

## **Honouring the Religious Rights of the LGBTQ Persons: An Islamic Perspective**

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### **Abstract**

Lesbian, Gay, Bisexual, Transgender, and Queer (LGBTQ) is a term that is no longer unknown to the people of this country. Media reports about their movement keep the public informed about their developments locally and internationally. The behaviour and lifestyle of the LGBTQ persons are at odds, not only with the shari'ah, but also with local laws, culture, and practices. Nevertheless, advocates of the LGBTQ movement are striving to obtain universal rights that they claimed to be the LGBTQ persons' rights in social life. While the movement claims to protect the rights of LGBTQ persons, they have been found to deny the most fundamental right, namely religious freedom. This religious freedom allows them to undergo rehabilitation to live a dignified life. The denial of religious freedom coincides with the international movement to remove homosexuality from the International Classification of Diseases (ICD) by the World Health Organisation (WHO) in 1990.

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It also coincides with efforts to remove the term “gender disorder” from the list of mental disorders. At the national level, various initiatives are being taken by JAKIM, state religious authorities, and several non-governmental organisations to fulfil the rights of the LGBTQ persons to receive guidance through religious programmes. Nevertheless, these good efforts, in particular, *Mukhayyam* programmes, have been deliberately juxtaposed with Western conversion therapy practices. This article will focus on the importance of preserving the religious rights of LGBTQ persons and the challenges faced in implementing relevant religious programmes. This article highlights the importance of rehabilitation programmes such as *Mukhayyam* by providing a legal and ambiguous phrase of the religious rights of the LGBTQ persons. The research finds that the continuation of rehabilitation programmes such as *Mukhayyam* needs to be protected to ensure that the LGBTQ persons will get a proper platform to seek religious guidance.

### Keywords

Religious rights, LGBTQ, conversion therapy, rehabilitation, *Mukhayyam*

## Introduction

LGBTQ, which stands for lesbian, gay, bisexual, transgender, and queer, functions as an umbrella term for certain sexual orientation and gender identity. Many variants exist, including variations that change the order of the letters among which is LGBT+ to ensure openness for further inclusion of other sexual orientations and gender identities. The acronym’s more recent extensions aim to include a larger segment of the community.<sup>1</sup>

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1. Erin Blakemore, “From LGBTQ to LGBTQIA+: The evolving recognition of identity,” *National Geographic* (20th. October 2021), <https://www.nationalgeographic.com/history/article/from-lgbt-to-lgbtqia-the-evolving-recognition-of-identity> (accessed 25th March 2023).

*Honouring the Religious Rights of the LGBTQ Persons*

A “lesbian” is a woman who has a romantic or sexual orientation towards other women. Some non-binary persons may also identify with this term. “Gay” refers to a man who has a romantic and/or sexual orientation towards people of the same gender.<sup>2</sup> This term is sometimes used as a shorthand term encompassing all other sexual orientations. Meanwhile, “bisexual” refers to a person whose sexual or romantic attraction is towards people of the same sex as well as of the opposite sex.<sup>3</sup> “Transgender,” frequently abbreviated to “trans,”<sup>4</sup> refers to a person whose gender identity differs from the biological sex at birth.<sup>5</sup> There are people who identify themselves as men (trans men) or women (trans women) despite their biological features. There are also people who identify themselves as something beyond the gender binary of only males and females.<sup>6</sup> Consequently, “queer” is a term used by those wanting to reject specific labels of romantic orientation, sexual orientation, and/or gender identity. Although some LGBTQ persons opine that the word is a slur, it was reclaimed in the late 1980s by the queer persons, who have since then embraced it.<sup>7</sup> Despite the fact that the concept of sexual orientation was first articulated in international law in 1992, it took much longer for the concept of gender identity to be introduced. The introduction of the latter’s concept was made in 2007, with the release of the *Yogyakarta Principles on the Application of International Human Rights*

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2. Stonewall, List of LGBTQ+ terms, <https://www.stonewall.org.uk/help-advice/information-and-resources/faqs-and-glossary/list-lgbtq-terms> (accessed 22nd September 2022).
  3. Bisexual, <https://www.merriam-webster.com/dictionary/bisexual> (accessed 23rd September 2022).
  4. Transgender, <https://lgbtqia.ucdavis.edu/educated/glossary> (accessed 22nd August 2022).
  5. Transgender, <https://www.merriam-webster.com/dictionary/transgender> (accessed 23rd September 2022).
  6. Abbie E. Goldberg, ed., *The SAGE Encyclopedia of LGBTQ Studies* (California: SAGE Publications Inc, 2016) 1254-1255.
  7. List of LGBTQ+ terms, <https://www.stonewall.org.uk/help-advice/information-and-resources/faqs-and-glossary/list-lgbtq-terms> (accessed 28th September 2022).

*Law to Sexual Orientation and Gender Identity*.<sup>8</sup> The main objective, according to reports, was to demonstrate that sexual orientation and gender identity (SOGI) rights were not “new” rights as opponents claimed, but rather were simply the implementations of already-existing human rights concepts and principles for LGBTQ individuals.<sup>9</sup>

The principles are meant to serve as a universal guide or a set of international standards to address the alleged abuse of LGBTQ persons’ human rights. The guiding principles specify that all people, regardless of their sexual orientation or gender identity, are entitled to respect, protection, and fulfilment of their human rights. The final statement includes suggestions to states, regional intergovernmental organisations, civil societies, and the UN itself in addition to 29 principles that human rights experts unanimously approved.<sup>10</sup>

### **Advocacy and Support for LGBTQ Movement**

In order to support the rights of the LGBTQ persons around the world as basic human rights, the *Yogyakarta Principles* attempted to shift the issue of “behaviour” to the issue of “rights” of

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8. Arvind Narrain, “The Yogyakarta Principles on Sexual Orientation and Gender Identity: Six Conceptual Advances enabled by the Principles,” <http://arc-international.net/research-and-publications/new-arc-reports/the-yogyakarta-principles-on-sexual-orientation-and-gender-identity-six-conceptual-advances-enabled-by-the-principles/> (accessed 28th September 2022)
  9. Rafidah Hanim Mokhtar, “Issues of Morality in the Application of Human Rights,” paper presented at Seminar on Universalism vs Relativism in the Context of Monitoring Human Rights in Malaysia, at Senate Hall, International Islamic University Malaysia (IIUM), 22nd March 2023, organised by Malaysian Alliance of Civil Society Organisations in the UPR Process (MACSA), Ahmad Ibrahim Kulliyah of Laws (AIKOL), Human Rights Commission of Malaysia (SUHAKAM) & UID - Sejahtera Malaysia.
  10. Wan Roslili Abd. Majid, “Rights Demanded by LGBT: A Preliminary Refutation,” *TAFHIM: IKIM Journal of Islam and the Contemporary World* 8 (2015), 39–40.

*Honouring the Religious Rights of the LGBTQ Persons*

marginalised, misunderstood, and threatened minorities.<sup>11</sup> This is done to influence public policy and community acceptance. This shift was adopted by Human Rights Watch, an international non-governmental organisation that conducts research and advocacy on human rights that insisted the first action to be taken after the announcement of *Yogyakarta Principles* on 27th October 2007, was the decriminalisation of homosexuality in the 77 nations that still have laws against same-sex relationships and the repeal of the death penalty in nations that still do. Other than that, human rights and LGBTQ organisations adopt the tenets, and discussions have appeared in scholarly papers and textbooks as well as in the homosexual press.<sup>12</sup>

Another form of support came from the World Health Organisation when it stopped classifying homosexuality as a mental disorder on May 17th, 1990. At the time, the classification was changed in the *International Statistical Classification of Diseases and Related Health Problems* (ICD). A new edition of the ICD, known as ICD-11, had made changes to reflect a modern understanding of sexual health and gender identity. This is done by reframing “transsexualism” with a new concept of “gender incongruence,” which means a condition relating to sexual health rather than a mental or behavioural disorder.<sup>13</sup>

This move was taken by the WHO to advocate that being LGBTQ is completely compatible with a normal and healthy life. In addition, same-sexual and romantic attractions, feelings, and behaviours are considered sound, i.e. perfectly acceptable variations of human sexuality and no longer considered a deviance. In other words, LGBTQ persons should never be

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11. Mohd Izwan Md Yusof, “Perspektif Komuniti Lesbian, Gay, dan Transgender Muslim terhadap Perlakuan Homoseksual dan Konsep Perkahwinan dalam al-Our’an,” (Doctoral dissertation, Universiti Kebangsaan Malaysia, 2016) 69.

12. Wan Roslili, “Rights Demanded by LGBT” 40.

13. World Health Organisation, “Moving one step closer to better health and rights for transgender people,” <https://www.who.int/europe/news/item/17-05-2019-moving-one-step-closer-to-better-health-and-rights-for-transgender-people> (accessed 23rd September 2022)

given any treatment or intervention as their sexual preference is considered a natural phenomenon. In light of this, any kind of treatment and rehabilitation for LGBTQ persons would be heavily criticised, no matter what approach is taken. Unfortunately, human rights defenders consider all forms of rehabilitation programmes, including those based on religious and spiritual education, as part of conversion therapy practices. These programmes have even been suggested as forms of torture that are likely to have harmful effects.<sup>14</sup>

Conversion therapy is defined as a set of practices that aims to change an individual's sexual orientation or gender identity. The premise is based on the belief that there is one socially acceptable SOGI and that an individual's SOGI can be altered, repaired or cured, and that doing so is a desirable outcome for the individual, family, or community. Sexual orientation change effort (SOCE), reparative therapy, reintegrative therapy, reorientation therapy, ex-gay therapy, and gay cure are other terms used to describe<sup>15</sup> a wide-ranging set of practices that are used separately or together in conversion attempts. They include talk therapy or psychotherapy, encompassing group therapy, medication, eye movement desensitization and reprocessing, electroshock or electroconvulsive therapy (ECT), aversive treatments, exorcism, forced nudity in front of others, behavioural conditioning, hypnosis, beatings, and other violence including rape, etc.<sup>16</sup>

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14. Asia Pacific Transgender Network, "Conversion Therapy Practices in Malaysia," <https://www.aidsdatahub.org/sites/default/files/resource/conversion-therapy-2020-malaysia-country-snapshot.pdf> (accessed 20th September, 2022).
  15. Independent Forensic Expert Group, Statement on Conversion Therapy, [https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/IESOGI/CSOsAJ/IFEG\\_Statement\\_on\\_C.T.\\_for\\_publication.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/SexualOrientation/IESOGI/CSOsAJ/IFEG_Statement_on_C.T._for_publication.pdf) (accessed 24th September 2022).
  16. International Rehabilitation Council for Torture Victims, "It's Torture Not Therapy – A Global Overview of Conversion Therapy:Practices, Perpetrators, and the Role of States," (accessed 24th September 2022).

## Previous Studies on Religious Rights of LGBTQ Persons

Nur Syuhada Mohd Subri, in her dissertation titled “*Pendekatan Pemulihan terhadap Golongan Transgender menurut Fiqh al-Hadith: Kajian terhadap Program Pemulihan oleh Jabatan Kemajuan Islam (JAKIM)*,” asserted the role of JAKIM to deal with gender dysphoria issues by organising a programme in the form of *da'wah*. The *Mukhayyam* programme<sup>17</sup> is very important to instil awareness among transgender persons to return to their socially structured disposition or *fitrah*. Meanwhile, advanced classes are programmes based on the request of the transgender persons. In approaching this community through the organisation of the above-mentioned programmes, the spiritual, self-identity, and condition, as well as the physical and mental aspects, are given an important focus. The three basic concepts set by JAKIM in organising the programme are first, relaxed and open without any element of violence, second, conducted based on a certain set of instructions and regulations and third, providing guidance and advice without judgement. According to the author, this approach is in line with the current context according to the perspective of the *Sunna* in dealing with the *mukhannathah* group as shown by the Prophet SAW.<sup>18</sup>

The *Mukhayyam* programme apparently had a positive impact on the development of transgender persons in Malaysia. This is especially with the success of transgender persons who managed to make the transformation (*hijrah*) and become the icons of the transition community. There is also the establishment of the Hijrah Community civil society organisations (CSO) that

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17. A three-day rehabilitation camp in May 2011 involving the *Mak Nyah* group which was organised by Bahagian (Pembangunan) Keluarga, Sosial, dan Komuniti (KSK), JAKIM.

18. Nur Syuhada Mohd Subri, “*Pendekatan Pemulihan terhadap Golongan Transgender menurut Fiqh al-Hadith: Kajian terhadap Program Pemulihan oleh Jabatan Kemajuan Islam Malaysia (JAKIM)*”, (Doctoral dissertation, Universiti Malaya, 2021).

were formed based on their awareness in their effort to return to their disposition (*fitrah*). The author also insisted that the identified technical problems need to be taken into consideration to ensure the continuity of a more holistic programme.<sup>19</sup> The study conducted by this author focuses more on the rehabilitation approach to transgender people according to *Fiqh al-Hadīth*.

In their article, “*Psycho-social and Spiritual Backgrounds, Experiences and Needs as a Transsexual: A Qualitative Study within Persatuan Insaf Pahang*,” Draman S and others highlighted the fact that the transsexual community continues to face widespread misunderstandings and discrimination from society. They had to face internal conflicts due to their transsexuality since childhood, and as they grew older, they also encountered exterior struggles with education, peers, employment, and religious guidance. The authors also emphasized that transsexuals should adapt to Malaysian norms, notably in terms of dress code, in order to be accepted in public, in addition to educating the larger Malaysian society to understand and tolerate those struggling with transsexualism to prevent discrimination. To meet the unique needs of transsexuals in our nation, committed efforts are still needed to train experts in the domains of education, medicine, and religion.<sup>20</sup>

The findings of the study showed that religious guidance and spiritual support by dedicated religious professionals who have received training in understanding the needs of transsexuals are essential in helping them towards attaining a better quality of life. The authors also emphasised that when providing counselling to transsexuals, it could be beneficial to incorporate spirituality to reduce their emotional stress. Besides, teaching them prayers and Quran recitations could empower them to individually practise their religion just like everyone else in the Malaysian society,

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19. Ibid., 166–167.

20. Samsul Draman et al., “Psycho-social and Spiritual Backgrounds, Experiences, and Needs as a Transsexual: A Qualitative Study within Persatuan Insaf Pahang,” *International Medical Journal Malaysia* 15, no. 2 (Dec 2016): 27–36.



*Honouring the Religious Rights of the LGBTQ Persons*

where the bulk of the population are devout Muslims. Religious authorities can also help by setting up appropriate locations for transsexuals to congregate frequently, such as mosques and halls, and by planning more events so that they can spend more time in settings that promote healthy values. The transsexuals would become more integrated into the Muslim community in this way and would not feel excluded or uncared for by society as a whole.<sup>21</sup> This study clearly focuses on the psychosocial as well as spiritual background and explores the perceptions and needs of male-to-female transsexuals in the context of *Persatuan Insaf Pahang*.

Meanwhile, another study emphasized that the spiritual element is the core and foundation that must be applied in LGBT persons rehabilitation programmes. The researchers highlighted efforts carried out by various parties such as JAKIM, state Islamic religious departments, and councils such as MAIS, CSOs, and professionals to deal with LGBTQ rehabilitation issues. Besides, there are also organisations established by LGBTQ individuals who have changed their sexual orientation or gender identity to help the LGBTQ persons to adhere to the Islamic way of life. The informants who managed to change their sexual orientation or gender identity and were involved in the interviews verified that spiritual education is an important element and serves as a basis for rehabilitation programmes for the community. This is important to help those who managed to change their sexual orientation or gender identity to live their life according to Islamic teachings.<sup>22</sup>

Performing prayers as well as a complete understanding of prayers are the core to helping them to make a change and to ensure that the intention of doing so is because of Allah. In

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21. *Ibid.*, 34.

22. Noor Hafizah Mohd Haridi, Norsaleha Mohd Salleh dan Khairul Hamimah Mohammad Jodi, "Kepentingan Pendekatan Kerohanian terhadap Pemulihan Lesbian, Gay, Biseksual dan Transgender (LGBT) di Malaysia," *Pembangunan Penyelidikan dalam Pendidikan dan Sains Sosial: Idea dan Analisis* (Tanjung Malim: Kaizentrenovation Sdn Bhd., 2021), 113–121.

addition, the practice of *dhikr* and *qiyām al-layl*, or performing prayers during the night, is recognised as being able to re-nourish the soul to return to its disposition. The informants also asserted that the programmes implemented are part of the efforts to approach them wisely and could eliminate stigma against the community. These are important to ensure that they will not return to the previous way of life by adopting a deviant culture, re-engaging in prostitution activities, and living a life that contradicts Islamic teachings. These acknowledgements were given by the informants who have made the change and are committed to stand firm and steadfast to what has been commanded by Allah while helping the efforts to bring the LGBTQ persons who are or those who still practice a deviant lifestyle to return to their disposition.<sup>23</sup> This study also showed that special focus is placed on the importance of educational and spiritual programmes in the rehabilitation of the LGBTQ persons. Therefore, this article focuses on the challenges that are faced in the continued efforts to guide and rehabilitate the LGBTQ persons as part of respecting their religious rights.

### **The Development and Status of LGBTQ in Malaysia**

LGBTQ is an important issue and a global social phenomenon including in Malaysia. Some have described it as an outcome of the concept of human rights, as well as the right to practise and live one's sexual preference even if they are considered deviant by the society and their religion or belief. In the age of new media, LGBTQ culture and lifestyle have spread worldwide. Twitter, for example, was once instrumental in spreading LGBTQ culture and movements.<sup>24</sup> Although there is no census of the LGBTQ persons in Malaysia,<sup>25</sup> there are several indicators that can be

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23. Ibid., 119.

24. Muhammad Faiz Mokhtar, Wan Alief Elfi Danial Wan Sukeri & Zulkifli Abd Latiff, 'Social Media Roles in Spreading LGBT Movements in Malaysia,' *Asian Journal of Media and Communication* 3, no.2 (October 2019):77–82.

25. Mohd Izwan Md Yusof, *Menelusuri Fitrah Insani*, (Putrajaya: Jabatan Kemajuan Islam Malaysia, 2021), 38.

*Honouring the Religious Rights of the LGBTQ Persons*

used to describe the group and its movement. According to Dr. Hatta Sidi, up to 20 old and new cases of LGBTQ persons are recognised each year. Based on statistics from the Ministry of Health of Malaysia, the gay and lesbian persons is estimated to be about 173,000 people in Malaysia, or 2% of the total population.<sup>26</sup> Research conducted by Yik in 2011 found that 65% of *Mak Nyah* work as prostitutes, 25% as entertainers in clubs, boutiques, beauty and hair salons, 8% work for private companies, and 2% are traders of food stalls. Meanwhile, a study by Lim showed that the number of *Mak Nyah* involved in sex work is actually double what is reported.<sup>27</sup>

In the 1990s, the term “LGBTQ” became widely used in the United States. This movement aims to obtain recognition and strengthen the so-called human rights protection of the LGBTQ persons. This community is considered a minority group in society as it is contrary to socially structured sexual orientation. Nevertheless, this group actively demands certain rights in social life. In fact, advocates of this community and movement consist of individuals who are recognised as human rights defenders and are granted awards.<sup>28</sup> LGBTQ networks have also emerged in Malaysia, and they continue to expand in community life through the formation of CSOs that actively advocate for LGBTQ rights. Though the community’s way of life and demands are contrary to Islamic principles and the norms of the local community, LGBTQ activities continue to grow in society today.<sup>29</sup>

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26. Saiful Azhar Saadon & Mohd Izwan Md Yusof, “Program Intervensi Kerohanian oleh Jabatan Kemajuan Islam Malaysia (JAKIM) Terhadap Golongan Lesbian, Gay, Biseksual, dan Transgender (LGBT) di Malaysia,” *Innovation in Humanities and Social Sciences: Opportunities and Challenges* (Kuala Lumpur: Universiti Pertahanan Nasional Malaysia, 2016), 2.

27. Mohd Izwan, *Menelusuri Fitrah Insani*, 39.

28. Noor Hafizah Haridi, Kamal Azmi Abd. Rahman & Rosni Wazir, “Metodologi Dakwah terhadap Golongan Lesbian, Gay, Biseksual dan Transgender (LGBT),” *Jurnal Pengajian Islam II*, no.9 (2016): 103–119.

29. *Ibid.*, 103.

Accordingly, an information network that supports the civil rights of this community, called the Gerakan Homoseksual (GH—Homosexual Movement) was formed. Within this coalition are Seksualiti Merdeka, Pink Triangle Foundation, Good As You Malaysia, A Malaysian LGBT Community Project, LPG Malaysia, and Men After Work.<sup>30</sup> In terms of reports, Human Rights Watch, an international organisation for example, published a survey titled I am Scared to Be a Woman in September 2014 to address the persecution faced by transgender persons in Malaysia. Recently, in August 2022, the organisation published a report entitled I Don't Want to Change Myself to urge the Malaysian government to immediately stop rehabilitation programmes for LGBTQ persons.<sup>31</sup> Meanwhile, there were also programmes, such as Seksualiti Merdeka,<sup>32</sup> held to support the LGBTQ movement in this country.<sup>33</sup> However, this programme was strongly opposed by the community and became a heated debate in the mass media. This, in turn, prompted the National Fatwa Council to issue a fatwa banning the programme, besides recommendations by members of Parliament that all activities related to LGBT need to be curbed through law enforcement.<sup>34</sup>

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30. Mohd Izwan, *Menelusuri Fitrah Insani*, 41.

31. The report was published based on the research conducted by Human Rights Watch and Justice for Sisters between March 2018 and July 2021. The report incorrectly claimed that *mukhayyam* camps include sexual orientation and gender identity change efforts also known as conversion practices. The Malaysian government has been urged to stop “funding conversion practices” and repeal laws that discriminate on the basis of sexual orientation and gender identity. In this context, it is said that the rehabilitation and “punishment” of LGBTQ persons should be replaced by a government commitment to acceptance, inclusion, and non-discrimination.

32. This festival was held for the first time in August 2008 in conjunction with Merdeka celebration. Its aim was to address the fact that 51 years after independence, not all Malaysians are free to be who they wish to be. < [https://en.wikipedia.org/wiki/Seksualiti\\_Merdeka](https://en.wikipedia.org/wiki/Seksualiti_Merdeka) > (accessed 24th September 2022).

33. Wan Roslili, “Rights Demanded by LGBT,” 46–47.

34. Mohd Izwan, *Menelusuri Fitrah Insani*, 95.

*Honouring the Religious Rights of the LGBTQ Persons*

In addition, there are several other programmes mapped out by the movement to be organised, such as Pride Not Prejudice on June 6–8, 2017, but were later cancelled. This cancellation, however, was followed by other programmes.<sup>35</sup> From a legal perspective, the case of the State Government of Negeri Sembilan & Ors. v. Muhammad Juzaili Mohd Khamis & Ors<sup>36</sup> became a landmark for human rights struggles developed by universal human rights defenders. The case involved an application by a Muslim transgender man to defend his rights as a transgender by challenging the legality and constitutionality of Section 66 of the Syariah Criminal (Negeri Sembilan) Enactment 1992.<sup>37</sup> In February 2021, the Federal Court unanimously declared that a Selangor state law’s provision which made unnatural sex a Sharia offence<sup>38</sup> is invalid and is *ultra vires* to the Federal Constitution.<sup>39</sup> This decision was welcomed by human rights

35. *Big Gay Iftar mempermainkan hukum Allah*, <http://www.sinarharian.com.my/nasional/big-gay-iftar-mempermainkan-hukum-allah-1.689436>, White Party BKK Warm Up, An Upcoming Event For Gays in KL <<https://thecoverage.my/lifestyle/white-party-bkk-warm-upcoming-event-gays-kl/>>. However it has been prevented from being organised, KDN tidak benarkan penganjuran White Party <<http://m.utusan.com.my/berita/nasional/kdn-tidak-benarkan-penganjuran-white-party-1.529434>> (accessed 19th April 2021).

36. [2015] 8 CLJ 975.

37. Wan Roslili, “*Rights Demanded by LGBT*” 49.

38. In 2019, under Section 28 of Selangor’s Sharia criminal enactment, a Selangor court had convicted five men of attempted sexual intercourse against the order of nature. The court sentenced each of the men to six to seven months in prison, fines and six strokes of the cane. The presiding judge stated that the punishment was intended to rehabilitate the accused men. One of those convicted, I.K., filed an application with the Federal Court seeking to have Section 28 declared invalid on the grounds that the state legislature lacked the power to enact laws to punish acts that were already criminalised under federal law. The court ruled in favour of I.K. and nullified the Selangor state law, “*I Don’t Want to Change Myself*,” *Human Rights*, <https://www.hrw.org/report/2022/08/10/i-dont-want-change-myself/anti-lgbt-conversion-practices-discrimination-and>, 1–2, (accessed 28th. September 2022).

39. *Iki Putra Mubarrak v. Kerajaan Selangor* [2020] 4 MLRA 1.

defenders and hailed as a significant victory for LGBTQ persons.<sup>40</sup> They even hope that the decision will lead to the repeal of other “discriminatory” laws in the future.<sup>41</sup> Subsequently, the case involving Muhammad Sajjad Kamaruz Zaman, or Sajjat, a cosmetics entrepreneur, has also caused controversy and increased international pressure on Malaysia to fully recognised the identity rights of transgender communities.<sup>42</sup>

A union of liberal NGOs using the COMANGO label (Coalition of Malaysian NGOs in the UPR Process) and supporting LGBTQ movements and rights is also leveraging on the Universal Periodic Review (UPR) mechanism of the Human Rights Council, United Nations (UN) to interpret freedom that violates certain boundaries determined by Islam. Accordingly, they insist on the repeal of several sections in the Penal Code, and the State Sharia Enactments,<sup>43</sup> in addition to other demands that conflict with the Federal Constitution and

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40. Ida Lim, “Federal Court Unanimously Declares Shariah Law Criminalising Unnatural Sex’ Void, Unconstitutional,” *Malay Mail* (25 February 2021), <https://www.malaymail.com/news/malaysia/2021/02/25/federal-court-unanimously-declares-selangor-shariah-law-criminalising-unnat/1952701> (accessed 28th September 2022).
41. Amnesty International, “Landmark Decision on Section 28 Welcome and Must Lead to Repeal of Other discriminatory Laws,” <https://www.amnesty.my/2021/02/25/landmark-decision-on-section-28-welcome-and-must-lead-to-repeal-of-other-discriminatory-laws/> (accessed 28th September 2022).
42. Muhammad Sajjad failed to appear in Shah Alam Sharia High Court to attend proceedings over a charge of dressing as a woman. Selangor religious department issued a warrant for his arrest. Months later, when Muhammad Sajjad resurfaced in neighbouring Thailand, Malaysia sought for her extradition. Thailand allowed him to stay in the country under the protection of the United Nations High Commissioner for Refugees, and eventually to settle in Australia. Kate Dennet, “Transgender beauty entrepreneur fights extradition from Thailand to Malaysia on charges of insulting Islam by wearing a dress,” *Mail Online* (28th. September 2021), <https://www.dailymail.co.uk/news/article-10038563/Transgender-beauty-entrepreneur-fights-extradition-Thailand-Malaysia.html> (accessed 14th April 2023).
43. Comango-Report-11Mar2013-FINAL-+-Annexure.pdf><http://www.awam.org.my/web/wp-content/uploads/2012/11/> (accessed 27th September 2022).

*Honouring the Religious Rights of the LGBTQ Persons*

domestic laws.<sup>44</sup> In its Mid-Term Report on Malaysia's 3rd Cycle in the UPR Process (2021), COMANGO, among others, put forward recommendations to end public and state-funded rehabilitation and conversion programmes that are tantamount to "torture," and enact legislation to criminalise and outlaw the organising and implementation of rehabilitation and conversion therapies. The report also recommended the abolition of all laws criminalising LGBTQ persons and ensuring that the fundamental rights to expression, assembly, and association for LGBTQ persons are provided for, in line with the Federal Constitution of Malaysia. The Federal Government has also been urged to work with the respective state governments to ensure that state-level Sharia legislation is in line with the fundamental liberties provided for under the Federal Constitution.<sup>45</sup>

Besides the strong support given to GH or LGBTQ in Malaysia, there are also preventive measures as well as objections from various aspects. These courses of action are aimed at defending the sovereignty of religion and the purity of Islamic teachings as well as Eastern cultures. From a fatwa point of view, the 25th *National Fatwa Muzakarah* (Fatwa Committee Council) on 13th December 1989 affirmed the Shari'a prohibition against medical gender reassignment from male to female or vice versa. The ruling also stated that the necessity of surgery is only for those born as "*khunsā mushkil*" (hermaphrodites) or with both male and female sex organs to retain the most functional sex organ. In addition, an exception is also provided to gender reassignment in cases of gender confusion, such as congenital adrenal hyperplasia and testicular feminisation syndrome, which are also included in the category of *khunsā mushkil*. The *Muzakarah*

44. Azril Mohd. Amin, "Tuntutan Hak Asasi Jangan Korbankan Islam," *Berita Harian* (9th. October 2017), <https://www.bharian.com.my/rencana/muka10/2017/10/335067/tuntutan-hak-asasi-jangan-korbankan-islam> (accessed 7th May 2022).

45. COMANGO, Civil Society Mid-term Report on Malaysia's 3rd Cycle in the UPR Process, COMANGO\_Malaysia%20midterm%20report%202021%20(3).pdf, 69 (accessed 20th September 2022).

also concluded that transgender marriages are considered illegal and invalid because the spouse remains biologically male or female, which in fact, is a homosexual relationship.

From a legal point of view, be it Sharia or civil, the LGBTQ lifestyle is considered an offence. For example, Sharia Criminal Offences (Federal Territories) Act 1997 (Act 559) lists down offences related to public morality, namely sexual intercourse out of wedlock, an act preparatory to sexual intercourse out of wedlock, *liwāt* (sodomy), *musāḥaqah* (lesbianism), a male person posing as a woman and indecent acts in a public place.<sup>46</sup> As for civil legislation, Sections 377A, 377B, and 377C of the Penal Code provide the types of offences and punishments for unnatural sexual conduct.

### **The Concept of *al-Dīn* and Religious Rights of LGBTQ Persons**

In discussing the religious rights of LGBTQ persons, it is appropriate to appreciate the meaning of religion (*al-dīn*) itself as explained by Professor Syed Muhammad Naquib al-Attas. This is important because having a clear understanding of this matter allows each person to understand his position as a servant of God, the responsibilities he shoulders, the meaning of life in this world, and the afterlife. *Al-dīn* as concluded by al-Attas, comprises four connotations, namely indebtedness, submissiveness, judicious power, and natural inclination. In the opinion of al-Attas, existence is the greatest gift that man receives. The concept of indebtedness in the religious and spiritual context implies that man is indebted to God, his Creator, and Provider, for bringing him into existence and maintaining him.<sup>47</sup> At the

46. [http://www2.esvariah.gov.my/esvariah/mal/portalv1/enakmen2011/Eng\\_act\\_lib.nsf/858a0729306dc2474825765100e16c5/bced11b697691518c8256826002aaa20?OpenDocument](http://www2.esvariah.gov.my/esvariah/mal/portalv1/enakmen2011/Eng_act_lib.nsf/858a0729306dc2474825765100e16c5/bced11b697691518c8256826002aaa20?OpenDocument) (accessed 20th September 2022).

47. Syed Muhammad Naquib Al-Attas, *Islam and Secularism* (Kuala Lumpur: IBFIM, 2014) 55.



*Honouring the Religious Rights of the LGBTQ Persons*

moment of creation and existence, man is already in a state of total loss.<sup>48</sup> To “repay his debt” he humbles himself before his Lord and places himself in service to Him. Thus, the rightly guided man consciously enslaves himself for the sake of Allah to fulfil His commands and prohibitions.<sup>49</sup>

Because of this sense of indebtedness, a rightly guided man submits himself to God. Moreover, he remembers the covenant with God<sup>50</sup> and acts accordingly. He does this in order to live his worship, piety, life and death for God’s sake alone. Consequently, submission is voluntary and conscious, and does not mean the loss of “freedom,” for freedom<sup>51</sup> is indeed the ability to fulfil one’s true natural demands.<sup>52</sup> Religion is the embodiment of the absolute power of God. As the Supreme Judge (*al-Dayyān*), God is the one who pronounces the judgment. When God is called the King and everything else is called the Kingdom, it becomes clear that man is His slave (*mamlūk*).<sup>53</sup> The last connotation refers to the natural inclination of human nature to be God’s *‘ābid*. In the religious context, thus, *‘ābid* refers to a person who humbles himself in service to God when he realizes that he is indebted absolutely to Him. When a person serves God in this way, he fulfils the purpose for which he was created. When man fulfils the purpose of his creation and existence, it becomes normal for him to serve God due to his natural inclination.<sup>54</sup>

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48. Ibid., 56.

49. Ibid., 59.

50. When God said in *Surah Al-A‘rāf* (7): 172, “Am I not your Lord”, and man’s true self testifying for itself answered, “Yea, verily. We testify.”

51. “When the man has, by means of worship (*‘ibādah*) succeeded in curbing his animal and carnal passion and has thereby rendered submissive his animal soul, making it subject to rational soul, the man thus described has attained the freedom in the sense that he has achieved supreme peace and his soul is pacified, being set at liberty, as it were, free from the fetters of inexorable fate and the noisy strife and hell of human vices. His rational soul in this spiritual station is called in the Holy Qur’an the ‘pacified’ or ‘tranquil’ soul: *al-naḥs al-muṭma‘innah*” as mentioned in *Surah Al-Fajr* (89):27–30. Al-Attas, *Islam and Secularism*, 70.

52. Ibid., 62.

53. Ibid., 60.

54. Ibid., 61.

In light of this worldview, a man may not act according to his own whims and fancies, based simply on will and arbitrary lust. Similarly, the worldview based on *al-dīn* rejects any claims in the name of fundamental rights or freedom that contradict religious teaching. This is based on the belief that humans are servants of Allah, the Exalted, and that they have a duty to obey His commandments and stay away from His prohibitions, as stated in the Qur'an.<sup>55</sup> According to this, Allah decides what is good (*ma'rūf*) and what is bad (*munkar*), and not by human reasoning. "Indeed, what is absolutely good is what is considered good by the shari'ah, while what is bad or abominable is what is considered bad or abominable by the shari'ah."<sup>56</sup> The Mu'tazilah, on the other hand, held that what is good or bad is determined by the human mind alone. That is, if the mind says that something is good, then it must be followed. However, if the opposite is said, then it is forbidden to follow it or to obey definitively on the basis of shari'ah. Shari'ah only serves to strengthen the laws that are intellectually understood based on the understanding of Allah's rules.<sup>57</sup>

The position of *al-dīn* can be seen in the importance placed on it in Malaysia. Throughout the history of Islam in the country, historical records show that Islam is an important part of the country's identity<sup>58</sup> as it has never left this land, and has even gained recognition and acceptance. Islam has rooted and flourished in the Malays' homeland to the present day.<sup>59</sup> As a result, religion is an important fundamental aspect

55. In *Surah al-Nūr* (24):52, it says: "He who obeyeth Allah and His messenger, and feareth Allah and keepeth duty (unto Him); such indeed are the victorious."

56. Muḥammad ibn Aḥmad ibn Abī Sahl al-Sarakhsī, *Uṣūl al-Sarakhsī* (Beirut: Dar al-Ma'rīfah, n.d.), 65.

57. 'Adil al-Shuwaykh, *Ta'īl al-Aḥkām* (Egypt: Dar al-Bashir li al-Thaqafah wa al-'Ulum, 2002), 27; Wahbah al-Zuhaylī, *Uṣūl al-Fiqh al-Islāmī*, 2nd edition, vol. 1 (Damascus: Dar al-Fikr, 2001), 119.

58. For further reading, please refer to Syed Muhammad Naquib Al-Attas, *Islam dalam Sejarah dan Kebudayaan Melayu* (Petaling Jaya: ABIM, 1990).

59. Shamrahayu A. Aziz, *Islam dalam Perlembagaan Persekutuan* (Kuala Lumpur: IKIM, 2018), 5.

*Honouring the Religious Rights of the LGBTQ Persons*

that makes up the identity of the country. Therefore, domestic legislation highly considers matters pertaining to religion; be it through federal statutes honouring religious perspectives in the application of legal provisions or through various state enactments which codify the shari'ah position prevailing in each state. In essence, the Federal Constitution pays due attention to the position of religion and religion-related matters, especially religious freedom which is enshrined under Article 11 of the document.<sup>60</sup> The right to profess and practise one's religion or belief is in line with the international standard of human rights as envisioned under Article 18 of the Universal Declaration of Human Rights. In this case, observation of religious rights requires every citizen to exercise their respective religious rights and duties to practise religion before the government fulfils its duty to assist in such matters through enforcement.

In relation to the religious rights of LGBTQ persons, it also encompasses their spiritual<sup>61</sup> needs and rights to undergo treatment and rehabilitation. Saiful Azhar and Mohd Izwan summarize the category of LGBTQ persons into three groups. The first category is the people who have changed their sexual orientation or gender identity and need support from family and society. Secondly, there are people who are still struggling to fight against same-sex attraction. In relation to this, the community needs to provide guidance and support without condemnation. The final category is those who believe that the desire for same-

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60. Idem, "Fahami Perkataan Agama dalam Perlembagaan", *Berita Harian* (21st. December 2017), <https://www.bharian.com.my/rencana/muka10/2017/12/365970/fahami-perkataan-agama-dalam-perlembagaan> (accessed 20th August 2022).

61. The LGBTQ persons stated that they experience discrimination from a religious point of view by certain groups in society. The spiritual needs of this group which are a form of their religious right are often denied. Issues of sexual orientation and gender identity need to be dealt with according to religious guidance, "Religious Rights of LGBT people Need to be Respected," submission for Malaysia's United Nations Human Rights Council's Universal Periodic Review 2018, *I Medik*, 2, ReligiousRightsofLGBTpeopleneedtoberespected.%20(1).pdf (accessed 26th September 2022).

sex relationships is predestined by Allah SWT. When dealing with those individuals, it is best to use wisdom and rational argumentation to convince them otherwise.<sup>62</sup> At present, the governmental approach to dealing with issues regarding LGBTQ persons, particularly transgenders, is accomplished via law enforcements and outreach activities, in which the enforcements will only be executed based on complaints. In this regard, the State Religious Departments carry out the duty of enforcement.

### **Psychotherapy as the Best Approach**

The outreach activities, on the other hand, are executed by JAKIM<sup>63</sup> and various CSOs such as Yayasan Ihtimam, Pertubuhan Amal Firdausi (PAFI), Persatuan Insaf Pahang, Persatuan Hijrah Republique, to name a few. In this sense, this initiatives deserve full praise and support from all walks of life. Hatta Sidi stated that there is no specific treatment for individuals suffering from sexual orientation disorders (lesbian, gay, or bisexual) or gender identity disorders (transgender).

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62. Saiful Azhar Saadon & Mohd Izwan Md Yusof, “Elemen Psikospiritual Islam dalam Video Pendek ‘LGBT: Apa yang Anda Perlu Tahu?’ Jabatan Kemajuan Islam Malaysia (JAKIM) Publication,” *Jurnal Pengajian Islam*, 2017, 10, II, 217–218.

63. As the central agency involved in planning the management of Islamic affairs and the development of the *Ummah*, JAKIM’s duties among others include (1) determining the development and progress of Islamic affairs in this country; (2) laying the foundations for the development of Islamic affairs in this country and safeguarding the purity of faith and Islamic teachings; (3) assisting the enactment and standardisation of necessary laws and regulations, and from time to time to evaluate and coordinate the implementation of existing laws and administrative regulations to address the problems faced by the Muslims; (4) implementing programmes for community development and the promotion of Islam in the national management and; (5) coordinating the law enforcement mechanism and administrative regulations for Islamic affairs throughout the country, “JAKIM’s Function,” <https://www.islam.gov.my/en/corporate-info/jakim-s-function> (accessed 27th March 2023).

*Honouring the Religious Rights of the LGBTQ Persons*

Nevertheless, the treatment of homosexuals<sup>64</sup> is considered necessary in a country like Malaysia, despite objections from certain parties.<sup>65</sup> However, the situation is the reverse in the West, as LGBTQ persons are considered natural, have equal rights and need no interventions.<sup>66</sup> He later proposed three forms of treatment for the LGBTQ persons, namely utilising counselling, psychospiritual, and medical approaches. This proposal, according to Saiful Azhar and Mohd Izwan, should be considered in the context of Malaysian society without overlooking two important elements, namely the position of Islam as the Federal religion and Eastern culture as its social structure. In this regard, the research concentrates on the psychospiritual approach, specifically for Muslim individuals who are involved in homosexuality as a prevention measure.<sup>67</sup>

The expression of Islamic psychotherapy connotes the treatment of mental, spiritual, moral, and physical ailments in

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64. Professor of Psychiatry, Dr. Robert Spitzer, Columbia University who was instrumental in removing homosexuality from the list of mental disorders of the American Psychiatric Association (APA) in 1973, wrote a study titled *Archives of Sexual Behavior* published in October 2003. He affirmed the position that a person can change sexual orientation from homosexual to heterosexual. Spitzer interviewed more than 200 people, most of whom claimed that through reparative therapy counselling, their same-sex desire was either significantly eliminated or they were able to make a change to a heterosexual orientation. Although still a supporter of homosexual activism, Spitzer was harshly and mercilessly attacked by his former admirers for violating the ideology that humans are born gay and cannot change. The condition cannot be changed, fixed, or permanent is the basic pillar of the claim to “gay rights” and “gay marriage”. Robert Knight, *Born or Bred? Science Does Not Support the Claim that Homosexuality is Genetic* < <https://concernedwomen.org/images/content/bornorbred.pdf> > (accessed 29th September 2022).
65. “Learn about us first, transgender activist tells Terengganu over proposed rehab course,” *Malay Mail* (29 December 2017), <https://www.malaymail.com/s/1542445/learn-about-us-first-transgender-activist-tells-terengganu-over-proposed-re> (accessed 22nd September 2022).
66. *All We Want is Equality – Religious Exemptions and Discrimination against LGBT People in the United States*, *Human Rights Watch*, <https://www.hrw.org/report/2018/02/19/all-we-want-equality/religious-exemptions-and-discrimination-against-lgbt-people> (accessed 26th September 2022).
67. Saiful Azhar & Mohd Izwan, “Elemen Psikospiritual Islam,” 218.

accordance with the methods prescribed in Islam that originated from the Qur'an, the *Sunna*, the guidance of scholars, and Islamic knowledge. These methods aim to build a harmonious, healthy, and balanced personality that further concentrates on emotions and judgments to gain Allah's pleasure, based on the foundation of Islamic teaching.<sup>68</sup> Incidentally, the concept of *tazkiyyat al-nafs* is essential for Islamic psychospiritual, which encompasses the elements of *mujāhadat al-nafs* and *riyādat al-nafs*. In this regard, the proposed elements of *mujāhadat al-nafs* incorporate repentance, avoidance of behaviour that cultivates a tendency towards the courses of LGBTQ as well as abiding in a healthy environment and association. As for the *riyādat al-nafs*, the proposed elements include marriage for those who are able, fasting, patience, praying, remembering, and wishing (*rajā'*) to Allah.<sup>69</sup>

All this shows how important religion is in the lives of Muslims, especially for those who need guidance to return to the righteous path. LGBTQ advocates, however, claim that religion does not play a direct role in addressing LGBTQ issues, especially when it comes to their physical and mental health issues. They believe that these concerns should be judged from a secular standpoint, in line with the charter of fundamental rights. This point of view is incorrect because the American Anthropological Association, in its statement to the United Nations Human Rights Commission in 1947, stated that the standards and values held by nations differ according to local religion and culture. As such, when questions arise pertaining to human rights issues, they must be resolved according to the relevant religious and cultural norms. Even in the world of modern medicine, the role of religion is not excluded in dealing with health problems related to LGBTQ persons. In a study titled "*The Influence of Religion on HIV Risk*", it was reported that 31 out of 51 studies have shown that bonding with religion can

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68. Ibid., 220.

69. *LGBT: Apa yang Perlu Anda Tahu* (1), < [https://www.youtube.com/watch?v=2vfOUGW\\_0NA](https://www.youtube.com/watch?v=2vfOUGW_0NA) > (accessed 22nd September 2022).

reduce the risk of promiscuous sex. Factors protecting high-risk practices for HIV, found in affiliation with the following religions; Islam (n = 16), Christianity (n = 4), Protestantism (n = 3), Catholicism (n = 2), Muslim and Hinduism (n = 2), Muslim and Christianity (n = 1), Muslim and Traditional (n = 1), Evangelism(n = 1), and other religions (n = 1). Another study found that the percentage of individuals who practise unprotected sex is high among individuals who have a low level of religious practice and belief as well as social support. This means that the religious approach can be leveraged to prevent the spread of HIV and AIDS, where the carrier has a sense of responsibility for exposing others to the danger of the virus.<sup>70</sup>

### ***Mukharyam* Programmes: Challenges in Preserving the Religious Rights of LGBTQ Persons**

With reference to the treatment and rehabilitation programmes (*ʕilāj wa shifāʕ*) conducted by JAKIM, known as *Mukharyam*<sup>71</sup>, the targeted goal is to strengthen the understanding and realisation, or mindfulness of Islam in a comprehensive way. This will further produce the best people (*khayra ummah*). The implementation of these programmes was led by the guidelines provided by the “*Manual of Islam and Mak Nyah*” published by JAKIM in 2013. The publication of this manual is intended to be used as a reference by Muslim volunteers and CSOs.<sup>72</sup>

*Mukharyam* programmes cover five main elements, namely spiritual awareness, basic religious knowledge such as *ʕaqidah* (creed) and *fardʕ ayn* (personal obligation), self and career motivation, health awareness, and physical fitness activities. However, the main emphasis is placed on the elements of spiritual

70. Rafidah Hanim Mokhtar, *Homo Fakta*, 111.

71. A three-day camp in May 2011 involving the *mak nyah* group which was organised by Bahagian (Pembangunan) Keluarga, Sosial, dan Komuniti (KSK), Saiful Azhar & Mohd Izwa, “Program Intervensi Kerohanian,” 6.

72. *Ibid.*, 8

guidance and awareness, such as recognising human superiority, the goal and end of life, the lesson from death, *dhikr* therapy, and prayers.<sup>73</sup> At times, the transgenders were also brought to pray in congregation with the members of the society apart from carrying out social services. This effort helps to erode the stigma towards transgender persons in the community.<sup>74</sup> This programme has involved an estimated 1,700 LGBTQ persons until 2021.<sup>75</sup> According to reports and interviews with the relevant individuals, 5% of the participants have changed in terms of appearance, while the remainder is still in the process of inner or self-struggle.<sup>76</sup> Based on the feedback from participants, this programme is acknowledged to be able to correct misunderstandings against religious groups who are perceived to be inclined to take punitive attitudes towards those who commit wrongdoings. In addition, participants have the

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73. Imām al-Rāzī in interpreting verse 45, *Surah al-Ankabūt*, “for prayer restrains from shameful and unjust deeds,” stated that prayer that is performed devoutly will hinder heinous acts and disobedience. The Prophet (may peace be upon him) is quoted as saying, “Whomever his prayer does not restrain him from committing sinful acts, his prayer will not proliferate him anything except stepping further away (from Allah).” Consequently, whoever performs the prayer, has to truly become the servant of Allah and therefore attained the status of prayers that truly worship his god. Thus, it is inconceivable for a servant to abandon his worship and move more towards obeying Satan who was cast out from heaven. Al-Rāzī stated further that, the servant, while praying, is wearing the garment of *taqwā* (piety). In this sense, repeated and continuous prayer will maintain the garment of piety on one’s person and ensure the continuance of restraint from committing evil conducts. Abū ‘Abdillah Muhammad ibn ‘Umar ibn al-Hasan ibn al-Husayn al-Rāzī, *Mafāṭīḥ al-Ghayb*, 3rd. edition, vol. 25 (Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī, 1420H.), 61.

74. Rafidah Hanim, *Homo Fakta*, 123.

75. Muhammad Saufi Hassan, “JAKIM Santuni Golongan LGBT,” *Harian Metro* (16th. May 2021), <https://www.hmetro.com.my/utama/2021/05/706415/jakim-santuni-golongan-lgbt> (accessed 20th September, 2022).

76. Nur Syuhada Mohd Subri, Khader Ahmad & Muhammad Adam Abd. Azid, “Peranan JAKIM dalam Menangani Golongan Mak Nyah di Malaysia” in Proceedings *Pemberdayaan Jaringan Strategik Ummah: Melakar Kecemerlangan Masa Hadapan*, (Selangor: Persatuan Ulama Malaysia, 2020), 284.



*Honouring the Religious Rights of the LGBTQ Persons*

opportunity to comprehend the basic teachings of Islam, such as prayer and other forms of individual obligatory acts, or *fard 'ayn*, as well as to recognise their responsibility towards God and others while restoring their self-confidence. The targeted goal is to provide guidance and awareness to the LGBTQ persons, especially among Muslims in Malaysia, to live a life that is in line with the demands of shari'ah. The *Mukhayyam* programme can be used as a model to be implemented by government agencies, CSOs and others.<sup>77</sup> In addition to the *Mukhayyam*, follow-up activities such as the *usrah* group or 'circle discussion', i.e. a religious educational activity, and study classes are also organised for this group. The organisation is either through the community's own initiative or through agencies such as JAKIM, JAIN, and CSOs.

Although it is clear that the goals and approaches used are completely different from Western conversion therapy practices, *Mukhayyam* programmes continue to be criticised based on unreasonable prejudices. Among them is Numan Afifi's statement during the UPR Session at the Human Rights Council in March 2019, accusing Malaysia of being unfair to LGBTQ persons.<sup>78</sup> This is due to JAKIM's *Mukhayyam* programmes, which are said to be "state-sponsored violence" and apply conversion therapy practices to the local LGBTQ persons. As reported by the local media, Numan's statement is supported by 41 human rights NGOs in Malaysia.<sup>79</sup> In connection with that, JAKIM issued a statement<sup>80</sup> to deny the false accusations and to provide

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77. Ibid., 2.

78. <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=24563> (accessed 14th. April 2023)

79. 41 NGOs, "Evidence of State Sponsored Violence and Discrimination against LGBT Person," *Malay Mail*, (19th. April 2019), <https://www.malaymail.com/news/what-you-think/2019/04/19/evidence-of-state-sponsored-violence-and-discrimination-against-lgbt-person/1744959> (accessed 20th September 2022).

80. "Kenyataan Media JAKIM berhubung Kenyataan Numan Afifi dan 41 NGO," Unit Komunikasi Korporat JAKIM, <https://www.islam.gov.my/ms/kenyataan-media/425-kenyataan-media-jakim-berhubung->

a true picture of the concept and the implementation of the *Mukhayyam* programmes.<sup>81</sup>

Apart from that, there were baseless allegations made by a Twitter account owner against the *Mukhayyam* programmes.<sup>82</sup> The author purposefully compared the programmes to Western conversion therapy practices, such as electric shock therapy, forced marriage, and even corrective rape, which successfully portrayed an ominous picture of the religious programmes held by JAKIM and other state religious authorities. The picture suggests that JAKIM's objectives and its programmes for the LGBTQ persons are consistent with “conversion therapy” as it is often misunderstood, even though JAKIM's approaches are different. *Mukhayyam* in fact contains education programmes, and the participation is completely voluntary with no elements of coercion involved. They are also far from the conversion therapy practised by other countries.<sup>83</sup>

In addition to fulfilling LGBTQ religious rights, educational and rehabilitation programmes such as the *Mukhayyam* programmes play an important role in safeguarding one of the five fundamental values in *maqāṣid al-sharī'ah* which is life. This is done particularly through information sessions of the *Mukhayyam* programme related to HIV and other infectious diseases. Local media reported in October 2017 that homosexuals and bisexuals are the main contributors to the spread of HIV and AIDS, especially in capital cities. According to the latest statistics from the HIV/STI Division, Kuala Lumpur, and Putrajaya Health Departments, homosexuals and bisexuals cause up to 65 percent of infections, while male-to-female sexual contacts or vice versa

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kenyataan-numan-affi-dan-41-ngo (accessed 19th September 2022).

81. Rafidah Hanim, *Homo Fakta*, 120–125.

82. Lukman Sheriff Alias, “*Mukhayyam*: Honour the Religious Rights of the LGBTQ People,” *Malaysiakini*, <https://www.malaysiakini.com/letters/537447> (accessed 26th March 2023).

83. MACSA Mid-Term Report on Malaysia 3rd Cycle in UPR Process (January 2022), <https://www.ohchr.org/sites/default/files/2022-01/MACSA-Mid-Term-Report-Malaysia-3rd-cycle.pdf>, 21-22 (accessed 17th June 2022).

*Honouring the Religious Rights of the LGBTQ Persons*

cause 31 percent.<sup>84</sup> Other than HIV, as reported by the WHO, some cases of monkeypox have been identified through sexual health clinics in gay and bisexual persons and other men who have sex with men.<sup>85</sup>

### Conclusion

It is clear that issues of sexual orientation and gender identity should be dealt with in accordance with the Shari'ah guidelines. The point is to ensure that they are understood within the correct framework without deviating from religious teachings. Indeed, the religious rights of LGBTQ persons are upheld and honoured when rehabilitation and treatment programmes are used to meet their spiritual needs. It also acts as a barrier to prevent all means leading to various harmful consequences (*sadd al-dhara'ih*).

By applying a rehabilitation approach to the LGBTQ persons and enforcing existing laws, preventive measures are carried out by Muslims as part of their responsibility to promote good and prohibit evil. Previous studies have shown that the psychospiritual approach or intervention is the best way to ensure that LGBTQ persons are guided to live a more dignified way of life. This conclusion is also admitted by members of the LGBTQ persons that have followed the *Mukhayyam* and similar programmes. This admission directly proves the importance of such programmes in supporting LGBTQ persons who wish to revert to a dignified way of life especially relating to self-abstinence. Following this, there will be a substantive impact on the LGBTQ persons in their effort to seek religious guidance if these programmes are terminated. Unfounded criticism and

84. Anne Muhammad, "JAKIM Bimbang Penularan HIV di kalangan Homoseksual," *Malaysia Kini* (14th October 2017), <https://www.malaysiakini.com/news/398255> (accessed 18th July 2022).

85. "Monkeypox: Public Health Advice for Gay, Bisexual and Other Men Who Have Sex with Men," World Health Organization, (25th. May 2022) <https://www.who.int/news/item/25-05-2022-monkeypox--public-health-advice-for-gay--bisexual-and-other-men-who-have-sex-with-men> (accessed 29th September 2022).

accusations against JAKIM's initiatives are in fact a discrimination against the LGBTQ persons' religious rights. There are a number of possible solutions to deal with this problem. The first is to continue to communicate the true narrative in accordance with religious teachings. Secondly, this narrative needs to be disseminated through various media and platforms at the international and domestic levels. Thirdly, more research needs to be done to uncover the detrimental effects of the LGBTQ lifestyle on family institutions, society, and the country as a whole. Future research should also benchmark best practices from other countries in conducting psychospiritual programmes to be applied in the *Mukhayyam* and similar programmes locally.

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*Honouring the Religious Rights of the LGBTQ Persons*

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