

The Phenomenon Of Cross Hijabers In The Lens Of Law And Human Rights In Indonesia

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Abstract

In this globalization era, more and more technological sophistication and the speed of information that can be received by everyone causes the world to be more open. Many new things that are easy to enter the country of Indonesia with technological and information sophistication, are also accompanied by increasing human resources in using and utilizing various technological sophistication features. One of them is the use of social media. Social media is the biggest influence on the existence of new information that can be accessed by all people, ranging from men and women. Nowadays, there is a lot of talk about the phenomenon of *Cross Hijabers*, where in a nutshell the *Cross Hijabers* phenomenon is a phenomenon of men who like wearing hijab / veil and joining Muslim community or activities. The rise of the *Cross Hijabers* phenomenon has long been talked about on social media, especially on Instagram and Twitter. Many Instagram and Twitter accounts post and share photos or videos of men wearing Muslim women's clothing, complete with hijab and veils. This is certainly a distorted phenomenon. In this writing, the author looks at the phenomenon of *Cross Hijabers* that is widely discussed in Indonesia through the lens of law and Human Rights.

Keywords: *Cross Hijabers*, Law, Human Rights

A. Preliminary

At present, there are a lot of phenomena that occur in Indonesia, one of which is the *Cross Hijabers* phenomenon which is widely discussed on social media such as Instagram and Twitter. Instagram and Twitter is one large and wide platform, and can be accessed by anyone, anytime, anywhere. Most of those who do this *Cross Hijabers* are teenagers. *Cross Hijabers* himself refers to men who like to look like women. Generally, they appear with a hijab, complete with a veil that covers part of the face. The term "Cross Hijabers" itself is taken from the term "crossdressing". The last name is a term used for a dress up style or appearance - specifically for clothing - that is incompatible with the innate gender from birth. Crossdressing can be done by men who dress up like women or even vice versa.¹ This *Cross Hijabers* phenomenon reflects an acute crisis of sexuality identity. Though humans were created only in two sexes, namely male and female. Each - each has unique characteristics both in terms of physical form and psychological factors. Consequently, obligations to men are different from obligations to women². It is not yet clearly known what underlies the perpetrators of *Cross Hijabers* to do this, some of the factors that may be due to psychiatric disorders, their curiosity to become a figure of the opposite sex which causes them to dress up like women, and there are other factors that they only fun and just

¹ Tim CNN Indonesia, 'Mengenal Fenomena "Crosshijaber" Yang Ramai Di Jagat Maya', *CNN Indonesia* <<https://www.cnnindonesia.com/gaya-hidup/20191014122452-284-439284/mengenal-fenomena-crosshijaber-yang-ramai-di-jagat-maya>> [accessed 31 January 2020].

² Compare this to the idea that humans are free but do not have natural authority over others. Initially it was called the oldest form of society, the family. The child is bound to the father as long as he needs it, after it is no longer natural but he does a social contract. This social contract can also be called alienation because free humans basically do not have complete freedom. As an illustration, a newborn baby is a free man but to achieve his freedom, the baby needs his mother so that the nutritional coverage is met through food and drink, further in Tomy Michael, *Memaknai Pemikiran Jean-Jacques Rousseau Tentang Kehendak Umum Menciptakan Keadilan, Kajian Multi Disiplin Ilmu dalam Pengembangan IPTEKS untuk Mewujudkan Pembangunan Nasional Semesta Berencana (PNSB) sebagai Upaya Meningkatkan Daya Saing Global*.

to keep up with what's being talked about on social media. Not only in cyberspace, *Cross Hijabers* also exist in the real world. Some time ago the City of Sukoharjo, Central Java, was shocked by a man with a mustache who disguised himself as a veiled woman and entered a mosque. He often invites photos together with the congregation of women. In Bandung, men wearing Muslim clothing some time ago also made me uneasy. Because, from a number of photos uploaded on social media, in a mosque, they are in a women's safe. They often unite with women when there are Islamic studies in mosques. Some of them even commit criminal acts. For example, in Ternate, North Maluku, on October 18, 2019, men wearing women's clothing veiled stole four mobile phones. Even in Kebumen, Central Java, the police responded seriously to this phenomenon. All police personnel were asked to be on alert when worshipping at the mosque, and to oversee the *crosshijaber* community that might exist in Kebumen.³

This is certainly detrimental to society, especially women. Where people who do this *Cross Hijabers* dare to enter women's privacy spaces, such as bathrooms, nursing rooms, rooms to change clothes, and even inside the mosque they sometimes dare to enter. This causes concern for women. One example is that they fear that these *Cross Hijabers* do something that is not right in a room reserved for women, such as harassing women, stealing their belongings secretly, doing something bad to channel their passions, and things - other bad things that might happen. Because after all they are men - their nature is stronger than women who can indirectly take advantage of women's weaknesses. This is supported by the existence of a patriarchal culture that dominates the values that live in society. This causes patterns of behavior, habits, regulatory legislation so that the economic, political and religious sectors also have a patriarchal perspective. This has an impact on the position of women who are sub-ordinate, marginal, vulnerable to violence and multi-burden.⁴

So in this paper, the author examines how law and Human Rights view the phenomenon of Cross Hijabers that is happening in the community. The method of approach taken by the author is a juridical empirical approach, which is where the authors search, explore, and find facts and facts that exist in society by looking at the situation and conditions that occur. As well as integrating with the rules and legal norms in accordance with the issues raised by the author.

B. Discussion

Responding to the phenomenon of *Cross Hijabers* that occurred in Indonesia, the Indonesian Ulema Council (MUI) considers it an act that is forbidden in Islamic teachings. Deputy Chairperson of the Indonesian Ulema Council (MUI), Zainut Tauhid said that the true teachings of Islam strictly forbid men to resemble women and women to resemble men because in terms of destiny and the sharia of men and women are different.⁵ In Islamic teachings, whatever their motives and reasons, this cross hijaber phenomenon is haraam. It is very clear that Rasulullah SAW cursed those who resembled women from among men. Likewise, those who resemble men from among women. Activities similar to this include clothing and accessories as well as their innate behavior.

Human Rights does not prohibit humans from using any kind of clothing, there are no restrictions and no penalties. From a legal standpoint, the Opening of the 1945 Constitution of the Republic of Indonesia which contained Pancasila became the basis of state philosophy which gave birth to a legal ideal (*rechtside*) and the basis of its own legal system in accordance with the spirit of the Indonesian people themselves. which provides legal guidance and overcomes all statutory regulations including the 1945 Constitution. In such a position, the Preamble of the 1945 Constitution and the Pancasila it contains constitutes fundamental principles or fundamental principles of state rules and cannot be changed by law, unless changes are made to the law. original identity that was born in 1945.⁶ In the 1945 Constitution and Pancasila, all humans are given the freedom to regulate their own lives, including in how to dress. Indonesian law does not have rules and penalties for the way a person dresses, including *Cross Hijabers*. We cannot punish someone who commits *Cross Hijabers* by using a certain law because there is no regulation in Indonesia itself. Dressing is a personal matter for everyone who is protected by human rights.

One of the characteristics of Human Rights is *Inhern*, which is inherently inherent in human beings. In addition there are other characteristics, namely *Inaliable*, which means that Human Rights cannot be revoked and cannot be shared. This proves that

³ Manda Firmansyah, 'Fenomena Crosshijaber, Eksistensi Atau Gangguan Kejiwaan?', *Alinea.Id* <<https://www.alinea.id/gaya-hidup/fenomena-crosshijaber-eksistensi-atau-gangguan-kejiwaan-b1Xoy9o2A>> [accessed 31 January 2020].

⁴ Wiwik Afifah, 'HUKUM DAN KONSTITUSI: PERLINDUNGAN HUKUM ATAS DISKRIMINASI PADA HAK ASASI PEREMPUAN DI DALAM KONSTITUSI', *DiH Jurnal Ilmu Hukum, Fakultas Hukum Universitas 17 Agustus 1945 Surabaya*, 13.26 (2017), 201.

⁵ Devira Prastiwi, '4 Hal Tentang Fenomena Crosshijaber', *Liputan6.Com* <<https://www.liputan6.com/news/read/4086072/4-hal-tentang-fenomena-crosshijaber>> [accessed 31 January 2020].

⁶ Ari Wibowo, 'Pengaturan Peraturan Daerah Kabupaten Solok Nomor 6 Tahun 2002 Tentang Berpakaian Muslim Dan Muslimah Dalam Perspektif Hukum Ketatanegaraan Indonesia', *Jurnal Hukum Ius Quia Iustum*, 14.3 (2007).

truly every human being has a choice in his life and no one can revoke, reduce, and deprive them of their rights, including in dress. If in a situation where we are a party that forbids the users of *Cross Hijabers* not to dress like that, then we can be said to violate Human Rights, specifically to take away their freedom to dress. Because human rights are absolute, which means that humans have them not because they are given by the state, society or anyone, but because they are human. Human Rights are all the authority and power that we have because we are humans, arising from us in the womb and obtained directly from God. The state is obliged to protect human rights for its citizens. Where it is clear that the responsibility of the state is *to respect, to fulfill, and to protect*. The state must respect, fulfill and protect the human rights of its citizens because they have entrusted their sovereignty to the state.

In the nature of human rights, namely what is referred to as suprallegal, that human rights do not depend on the state, government, or even the laws governing these rights. This is where the Law does not regulate the procedure for dressing, choice of dress, and what type of clothes we use. So if we look at it from the perspective of law, law in Indonesia cannot enforce what is permitted and what is not permitted by humans because it is not part of the affairs and authority of the state, but it is an individual authority over the existence of Human Rights. However, what can be done by our law is if the users of *Cross Hijabers* do something that is clearly prohibited by the government and has been governed by laws such as harassment, theft, robbery, and other bad things, then the state has the authority and obligation to act. By punishing the offender in accordance with applicable laws and regulations.

Furthermore, if we look at it from a human rights perspective, it has two sides. The side of the *Cross Hijabers* user itself and the side of the community that is not a circle of *Cross Hijabers* users. If you look at the users of *Cross Hijabers*, then of course they have the right to dress according to what they want. But this deviates from existing norms, such as norms of decency and norms of religion. Because it is not proper for a man to wear women's clothes, and vice versa. This can be seen from their motives for *Cross Hijabers*. According to the sociologist from the University of Indonesia, Ida Ruwaida, it is necessary to first trace the background and motives of the *crosshijabers* wearing headscarves or veils. She said, if the perpetrators of *crosshijaber* are men who like to express themselves by dressing women, then it is classified as gender expression. Within the gender expression group, there are those who like to appear in the public sphere, others who only use it to satisfy themselves.⁷ So if like this, they are protected by Human Rights, where they are free to express themselves even though they are dressed in women.

Conversely, if we see from the side of the community who are not a circle of *Cross Hijabers* users, of course they have the same rights. The point is that they will feel anxiety and worry about this phenomenon. Because it is undeniable also that this phenomenon produces bad impacts on society. People who are not users of *Cross Hijabers*, have the right to be protected by the state for anxiety, fear, and worry. Here the state is also required to take steps to reduce the existence of this *Cross Hijabers* phenomenon. The state not only carries out monitoring of this widespread phenomenon, but the state must also do something real to overcome the problem of *Cross Hijabers*. The state must not look at one side whether it be seen from women or men. Because it is in accordance with the nature of human rights, namely equality, which means that all human beings have the same degree as God's creation, then the state is obliged to protect fairly because human dignity and dignity are the same. Here is supported by the existence of one main characteristic of Human Rights namely Human Rights applies to everyone. And the state is obliged to protect *Cross Hijabers* users and those who are not circle of *Cross Hijabers*.

The last discussion is, the state can do a way to deal with the phenomenon of *Cross Hijabers*. For example by the way the police immediately conduct an investigation of the signaled *Cross Hijabers*. The police can investigate the social media accounts they use. In addition, the police can investigate who the perpetrators are and the motives behind their actions. If there are efforts by those who deliberately upset the public, then the state has the right to carry out further legal proceedings. In addition, the state is obliged to provide education to its people by means of assessment, counseling, and socialization. The result of the country's education is that the public has its own filter to block the rate of *Cross Hijabers*. They will be sensitive to this phenomenon of deviation. They will immediately report to the state when they suspect and know the phenomenon of *Cross Hijabers* in their midst. As for women in particular, they can be careful. Women do not carelessly make chips on people they do not know. Thus they can avoid the possibility of crime from *Cross Hijabers*. In this case, it should be noted about the teachings of Islam which forbids people of the same sex to sleep in a blanket. Including bathing with same-sex people in one bathroom and the rules of genitals limitation that can be seen by those of the same sex.⁸ As a result, women will be able to avoid and awake from this *Cross Hijabers* phenomenon.⁹

⁷ Firmansyah.

⁸ From that sense, there is a fundamental difference between the nature of the right according to the Law of the Republic of Indonesia Number 39 of 1999 on Human Rights Universal Declaration of Human Rights 1948 namely the international nature of the right according to the rights of human beings freely freely without any element of God or divine rights while nationally in Indonesia, there is no associated human rights as a creature of God Almighty and is a gift from Him. The phrase "creature of God and is His grace" is actually equivalent to the rights conferred by Universal Declaration of <http://dx.doi.org/10.29322/IJSRP.10.02.2020.p9858>

C. Closing

1. Conclusion

The conclusion that can be delivered by the writer is that the phenomenon of *Cross Hijabers* refers to men who like to look like women. Generally, they appear with a hijab, complete with a veil that covers part of the face is a phenomenon that is rife in Indonesia. When viewed from a legal perspective, the Indonesian state cannot punish *Cross Hijabers* users because this is their right to dress. However, the state can act and punish these *Cross Hijabers* users if they do things that are prohibited by the state and are included in the legislation such as harassment, theft, robbery, or other things that constitute a criminal act. And when viewed from the perspective of Human Rights, we must see from two sides of the object, namely the *Cross Hijabers* users themselves and the people who are not *Cross Hijabers* users. If we look at *Cross Hijabers* users, they are protected by Human Rights in dress because it is their individual right. But if we look at it from the side of people who are not *Cross Hijabers* users, of course they have the right to feel alarmed, afraid, and worried. And here is the role of the state in dealing with this phenomenon is very necessary.

2. Suggestion

The suggestion given by the writer is that the state must act on this phenomenon. The state does not only listen but must do something such as conducting education through studies, counseling, and socialization of the community so that the community has its own filter to block the rate of *Cross Hijabers* trends. In addition, the state must also be responsive if the public reports an event that is considered detrimental to them, which was carried out by these *Cross Hijabers* users.

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Human Rights 1948 but in practice in Indonesia is limited to Pancasila. The next comparison when Indonesia fully implement human rights based Universal Declaration of Human Rights 1948 then that is where the state directly create rights to everything as long as it is not inconsistent with law, Tomy Michael, Right To Have Rights, *Mimbar Keadilan Jurnal Ilmu Hukum*, Februari 2017, Fakultas Hukum Universitas 17 Agustus 1945 Surabaya.

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