opinions of three informants from the Jember citizen (Fitri, Setiawan, and Wahib) who perceive transgender as male figures who defy nature, are associated with prostitution, and are responsible for spreading infectious diseases such as HIV/AIDS due to their deviant sexual behavior. This perspective is further reinforced by the opinion of transgender informants (Fagus, Aurela, Miranda) who stated that in building communication with society, they still often get discrimination by sneering, negative labels, and different treatment from the majority of society.

3.2.2 The Objectivation Process

Objectivation is a state of acceptance of various forms of activity or behavior in social interaction with institutionalized intersubjective or through institutional processes. During the process of objectivation, two distinct forms of social reality emerge: the individual's self-reality and external social realities that are perceived as objective. In the process of social construction, this moment is characterized by social interaction through institutionalization and legitimacy. Within this institution and legitimacy, agents work to stimulate the subjectivity of their world to turn to world goals through relationships between humans that are designed in groups.³² The form of the objectivation stage can be seen when the community and the Jember Regency government begin to identify the productivity and role of a transgender person in society. As mentioned by Fagus and Aurela, they try to get rid of this negative stigma by being open in their appearance and socializing with their environment. They participate in community activities by demonstrating their social function and productivity by training the community in the skills of make-up and designing JFC costumes, as well as their involvement in the event. This is also confirmed by Fitri and Setiawan's opinion, who perceived transgender people as someone who has talent and creative abilities in designing JFC costumes.

3.2.3 The Internalization Process

The process of internalization is the re-absorption of the objective world into consciousness in such a way that the individual subjective is influenced by the structure of the social world. Internalization is a moment of withdrawal of social reality into oneself or social reality into subjective reality. Social reality resides within the human being, and through this process, individuals identify themselves within the socio-cultural world.³³

In this study, the process of internalization began when the productivity of transgender people changed how society perceived transgender communities. According to Fitri and Setiawan, the community began to appreciate the talent, creativity, and productivity of transgender communities. This acceptance had a positive impact on the openness of social interactions and the equal treatment of transgender people in various community activities.

Recognition and respect for the right to expression for transgender people in Jember Regency are manifested in a shift of public perceptions. Initially, transgender people were stigmatized with a negative bias, but they are now viewed as integral members of society whose rights should be respected and treated equally. However, it is important to note that, as mentioned by the research informants, this respect and recognition do not necessarily extend to accepting deviations in their appearance and behavior. Nevertheless, transgender people have the same role and contribution as other members of society in their personal development and the advancement of Jember Regency, as guaranteed by Article 28c of the 1945 Constitution of the Republic of Indonesia. Furthermore, according to Fagus and Aurela, the impact of the annual JFC event has provided space for transgender people to get opportunities equal to those of the wider community to participate in the selection to become potential

31 Zulkhaedir Abdussamad et al., "Social Construction of Natural Environmental Management Based on Local Wisdom in the Indigenous Peoples of the Boti Tribe, NTT, Indonesia," *International Journal of Humanities, Social Sciences and Education* 9, no. 8 (2022): 29–39, <https://doi.org/10.20431/2349-0381.0908003>.

32 Abdussamad et al.

33 NN, "Pemahaman Teoritik Teori Konstruksi Sosial."

creators who are trained non-formally for JFC costume design which includes making carnival-scale costume formations, stage make-up, presenters, singers, dancers, and choreography, all free of charge for a period of approximately 3-12 months.

The winner of the JFC will be awarded a scholarship from the Esmod Jakarta Fashion School, participate in a beauty workshop from Sari Ayu Martha Tilaar, and be promoted to take part in roadshows throughout Indonesia and even international events. This treatment is a form of respect for Jember residents for the rights of transgender people to be able to develop their talents and potential so that they can contribute to advancing Jember Regency, just like any other resident.

3.3 Human Rights Perspective on the Right to Freedom of Expression for Transgender

3.3.1 General Overview of International Legal Instruments

The protection of human rights is a crucial global agenda applicable to both developed and developing countries. Protection of human rights is essentially a form of appreciation for equality and human dignity that has been bestowed by God Almighty without discrimination based on factors such as skin color, gender, ethnicity, race, and religion, as well as social status. With the principle of equality, humans have the freedom to explore all their potential to develop their human qualities.³⁴ Human rights are an important issue in the implementation of democracy in various countries. Human rights and democracy are two things that cannot be separated because the success of implementing democracy in a country cannot be separated from the success of upholding human rights.³⁵

The form of guarantees for the protection of human rights in democracies around the world has been implemented in international instruments and national instruments. The protection of human rights bestowed in international instruments is carried out through the ratification of some international conventions based on the protection of human rights, such as the ratification of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR)³⁶ as well as in several other covenants addressing human rights concerns. Meanwhile, the protection of human rights in national instruments is carried out through the creation of some laws and regulations governing human rights and also in several other legislative provisions that encompass human rights protection.

Article 1 of the UDHR states that all humans are born free and have the same rights. Specifically, in the Annual Report of the United Nations High Commissioner for Human Rights released on 17 November 2011, it is stated that “all human beings” in Article 1 of the UDHR include the respect for the dignity of all human groups without exception, including LGBT (lesbian, gay, bisexual, and transgender) groups. This is based on the concept of international human rights, which adheres to the principles of universality and non-discrimination. Therefore, LGBT people are entitled to guaranteed international human rights protection, which includes the right to life, security of privacy, freedom from arbitrary treatment, freedom from all forms of discrimination and marginalization, and the right to associate, assemble, and express their views.³⁷ The meaning of the phrase “all human”, which includes transgender people, provides an understanding that the existence of transgender people is recognized by the UDHR as part of the international community, and their basic rights must be protected and guaranteed by the state. The state must not discriminate by ignoring its responsibility to protect all its people regardless of gender, skin color, ethnicity, race, religion, gender identity, and sexual orientation. Other international instruments that establish the foundation for the protection of human rights for transgender people are contained in the ICCPR. Article 2 Paragraph 1, and Article 26 of the ICCPR emphasize the need to respect and guarantee the protection of human rights for transgender people by using the phrase “other status”. The use of the phrase “other status” in these two articles can be interpreted as a commitment that countries that ratify this Covenant are

34 Dede Rosyada, “Demokrasi Hak Asasi Manusia Dan Masyarakat Madani,” 2005.

35 Abdul Rochim, “Hak Asasi Manusia Menurut Pandangan Islam Dan UUD 1945 Pasca Amandemen (Studi Komparasi Universitas Dan Partikularitas Ham),” 2009.

36 Undang-Undang Republik Indonesia Nomor 12 Tahun 2005 tentang Pengesahan International Covenant on Civil and Political Rights (Kovenan Internasional Tentang Hak-Hak Sipil dan Politik).

37 The United Nations General Assembly, “UN Report on Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity - Human Rights Council,” no. November (2011): 1–25.

obliged to respect and guarantee the protection of human rights for all their citizens without discrimination based on ethnicity, race, religion, language, wealth, political views including gender identity.³⁸

According to Eric Heinze, a legal and humanitarian expert from the University of London, there are three approaches to understanding the reasons for prohibiting all forms of discrimination in certain legal instruments: the indicative approach, the exhaustive list approach, and the broad open-textured approach.³⁹ If we look at all the editorials listed in Article 2 Paragraph 1 and Article 26 of the ICCPR, the provisions fall into the category of the indicative approach. Firstly, the provisions of Article 2 Paragraph 1 and Article 26 mention each category which are the reasons for the prohibition of discrimination. These categories include race, color, gender, language, religion, political or another opinion, national or social origin, wealth, and birth. Secondly, Article 2 paragraph 1 and Article 26 of the ICCPR also include a clause indicating that the provisions of the article can be interpreted broadly. The use of the phrase “other status” allows to include gender identity and sexual orientation so that protection from discriminatory actions is not only given to categories that are clearly stated in Article 2 paragraph 1 and Article 26 of the ICCPR but also categories that are implicitly contained in the phrase “other status”.

This opinion was also strengthened by the Committee on Economic, Social and Cultural Rights in interpreting the phrase “other status” in Article 2 Paragraph 2 of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which states that the Covenant must be carried out with the principle of non-discrimination including the prohibition of other status differences based on sexual orientation and gender identity. This understanding is confirmed in General Comment No. 20 on Non-discrimination in economic, social, and cultural rights that the phrase “Other status” is regulated in Article 2 Paragraph 2, including sexual orientation.⁴⁰ Participating countries are obliged to ensure that differences in sexual orientation do not hinder the fulfillment of regulated human rights, such as accessing survivors’ pension rights. In addition, gender identity should not be a reason to discriminate; for example, so far, transgender harassment often results in serious human rights violations at school or the workplace.⁴¹

Understanding the phrase “other status” in Article 2 Paragraph 1 and Article 26 of the ICCPR through an indicative approach has implications for meanings that are not closed and stagnant but contain meanings that are open to interpretation. The expression “other status” becomes a living instrument whose interpretation will continue to evolve according to the needs of a particular era. This opinion is supported by the United Nations High Commissioner for Human Rights, which states that the specific basis for the prohibition of discrimination provided for in the ICCPR and other human rights treaties is not exhaustive. The drafters of the Covenant intentionally broadened the scope of the prohibition of discrimination by using the phrase “other status”, so this phrase allows criteria that are not explicitly stated in the Covenant to be accommodated, such as disability, age, and health status including gender identity and sexual orientation.⁴²

The use of the phrase “other status” in Article 2 Paragraph 1 and Article 26 of the ICCPR indicates that apart from the categories that are explicitly listed in these provisions, there are also other categories that can be implicitly included as a part that must receive human rights protection. The drafters of the ICCPR deliberately designed the Article to allow for open and flexible interpretation in order to protect other reasons not explicitly stated in the two articles, such as sexual orientation, gender identity, disability, age, or health status. This shows that the inclusion of the phrase “other status” signifies an indication that the ICCPR and other international legal instruments, which have the same provisions as Article 2 Paragraph 1 and Article 26, can still protect groups or categories that are not explicitly stated in these provisions, such as transgender groups.

Discriminatory treatment against transgender people in Jember Regency through bullying, expulsion, and exclusion is a form of restriction on transgender people as humans who have the right to get equal access to fulfill

38 CESCR, “Non-Discrimination in Economic, Social Rights (Art. 2, Para. 2 of the International Covenant on Economic, Social and Cultural Rights)” 43405 (2009): 10.

39 Eric Heinze, “Sexual Orientation: A Human Right: An Essay On International Human Rights Law,” 1995, 416.

40 CESCR, “Non-Discrimination in Economic, Social Rights (Art. 2, Para. 2 of the International Covenant on Economic, Social and Cultural Rights)” 43405 (2009): 10.

41 CESCR, “Non-Discrimination in Economic, Social Rights (Art. 2, Para. 2 of the International Covenant on Economic, Social and Cultural Rights),” 2009.

42 The United Nations General Assembly, “UN Report on Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity - Human Rights Council.”

their basic needs. Different treatment for someone who has a different gender identity and sexual orientation is unjustifiable because it is contrary to the guarantee of protection of human rights as mandated in the UDHR and the ICCPR. The meaning of the phrase “all human” in Article 1 of the UDHR and the phrase “other status” in Article 2 Paragraph 1 and Article 26 of the ICCPR, which is understood to include transgender people, also refers to the prohibition of acts of racism, sexism, and transphobia.⁴³ Transphobia is a different treatment of a person based on differences in gender identity and sexual orientation which, in essence, gender identity and sexual orientation are part of a complex human identity and cannot be chosen.⁴⁴ Discrimination and violence based on gender identity must be interpreted the same as forms of discrimination and violence based on skin color and sex so that the implementation of human rights protection for transgender people should be regarded as equal to the protection of human rights in general.

From the explanation above, it can be understood that efforts to protect transgender rights prioritize the approach to expand the interpretation of the provisions in binding and existing international legal instruments. The expansion of the meaning of already binding international instruments is seen as more realistic than having to draft a new international legal instrument on the protection of human rights for transgender people. This can be seen from the points of similarity in the provisions of the UDHR and the ICCPR, which aim to protect minority groups such as transgender people.

3.3.2 General Overview of National Legal Instruments

The form of respect and guarantee for the protection of human rights in Indonesia is stated in Article 28 of the 1945 Constitution. Article 28 letters A to J of the 1945 Constitution regulate the guarantee of human rights protection, which includes the right to life, the right to form a family, the right to access education, the right to get equal treatment in the eyes of the law, the right to freely practice one's belief and religion, the right to access information, the right to freedom and personal security, the right to avoid torture, and the right to adequate housing.

Even though exercising human rights has been protected by the provisions of Articles 28a to 28i of the 1945 Constitution, every citizen must also be subject to the restrictions stipulated in Article 28J Paragraph (2) of the 1945 Constitution, which states that every citizen who exercises human rights and freedoms must be subject to restrictions. The law guarantees human rights and other freedoms of citizens so that in exercising human rights, every citizen must consider religious values, moral ethics, security, and public order. This article signifies that the characteristics of Indonesian human rights must be based on religious values or commonly referred to as human rights that believe in God. In its implementation, it is limited by obligations that are harmonized with religious values, community moral values, considerations of security, and public order.⁴⁵ While Indonesia is not a religious state, Pancasila, with its first principle of “Ketuhanan Yang Maha Esa” (belief in the one and only God), establishes religious values as the foundation of the constitution in fostering democratic life in the nation.⁴⁶ Respect and recognition of human rights are fulfilled by the state towards transgender people in their capacity as citizens, without using them to justify deviations in behavior and sexual orientation.

Substantially the entire contents of Indonesian Human Rights Law have included provisions regarding the protection of Human Rights in the 1945 Constitution of the Republic of Indonesia. The state is obliged to respect and protect human rights as inherent and natural rights for every citizen. The form of guarantee and protection of human rights by the state is manifested through the principle of non-discrimination contained in Article 3 Paragraph (3) of Indonesian Human Rights Law, which reads, “Everyone has the right to protection of human rights and basic human freedoms, without discrimination.” When examined closely, the article does not state the reasons for the categories of discrimination as in the provisions of Article 2 Paragraph 2 or Article 6 of the ICCPR. The absence of reasons for the prohibition of discrimination implies that this principle can be interpreted

43 The United Nations General Assembly, “UN Report on Discriminatory Laws and Practices and Acts of Violence Against Individuals Based on Their Sexual Orientation and Gender Identity - Human Rights Council,” no. November (2011): 4.

44 Sam Killermann, *A Guide to Gender: H E Social Justice Advocate's Handbook, Finance*, Second Edi (Impetus Books, 2017).

45 Sipghotulloh Mujaddidi, “Konstitusionalitas Pembatasan Hak Asasi Manusia Dalam Putusan Mahkamah Konstitusi,” *Jurnal Konstitusi* 18, no. 3 (2022): 539, <https://doi.org/10.31078/jk1833>.

46 Fatimah Asyari, “LGBT Dan Hukum Positif Indonesia,” *Jurnal LEGALITAS* 2, no. 2 (2017): 57–65, <http://ejurnal.untag-smd.ac.id/index.php/LG/article/view/3385>.

as that all acts of discrimination based on any kind of discrimination are prohibited in all matters, including gender identity and sexual orientation.

However, a different perspective emerges when looking at the concept of discrimination in the provisions of Article 1 Paragraph (3) of the Human Rights Law, which states that any restriction, harassment, or marginalization that is carried out directly or indirectly based on differences in ethnicity, race, religion, class, social status, wealth, gender, language, political preferences which result in the reduction or even elimination of the recognition of the use of human rights and basic freedoms that are carried out individually or collectively in various aspects of life. The definition in the provisions of Article 1 Paragraph (3) is described in more detail by mentioning the categories of reasons for the prohibition of discrimination, which include ethnicity, group, class, ethnicity, race, religion, and other beliefs. These provisions do not provide other alternative interpretations as regulated by the ICCPR through the phrase “other status”. Consequently, the reasons for the prohibition of discrimination in the provisions of Article 1 Paragraph (3) of Indonesian Human Rights Law are limited to the scope of categories that are explicitly stated in the clauses of that article. Due to the exclusive and restrictive nature of the article, the state does not guarantee the protection of human rights for every citizen from all forms of violence and discrimination based on gender identity and sexual orientation. This interpretation of the article implies that the state has no responsibility for providing human rights protection to categories other than those expressly stated in Article 1, Paragraph (3) of the Human Rights Law so that violence and discrimination against transgender people can be justified because it is not the responsibility of the state. On the other hand, this article also reveals inconsistencies in understanding the principle of non-discrimination in Article 3, which provides protection for human rights for all people without exceptions.

In this case, after the success of the JFC event, the Jember Regency Government has not issued an official statement or policy through regional regulations that specifically recognizes and protects the rights of expression for the transgender community. But in practice, the JFC event organized by the Jember Regency government has provided an opportunity for transgender people to be able to express themselves and develop artistic talents and contribute to advancing Jember Regency just like any other residents of Jember. The JFC moment has become a bridge to fulfill human rights for transgender people to be treated on an equal basis with other residents of Jember.

4. Conclusion

First, the social construction of society towards the existence of transgender people in Jember Regency is described in three stages, namely the externalization process, which is shown through the views of the Jember people towards the existence of transgender people who regard them as males who defy nature, engage in deviant sexual behavior, and spread HIV/AIDS. In the objectivation process, the community began recognizing transgender people as someone who has a role and contribution to society through their talent, creativity, and productivity in participating in the JFC. Finally, during the internalization process, the people of Jember showed respect for the rights of transgender people to express themselves, manifested in the form of community appreciation for the achievements of transgender people at the JFC and equal treatment with society in general.

Second, the JFC has had a major impact on the recognition of the regional government and the people of Jember in providing opportunities for transgender people to be able to express their artistic soul, develop creativity and play a role as both participants and organizers of the JFC event.

Third, the government of Jember Regency has not made a specific policy in protecting the right of transgender people to express themselves and develop themselves. However, at the practical level, the government and residents of Jember have positioned the transgender community as citizens with equal rights and position to express themselves and contribute to advancing the Jember Regency.

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INTERVIEW

- "Results of Interviews with Several Transgender Participants in the Jember Fashion Carnival on 17 April 2022 at 16.10 WIB."
- "Interview Results with Fagus (Not His Real Name) as a Transgender Informant on 03 May 2022 at 13.15 WIB."
- "Interview Results with Miranda (Not His Real Name) as a Transgender Informant on 09 May 2022 at 19.00 WIB."
- "Results of an Interview with Fitri as a Resident of the Jember Regency on 11 May 2022 at 09.30 WIB."
- "Results of an Interview with Setiawan as a Resident of the Jember Regency on 13 May 2022 at 13.30 WIB."
- "Results of an Interview with Wahib as a Resident of the Jember Regency on 15 May 2022 at 11.45 WIB."

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