



**MEDICAL MANAGEMENT OF THE INTERSEX:
A CRITICAL ANALYSIS FROM THE FIQH
PERSPECTIVE IN THE MALAYSIAN CONTEXT**

BY

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**A dissertation submitted in fulfilment of the requirement for
the degree of Master of Islamic Revealed Knowledge and
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ABSTRACT

This study is concerned with the gender classical definition of the person with ambiguous genitalia that does not fit into typical male or female category known as hermaphrodite or intersex. It also compares the Islamic position with that of medical science. It uses a qualitative method of articulating the above and examines as to how medicine can manage such a condition. It finds that Islamic countries, including Malaysia, depend on *fatwās* since they do not have a formal Islamic guideline at the time of this study. The bigger problem in medical practice is that it encourages medical intervention at infancy which may not fix the sex of such an infant when he/she attains puberty. Therefore, this study proposes that a medical guideline based on an Islamic framework can be helpful in dealing with this phenomenon.

ملخص البحث

تَهتم هذه الدراسة بتعريف الجنس الكلاسيكي للأفراد مع الأعضاء التناسلية الملتبسة التي لا تدخل في قسم الذكور أو الإناث المعروفة باسم الخنثى أو ثنائية الجنس. وتقوم هذه الدراسة أيضاً بالمقارنة بين الموقف الإسلامي من هذه القضية وموقف العلوم الطبية منها. وتُستخدم أسلوب النوعي لتوضيح ما سبق، وتُبحث عن كيفية تعامل العلوم الطبية مع هذه المشكلة. وجدت هذه الدراسة أن الدول الإسلامية بما في ذلك ماليزيا تعتمد على الفتاوى؛ وذلك لعدم وجود أي توجيه إسلامي رسمي في هذه الدول حتى الآن. وكان أكبر المشكلة في الممارسة الطبية هي أنها تشجع التدخل الطبي في مرحلة الطفولة والتي قد لا تصلح العضو التناسلي لذلك الفرد عندما يبلغ الطفل سن البلوغ. ولذلك، تقترح هذه الدراسة أن المبدأ التوجيهي الطبي على أساس الإطار الإسلامي يمكن أن يكون مفيداً للتعامل مع هذه الظاهرة.

APPROVAL PAGE

I certify that I have supervised and read this study and that in my opinion; it conforms to acceptable standards of scholarly presentation and is fully adequate, in scope and quality, as a dissertation for the degree of Master of Islamic Revealed Knowledge and Heritage (Fiqh and Uşūl al-Fiqh).

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DECLARATION

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Muhammad Afif Bin Mohd Badrol

Signature.....

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This dissertation is dedicated to my beloved parents

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CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

Sex determination is a biological phenomenon that governs the development of sexual characteristics in an organism. As for humans, normal birth consists of two sexes: either a female or a male. However, in some cases, human infants are born with sexual anatomy that does not seem to fit into the typical definition of either a female or male. Such infants are known as intersex or *Khunthā*.

Islamic jurisprudence details the legal rulings regarding *Khunthā* and classifies them into *Khunthā wāḍih* and *Khunthā mushkil* depending on the external shape of their genitals and the way they function. A male or a female *Khunthā wāḍih* normally refers to a baby who has both male and female genitals and is regarded either as a male or female based on the function of his genitals during infancy. Otherwise, the sex type determination of such an infant is postponed until puberty and considered as an infant of indeterminate sex.

Modern medicine considers this phenomenon as Disorder of Sex Developments (DSD), a condition known as intersex. Their common categories are babies appearing to be female on the outside, but having mostly male-typical anatomical on the inside. Or such an infant may be born with genitals that seem to be in-between the usual male and female types¹. For example, a girl may be born with a noticeably large clitoris, or lacking a vaginal opening, or a boy may be born with a notably small penis, or with a

¹ Göllü G, et al. "Ambiguous genitalia: an overview of 17 years' experience", *Journal of pediatric surgery*. Vol. 42, no. 42 (2007): 840-844.

scrotum that is divided so that it has formed more like labia. Similarly, a person may be born with mosaic genetics so that some of his cells have XX chromosomes and others have XY.² Modern medical technology is capable of correcting such genital abnormalities during infancy via surgery and hormonal therapy once the infant is three months old. It has not only become standard practice in non-Islamic jurisdictions but also in some Muslim countries.

In light of the above predication, this study proposes to address this issue from a juristic perspective with the aim of giving some suggestions.

1.2 STATEMENT OF THE PROBLEM

In the healthcare sector, the procedure of genital normalisation of babies born with intersex conditions is known as sex assignment surgery (SAS). Among others, it involves subjecting an intersex infant to invasive surgery in order to fix the sex. As to whether it really overcomes the problem of sex indeterminacy is a contested issue among Western experts. The Islamic *fatwā*, to the best of my knowledge, is one of general approval. Accordingly, the main problem with Muslim legal responses is that they do not concern with the failure rate of the medical management of the intersex. Therefore, some of the pertinent questions in *fiqh* are: ‘Is it a medical necessity?’ and ‘Should it be allowed in spite of the documented rate of failure?’. To date, it seems that the existing *fatwās* do not deliberate sufficiently on these questions.

Hence, this study proposes to reflect on the medical management of the intersex so as to see if the existing guidelines on medical management of the intersex in Muslim

² Isna, “What Is Intersex”, Intersex Society of North America, <http://www.isna.org/faq/what_is_intersex> (Accessed 3 July, 2015).

countries such as Malaysia are comprehensive enough to guard against imprudent use of sex assignment procedures to treat an infant's sex indeterminacy.

1.3 RESEARCH QUESTIONS

This study attempts to answer the following questions:

1. What is the phenomenon of *Khunthā* from *fiqhī* and medical perspectives?
2. How do the *fuqahā'* distinguish *Khunthā wāḍih* from *Khunthā mushkil*?
3. How does medical technology categorise and manage the intersex?
4. What is the position of *fatwā* about medical management of intersex babies in Malaysia?

1.4 RESEARCH OBJECTIVES

This study aims to achieve the following objectives:

1. To expound the phenomenon of *Khunthā* from *fiqhī* and medical perspectives.
2. To explain how the *fuqahā'* distinguish *Khunthā wāḍih* from *Khunthā Mushkil*.
3. To explore how medical science categorises and manages the intersex.
4. To explicate the position of *fatwā* about medical management of intersex babies in Malaysia.

1.5 SIGNIFICANCE OF THE RESEARCH

This study proposes to deal with an important issue in the biomedical field from *fiqhī* perspective. Its main distinction lies on the fact that it examines the existing guidelines on intersex medical management in Malaysia. Moreover, it adds to the available

academic discourse on genital surgical correction between science and *fiqh* on the subject matter of *Ahkām al-Khunthā*.

1.6 METHODOLOGY OF THE STUDY

This research will be carried out by using qualitative methods. The qualitative methods are from library research and unstructured interviews for the purpose of data collection.

The library research will involve content analysis of the relevant literature.

The unstructured interviews will involve direct interaction between the researcher and medical experts in this area, *Mufti* and *Shari'ah* scholars in order to uncover their responses.

1.7 LITERATURE REVIEW

The issue of corrective surgery to normalise genital abnormality in the case of children born with intersex conditions from the *Shari'ah* perspective has not been thoroughly evaluated by Muslim writers. Some relevant studies which I have reviewed include:

The *fatwā* given by Islamic *Fiqh* Council under Muslim World League. It states that changing sex whether male to female or vice versa is unlawful for normal genders. Whoever tries to change their sex is regarded as committing a crime that deserves an appropriate level of punishment because it amounts to changing the creation of God. In spite of that, the *fatwā* gives an exception for those with ambiguous sexual organs. Surgical intervention to correct sexual abnormality is allowed as it has the effect of removing a birth defect and not changing the organised nature of Allah's creation³. This study will further deal with this issue based on the *fatwā* in the Malaysian context.

³ Ibn Bāz, Abd al-`Aziz ibn `Abd Allāh, Et al, "Bi shā'n taḥwīl al-dhakar ilā al-unthā wa bi al-`aks", *Al-Majma' Fiqhī Al-islāmī*, vol. 11, no 6 (1989): 262-263.

In their article entitled “An Emerging Ethical and Medical Dilemma: Should Physicians Perform Sex Assignment on Infants with Ambiguous Genitalia?”⁴, Beh and Diamonde (2000) challenge the practice of gender assignment surgeries of infants born with ambiguous genitalia and other intersex conditions. They assert that the child's right to an open future should be preserved. They also question the efficacy of medical measures to correct intersex conditions by referring to the stories of two young men; one had contemplated a lawsuit against the physicians but was dissuaded when he learned that the medical law in his state protected physicians who followed community standards of practice. The other young man was just discovering what had occurred when he was a child. In the end of their article, they concluded that a fuller airing of the ethical dimensions of treatment and the duties of informed consent may prompt a more cautious approach to surgical intervention to treat the intersex. Recognising a child’s right to an open future as part of the decisional calculation may yield a more measured approach in these difficult cases. Waiting to see what the child desires is the most sensible approach because, as it has been frequently stated that the most important sex organ is between the ears rather than between legs. In this research, I am going to re-examine this proposal from Islamic legal perspective.

In the journal article titled, “Gender Assignment for Children with Intersex Problems: An Egyptian Perspective”⁵, Dessouky (2001) reviews the Egyptian experience with intersex patients in Cairo University: their incidence, clinical variants, different patterns of presentation, methods of diagnosis and surgical management with

⁴ Hazel Glenn Beh and Milton Diamond, “An Emerging Ethical and Medical Dilemma: Should Physicians Perform Sex Assignment on Infants with Ambiguous Genitalia?”, *Michigan Journal of Gender & Law*, Vol. 7 (2000): 1-63. University of Hawai’i via <<http://www.hawaii.edu/PCSS/biblio/articles>>.

⁵ Nabil M. Dessouky, “Gender Assignment for Children with Intersex Problems: An Egyptian Perspective”, *Egyptian Journal of Surgery*, Vol. 20, No. 2 (2001): 499-515. Researchgate, via <<http://www.researchgate.net/publication>>.

special emphasis on different ethical, social, cultural and religious aspects influencing the gender assignment of these cases in their local community. He concludes that in a gender assignment procedure, the process by which the sex of rearing in a newborn with ambiguous genitalia is decided must be considered as a psychological emergency. The objective of the physician in the management of patients with ambiguous genitalia should be to establish a diagnosis and assign a sex of rearing that is most compatible with a well-adjusted life and sex adequacy of the intersex. Once the sex of rearing is assigned, the gender role is reinforced by the use of appropriate surgical, hormonal or psychological measures. In my research, however, I will examine the practical legal problems which arise from the medical management of the intersex in Malaysia.

In his article, “*Mushkilāt al-Khunthā bayn al-Ṭibb wa al-Fiqh*”⁶, Muḥammad ‘Alī al-Bārr (2007) explicitly recognises fake *Khunthā* as either a female pseudo hermaphrodite; an individual with ovaries but with secondary sexual characteristics or the one with external genitalia resembling those of males, or a male pseudo-hermaphrodite; an individual whose gonads are testes but whose secondary sexual characteristics or external genitalia resemble those of females. He deduces that male and female hermaphrodites are governed by specific rules in marriage, in inheritance and others. Al-Bārr also maintains that with the progress of modern technology in medicine, the problem of *Khunthā Mushkil* would soon be solved because medical criteria for sex determination go beyond the physiological function of genitals. Then, it is for the jurists to regulate their socio-legal undertaking. Therefore, these issues need to be carefully examined in the study which I propose to undertake.

⁶ Al-Bārr, Muḥammad ‘Alī, “*Mushkilāt al-Khunthā bayn al-Ṭibb wa al-Fiqh*”, *Majallāt al-Majma` al-Fiqhī al-Islāmī*, vol. 6, (2007): 347-365.

In the article written by Saskia E. Wieringa under the title, “Intersex, Transgender Or Same-sex: What’s on A Name?”⁷ (2011), the author presents some case studies in which discursive contestations occur between conservative biomedical, religious and political leaders, on the one hand, and feminists, gay, and lesbian human rights activists, on the other. The debates centre around the definition of what is ‘normal’ gender, a ‘normally’ sexed body and ‘normal’ sex. The cases studied are: 1) the intersex Alterina Hofan whose marriage was declared to be based on “documented fraud” based on sex operation in Indore, in which baby girls are turned into “boys”; 2) the transgender Aleesha, who wanted to be buried as a woman. Hence, gender equality advocates contend that the broad liminal space in which trans people moved, at least in some South East Asian societies, is carved up into neatly defined categories, each with his/her own medical codes and legal instruments. Thus, they have to struggle individually for recognition and legal protection. In consequence, the medicalisation of those persons with typical genitalia and the stigmatisation of those insist on being in an in-between space, who refuse to accept the binary sex-gender model, have emerged as debatable issues in biomedical studies. Hence, in this study, I shall address this point from the *Shari’ah* perspective with additional focus on medical management of the intersex.

In his journal article entitled “Disorders of Sex Development: Diagnostic Approaches and Management Options”⁸(2011), Jurayyan discusses ambiguous genitalia as a major social and medical emergency. He explains that several forms of

⁷ Saskia E. Wieringa, “Intersex, Transgender Or Same-sex: What’s on A Name?”, *The United Academics Journal of Social Sciences*, vol.2011, (2011): 7-11. Amsterdam Institute for Social Science Research (AISSR), via United Academics, <www.united-academics.org>.

⁸ Nasir AM Al Jurayyan, “Disorders of Sex Development: Diagnostic Approaches and Management Options— An Islamic Perspective”, *The Malaysian Journal of Medical Science*, Vol. 18, No. 3, (2011): 4-12.

congenital adrenal hyperplasia can lead to significant salt loss, which, if unrecognised and inappropriately treated, may lead to shock. To ensure that the affected individual has a high-quality of life, medical practitioners are required to quickly and correctly assign the individual's sex and effectively assuage the family's concerns and anxieties. The author also concludes that when approaching the treatment of any children diagnosed with sexual ambiguity, it is important to first review and understand the embryology and physiology of sexual differentiation. Although the basic developmental events have long been known, the genetic, biochemical, endocrine and molecular mechanisms are complex and have only been partially elucidated. Lastly, he suggests that appropriate genetic and psychosocial counselling should be made available to the family and when the patient is old enough to understand, all available information should be progressively disclosed to him. The point of complex nature of intersex mentioned by the author can be further explored to evaluate the *fiqhī* position on the issue.

In their article, "Boy Or Girl: Religious And Ethical Approach"⁹(2014), Mohamed and Mohd Noor write about the religious and ethical approaches to the problem of gender identity disorder. They maintain that it has been resolved by the approval of sex assignment surgery (SAS). Their gender must be reassigned and their ambiguity eliminated. Therefore, there is no moral dilemma on whether surgery should be performed or otherwise. However, a dilemma persists on the post-surgery selection of gender for the DSD new-borns. This article reveals that Islam recognises these new-borns and requires their parents to bring them up in accordance to their dominant sex indicator such as the physical appearance of genitals. The problem remains for the cases

⁹ Mohd Salim Bin Mohamed and Siti Nurani Binti Mohd, "Boy or Girl: Religious and Ethical Approach", *Revista Română de Bioetică*, vol.12, no.4, (2014): 136-144.

where gender identity is vague. Wrong sex assignment will involve ethical and legal risks in the Islamic view of roles assigned to different genders. In this article, the issue is discussed in the context of Malaysian culture where distinct religious requirements dictate how decisions on SAS are ought to be made. The concerns raised in this paper will further be detailed in this study.

In her article, “Intersex Management in the U.S. and Non-Western Cultures”¹⁰(2014), Tell discusses that in Western nations, there is an increasing consensus about ethical approaches to clinical intersex management. At the same time, as Western-trained physicians increasingly encounter intersex patients in other parts of the world, new ethical tensions arise. Which cultural values are fair parameters for gender assignment decision-making, particularly in cultural milieus where there is social and economic inequality between the sexes? How can physicians uphold universal bioethical principles, while remaining culturally sensitive? Physicians have a primary commitment to patient’s beneficence and universal human rights, requiring physicians to promote concordance between the child’s assigned gender and his/her likely future gender identity. Ultimately, the potential patient distress posed by gender dysphoria fundamentally outweighs the influence of local cultural factors such as economics, gender politics and homophobia. This suggestion needs to be evaluated from a *fiqh* perspective in the context of Malaysia.

In his research entitled “Variant Sex and Gender, Religion and Faith”¹¹(2015), Susannah Cornwall examines the condition of the intersex and the transgender in religious discourses, predominantly those of the Abrahamic faiths (Christianity, Islam

¹⁰ Shoshana Tell, “Intersex Management in the U.S. and Non-Western Cultures”, *The Einstein Journal of Biology and Medicine* Vol. 30, Issues 1-2 (2014): 6-15. Albert Einstein College of Medicine, via freepdf, <<http://freepdfs.net/intersex-management-in-the-us-and-non-western-cultures>>.

¹¹Susannah Cornwall, “Variant Sex and Gender, Religion and Faith”, <<http://humanities.exeter.ac.uk/theology/research/projects/variantsexgender>> (Accessed 13 July 2015).

and Judaism). It engages with both textual treatments of individuals with variant sex and gender in Christian, Islamic and Jewish scriptures and legal texts, and with contemporary experiences of the intersex and the transgender. He explains that people of faith have extensive resources and expertise in promoting good pastoral and spiritual care, but may be less aware of the specific needs of the intersex and transgender. Conversely, intersex and transgender support and advocacy groups work hard to provide care and help for intersex and transgendered people, and equally promote the protection of people with variant sex and gender as the laws are less equipped to ensure their spiritual well-being. This ideal of lamping together the intersex and the transgender for the purpose of fair treatment in Islamic perspective needs critiquing which this study will detail.

In their article, “Islamic Bioethical Deliberation on The Issue of New-borns with Disorders of Sex Development”¹² (2015), Mohd Salim Mohamed and Siti Nurani Mohd Noor present the Islamic bioethical deliberation on the issue of sex assignment surgery (SAS) for infants with disorders of sex development (DSD) or intersex as a case study. The main objective of this study is to present a different approach in assessing this biomedical issue within the medium of the *Maqāṣid al-Sharī’ah*. Within the framework of the *maqāṣidic* scheme of benefits and harms, they contend that any practices where benefits are substantial are considered permissible, while those promoting harm are prohibited. The concept of *Maqāṣid al-Sharī’ah*, which is the goal-based interpretation of the *Qur’ān* and *Ḥadīth*, presents the holistic attention of Islam on various life activities, including healthcare. Indeed, this concept encompasses many aspects of worldly life, individually and collectively. In healthcare, the practice of SAS

¹² Mohd Salim Mohamed and Siti Nurani Mohd Noor, “Islamic bioethical deliberation on the issue of newborns with disorders of sex development”, *Science and Engineering Ethics* vol.21 issue 2 (2015): 429–440. National Library of Medicine, via Springer Link, < <http://link.springer.com/article> >.

on DSD newborns has presented an assortment of implications on the future livelihood of the affected individuals. The process of decision-making seems to be very multifaceted since every element such as the determination of the 'correct' sex and the urgency of early surgery must consider the benefits and harms, as well as the child's rights and best interest. The application of the concept of *Maqāṣid al-Sharī'ah*, would convey a pragmatic approach that is often disregarded in Western medicine. This approach considers the right of the individual to live life optimally, individually and socially as well as practices his faith, in accordance with the assigned gender. This proposition will further be considered in this study.

In his article entitled, “*Al-Khunthā al-Mushkīl wa Ishkāliyyāt al-Taklīf al-Fiqhī*”¹³(2015), Sulaimān ibn Ḥasan Al-Qarārī discusses the rulings and methods to determine *Khunthā Mushkil* from the views of Muslim scholars from four schools: *Ḥanafī*, *Mālikī*, *Ḥanbalī* and *Shāfi‘ī*. He concludes that, even though those scholars can classify hermaphrodites either as males or females based on potency and functionality of one of their genitals during infancy, or by looking at their sexual traits as they grow up, today’s scholars can get the help from the findings of medical sciences to categorise *Khunthā* as determinate or indeterminate. In this research, the efficacy of medical determination will be examined.

In the 76th *Muzākarah* (Conference) of the *Fatwā* Committee National Council of Islamic Religious Affairs Malaysia (JAKIM) has discussed the issues of gender disorder; congenital adrenal hyperplasia and testicular feminisation syndrome.¹⁴ The

¹³ Al-Qarārī, Sulaimān ibn Ḥasan, “*Al-Khunthā al-Mushkīl wa Ishkāliyyāt al-Taklīf al-Fiqhī*,” Islamtoday.net, <<http://www.islamtoday.net/bohooth/artshow-86-104434.htm>> (accessed 23 July, 2015).

¹⁴ JAKIM, “Penentuan Jantina Bagi Ambiguous Genetalia Dan Testicular Feminisation”, e-fatwa, <<http://www.e-fatwa.gov.my/fatwa-kebangsaan/penentuan-jantina-bagi-ambiguous-genetalia-dan-testicular-feminisation-syndrome#tabset-tab-3>> (accessed 3 August, 2015).

committee has decided that for congenital adrenal hyperplasia case, gender reassignment surgery to return to the previous gender is permitted in Islam because it can be treated by hormone treatment and surgery. Meanwhile, for testicular feminisation syndrome (TSF), getting back to the male gender through surgery or hormone treatment is rather difficult. If the patient intends to undergo surgery, it is permitted, provided that the surgery does not harm the patient psychologically or biologically. When the case of testicular feminisation syndrome is detected after the person has already grown up, the person can continue a normal life and his gender is identified on the basis of his physical features and the shape of his genitalia. It can be observed that JAKIM's deliberation tends to focus more on the problem of sexuality in the adults than intersex infants. This study will elaborate more on the latter category.

In view of the above, it is clear that the available literature partially deal with the Islamic juridical issues arising from medical management of intersex infant. Hence, this study proposes to enhance the theoretical discussion of the issue with practical focus on the level of existing *fatwā* in Malaysia.

CHAPTER TWO

AL-KHUNTHĀ IN ISLAMIC JURISPRUDENCE

In the scheme of Allah's creation, human babies are born either male or female. Nevertheless, there are incidents in which the babies cannot be distinguished as such at birth. Such babies are known in Arabic as *khunthā*. *Khunthā* is normally referred to as 'hermaphrodite' in English. It is defined as a person whose body does not conform to arbitrarily quantified criteria for male or female body and have ambiguous sex.

Shari'ah, being a comprehensive code, not only governs the life of normal humans but also in *Khunthā* as well.

According to one *ḥadīth*:

سئل عليه السلام عن الخنثى كيف يورث ؟ قال: أنه ورث خُنْثَى من حيثُ يبولُ

The Prophet (peace be upon him) was asked about how the condition of *Khunthā* is inherited. He said that it is determined by the way the person urinates.¹

This chapter will discuss three important elements of *khunthā* in Islamic jurisprudence which are the concept and the classification of *khunthā*, and the juridical management of *khunthā Mushkil*. Firstly, the concept of *khunthā* discusses on the literal and technical definitions of *khunthā* and its definition based on the four prominent schools of jurisprudence in Islam. The classification of *khunthā* is divided into *khunthā wadih* (determinate hermaphrodite) and *khunthā mushkil* (ambiguous/indeterminate hermaphrodite). The juridical management of *Khunthā Mushkil* touches on the criteria of prepubescent *khunthā* and the criteria of *khunthā* at puberty.

¹ Al-'Asqalānī, Ahmad ibn 'alī Ibn Hajar al-'Asqalānī, *Talkhīṣ al-habīr fī takhrīj aḥādīth al-Rafī'ī al-kabīr*. (Egypt: al-Tibā'ah al-Fanniyah al-Muttaḥidah, 1964), vol 1, p.194.

2.1 THE CONCEPT OF *KHUNTHĀ* IN ISLAMIC JURISPRUDENCE

Khunthā is referred to in English as ‘hermaphrodite’ or ‘intersex’. It is explained by Ibn Manzūr that the term *Khunthā* literally comes from word *khunuth* which means *Layyīn* (softness).² It is not applied to *Mukhannath*, a term used for a man who clearly identifies as male and chooses to behave and dress like a woman.³

The definition of *khunthā* have been proposed by language scholars as an individual that is completely not male or female, or an individual that has both male and female reproductive systems, but cannot be identified as either.⁴

Muslim jurists have also given various definitions of *khunthā*. Some of them describe variations in sex characteristics of *khunthā*. Hanafī jurist, al-Kāsānī, defines *khunthā* as a person born with both male and female external genitalia. *Khunthā* cannot be claimed as both male and female as its identity, but must be identified as either man or woman.⁵ As for al-Zayla'i, *khunthā* is the condition of having a male and female characteristic.⁶

Malikī jurist, al-Khurashī, defines *Khunthā* as an individual that has both male and female organs, and also an individual that does have male or female organs. This person must not be identified as man or woman. This is because such variations may

² Ibn Manzūr, Muḥammad ibn Mukarram ibn `Alī ibn Aḥmad, *Lisān al-`Arab*, (Bayrūt: Dār Ṣadir, 1955-1956) vol.2, p.145.

³ Rispler-Chaim Vardit, *Disability in Islamic Law*, (Netherland: Springer, 2007), 69.

⁴ Al-Fayrūzabādī, Muḥammad ibn Ya`qub, *Al-Qāmūs al-Muḥīṭ*, (Bayrūt: al-Mu`assasah al-`Arabiyah lil-Dirāsāt wa-al-Nāshr: Mīhwar al-Shīr, 1887) b.1 p.216; al-Jurjānī, al-Sharāf `Alī bin Muḥammad, *Kitāb al ta`rifāt* (Bayrūt: Dār al-Kutūb al-`Ilmiyyah, (1988)b1 p.137; al-Farāhīdī, Abu `Abd ar-Raḥmān al-Khalīl ibn Aḥmad ibn `Amr ibn Tammām al-Azdī al-Yaḥmadī, *al`aīn* (Bayrūt: Dār al-Kutūb al-`Ilmiyyah, 2003), b4 p.248.

⁵ Al-Kāsānī, `Alā` ad-Dīn Abū Bakr ibn Mas`ūd al-Kāsānī, *Badā`i` al-Ṣonā`i` fi Tartīb al-Sharā`i`*, (Bayrūt: Dār al-kutūb al-`Ilmiyyah, 1986) b.6 p.418.

⁶ Al-Zailā`i, Uṯmān ibn `Alī Zayla`i, Fakhrudīn Uṯmān ibn `Alī, *Tabyīn al-Haqā`iq Sharh Kūnz al-Daqā`iq* (Egypt: Bulaq, 1313H), b 6 .215.