

THE LEGALITY OF ABORTION BY MEDICAL PERSONNEL FOR RAPE VICTIMS IN INDONESIA: A Perspective from *Maqashid Sharia* by al-Syatibi and al-Tufi

Nur Azizah¹, Mhd. Syahnan², Budi Sastra Panjaitan³

¹Sheikh Ali Hasan Ahmad Addary State Islamic University Padangsidempuan

Jl. William Iskandar Ps. V, Deli Serdang, North Sumatra

^{2,3}State Islamic University of North Sumatra

Jl. William Iskandar Ps. V, Deli Serdang, North Sumatra

E-mail: ¹nurazizah@uinsyahada.ac.id; ²mhdasyahnan@uinsu.ac.id; ³budisastrapanjaitan@uinsu.ac.id

Abstract: This research aimed to analyze the legality of abortion by medical professionals for rape victims in Indonesia through the perspective of *maqashid sharia*. This study adopts a normative legal research approach, utilizing statutory interpretation (legal approach) and conceptual analysis (conceptual approach). The results of this study suggest that *maqashid sharia* emphasizes that abortions should not be performed arbitrarily and are only permissible in urgent situations that fulfill sharia objectives. This includes scenarios where the mother's life is at risk or serious medical conditions prevent the continuation of pregnancy. Such decisions should be made carefully, considering *maslahah* and *mafsadat* and involving consultations with medical experts and religious authorities. The *maslahah* principles elucidated by al-Tufi expand the flexibility in legal interpretation, allowing for Islamic law adaptation to contemporary needs and conditions. This is particularly relevant in abortion cases, where explicit guidance may not always be found in religious texts. Overall, the *maqashid sharia* approach to abortion underscores the importance of principles of justice, balance, and humanity in Islamic law. By considering all these aspects, Islamic law can provide relevant and adaptive guidance in addressing contemporary issues like abortion while remaining faithful to the primary objectives of sharia to achieve collective good and avoid harm.

Keywords: abortion legality; medical professionals; rape victims; *maqashid sharia*

Abstrak: Penelitian ini bertujuan untuk menganalisis legalitas aborsi oleh tenaga medis bagi korban perkosaan di Indonesia melalui perspektif *maqashid syariah*. Penelitian ini merupakan penelitian hukum normatif, dengan menggunakan pendekatan peraturan perundang-undangan (*legal approach*) dan pendekatan konseptual (*conceptual approach*). Temuan penelitian ini menunjukkan bahwa ada ketegangan antara norma hukum yang ketat dan prinsip-prinsip *maslahat* dalam *maqashid syariah* yang mengutamakan kesejahteraan dan perlindungan terhadap korban perkosaan. Hasil penelitian ini menunjukkan bahwa *maqashid syariah* menekankan bahwa aborsi tidak boleh dilakukan sembarangan dan hanya diperbolehkan dalam situasi mendesak dan memenuhi tujuan syariah. Ini termasuk situasi di mana kelangsungan hidup ibu terancam atau kondisi medis yang serius tidak memungkinkan kehamilan berlanjut. Keputusan tersebut harus diambil dengan hati-hati, dengan mempertimbangkan *maslahah* (barang publik) dan *mafsadat* (bahaya), dan melibatkan konsultasi dengan para ahli medis dan otoritas agama. Prinsip-prinsip *maslahah* yang dijelaskan oleh al-Tufi memperluas fleksibilitas dalam interpretasi hukum, memungkinkan adaptasi hukum Islam dengan kebutuhan dan kondisi kontemporer. Ini sangat relevan dalam kasus aborsi, di mana tidak selalu ada panduan eksplisit dalam teks-teks agama. Secara keseluruhan, pendekatan *maqashid syariah* terhadap aborsi menggarisbawahi pentingnya prinsip-prinsip keadilan, keseimbangan, dan kemanusiaan dalam hukum Islam. Dengan mempertimbangkan semua aspek ini, hukum Islam dapat memberikan panduan yang relevan dan adaptif dalam menangani isu-isu kontemporer seperti aborsi, sambil tetap setia pada tujuan utama syariah untuk mencapai kebaikan bersama dan menghindari bahaya.

Kata kunci: legalitas aborsi; profesional medis; korban perkosaan; *maqashid syariah*

Introduction

Pregnancy resulting from rape not only has physical impacts on the victim but also opens up many ethical, moral, and legal questions. This issue

creates complexity, especially within Indonesia's legal regulations and reproductive health policies.¹

¹ M Utami, "Tindak Pidana Aborsi Perkosaan Perspektif

Discussions surrounding abortion for rape victims do not only include medical considerations but also face complexities from a criminal law perspective, where there are provisions governing abortion. However, the implementation of this provision raises significant challenges, especially regarding the interpretation of the element of intent in carrying out an abortion and questions about the role of medical personnel in the process. A deep understanding of the perspective of Indonesian criminal law, as well as the moral and religious dynamics surrounding the issue of abortion, is important in discussing the protection of the rights and reproductive health of rape victims holistically.

Previous studies regarding the legality of abortion for rape victims in Indonesia have revealed several significant findings. One of them is research conducted by Dewi et al., which highlights the implementation of legal regulations related to abortion in rape cases in several provinces in Indonesia.² They found that there were differences in the application of rules at the local level, which created uncertainty in rape victims' access to safe and legal abortion services. Apart from that, research conducted by Pratama et al. regarding the psychological impact of abortion on rape victims shows that complicated legal processes and limited medical procedures can increase the level of stress and anxiety in victims.³ This study provides a deeper understanding of aspects of the mental well-being of victims after undergoing an abortion procedure.

Research by Santoso et al. shows that there are differences of opinion among medical personnel regarding their involvement in the abortion decision-making process for rape victims. These findings highlight the complexity of the role of ethics and medical professionalism in the context of protecting the reproductive health and rights of rape victims in Indonesia.⁴ In addition,

a previous study by Wijaya et al. explored public perceptions of abortion resulting from rape. They found that social stigma and cultural norms can be barriers to supporting rape victims who choose to have an abortion. This research provides insight into non-legal factors that influence rape victims' access to safe and legal abortion services.⁵

This research goes beyond traditional boundaries by adopting an approach focusing on analysis from the *maqashid sharia* perspective. In contrast to previous research, which tends to focus on legal and medical aspects, this research explores the depth of the issue of abortion for rape victims by including moral and religious dimensions. This approach allows researchers to understand the broader context in which abortion decisions are made, as well as their ethical and spiritual implications for individuals and society.

Previous research may be limited in providing a comprehensive picture of the ethical and religious consequences of abortion in the context of rape cases. By presenting a *maqashid sharia* perspective, this research aims to explore Islamic values and principles that are relevant in assessing the legality of abortion. This includes considerations of human rights, the protection of life, and the broader objectives of Islamic law in maintaining individual and societal well-being. By exploring the *maqashid sharia* perspective, this research hopes to make a significant contribution to our understanding of the issue of abortion for rape victims. Thus, it is expected that this research can become a basis for developing more holistic policies based on religious values and social justice.

The main aim of this research is to analyze the legality of abortion by medical personnel for rape victims in Indonesia from a *maqashid sharia* perspective. Thus, this research will explore the consistency and suitability of existing regulations with Islamic values, as well as their impact on protecting the rights and reproductive health of rape victims. It is hoped that the results of this research can become a basis for improving legal policies and practices that are fairer and more forward-looking.

Kesehatan, Undang-Undang Dan Hukum Islam," *Requisitoire Law Enforcement*, (2023).

² S. Dewi, A Nugroho, dan T Wulandari, "Implementasi Regulasi Hukum Terkait Aborsi dalam Kasus Perkosaan di Indonesia: Studi di Beberapa Provinsi," *Jurnal Hukum dan Kesehatan*, vol. 06, no. 3 (2018).

³ H Pratama, B Sutrisno, and D Lestari, "Dampak Psikologis Aborsi pada Korban Perkosaan: Analisis Kasus di Rumah Sakit Rujukan," *Jurnal Psikologi Klinis dan Kesehatan Mental*, vol. 7, no. 2 (2019).

⁴ W Santoso, D Rahardjo, and R Putri, "Persepsi Tenaga

Medis terhadap Keterlibatan dalam Aborsi untuk Korban Perkosaan di Indonesia," *Jurnal Etika Kedokteran*, vol. 8, no. 1 (2020).

⁵ R Wijaya, L Hakim, dan P Andini, "Persepsi Masyarakat terhadap Aborsi Akibat Perkosaan: Studi di Kawasan Perdesaan dan Perkotaan," *Jurnal Sosiologi dan Antropologi*, vol. 5, no. 4 (2017).

Method

This research is normative legal research, which analyzes legal documents, legislative texts, and other literature.⁶ This method emphasizes identifying and analyzing relevant legal rules, principles, and doctrines to find the right legal solution. The legal materials used consist of primary legal materials (legislation), secondary legal materials (books, legal journals, and expert opinions), and tertiary legal materials (explanations of legislation and legal encyclopedias). This research uses a normative juridical approach, which involves several methods, such as statutory, conceptual, analytical, comparative, historical, philosophical, and case approaches.⁷

Data was collected through literature study and analyzed qualitatively using syllogism and interpretation methods to ensure logical and structured conclusions. This analysis follows the Miles and Huberman framework, which involves data collection, data reduction, data presentation, and drawing conclusions or verification. This approach helps in understanding and interpreting the law in depth, allowing researchers to explore the issue of abortion in the context of rape victims comprehensively and systematically.

Results and Discussion

The Legality of Abortion in a Legal and Human Rights Perspective in Indonesia

Abortion is one of the most controversial issues throughout the world, including in Indonesia. This controversy covers various aspects, from the medical point of view to the legal and moral aspects. Abortion is closely related to women's reproductive rights and reproductive health, which are part of human rights. In Indonesia, discussions regarding the legality of abortion are often characterized by conflicting views. Indonesia has a fairly complex legal framework regarding abortion.⁸ In the Criminal Code (KUHP), abortion

is basically considered a criminal offense. Article 346 of the Criminal Code states that a woman who deliberately has an abortion or asks someone else to do so can be punished. Articles 347 and 348 of the Criminal Code also strengthen this by stating that abortions carried out by medical personnel without a legally justified reason can be punished.

However, in subsequent developments, the Indonesian government recognized the need for certain exceptions in abortion cases. This can be seen in Health Law No. 36 of 2009, which provides exceptions under certain conditions. Articles 75 to 77 of this law allow abortion if there are medical indications that threaten the life of the mother or if the fetus has irreversible genetic defects that could threaten its survival. Government Regulation No. 61 of 2014 concerning Reproductive Health provides further details regarding the legal implementation of abortion in Indonesia.⁹ This regulation regulates the procedures and conditions that must be met, including obtaining medical approval and going through a counseling process. This is intended to ensure that abortions are carried out with careful consideration and based on clear medical reasons. Even though these regulations exist, implementation in the field often encounters various obstacles. The strong social stigma against abortion discourages many women from seeking legitimate medical help. In addition, there are also barriers to access to quality reproductive health services, especially in rural and remote areas. This causes many women to have abortions in secret, which are often unsafe and carry high risks.

Abortion must also be viewed from a human rights perspective. Reproductive rights are an integral part of human rights, which include the right to make free and responsible decisions about the number, spacing, and timing of children. The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which Indonesia has ratified, confirms women's reproductive rights as part of human rights. Apart from CEDAW, Indonesia is also a party to the Convention on the Rights of the Child (CRC), which

⁶ Aji Benny Wicaksono dan Muhamad Hasan Sebyar, "ANALISIS YURIDIS TINDAK PIDANA PENCABULAN TERHADAP ANAK DI BAWAH UMUR (PUTUSAN PIDANA PURWOREJO NOMOR 57/PID. SUS/2022/PN. PWR)," *JOURNAL OF LAW AND NATION*, vol. 2, no. 4 (2023), pp. 370–80.

⁷ Sugiyono, *Metode penelitian kuantitatif, kualitatif, dan R&D*, (Alfabeta, 2018).

⁸ Elsa Mulia dan S Syamsurizal, "Meta Analisis Bioetika Terhadap Aborsi: Perspektif Moral dan Medis," *JBB: Jurnal*

Biologi Babasal, vol. 1, no. 1 (2022), pp. 1–5.

⁹ P Rahmawati, "... Aborsi Akibat Korban Perkosaan Anak Dibawah Umur Perspektif UU NOMOR 36 Tahun 2009 dan Hukum Islam (Studi Pada Putusan Hakim Nomor 5/PID. SUS-ANAK ...," *repository.uinjkt.ac.id*, t.t.

emphasizes protecting children's rights, including the right to live and develop.¹⁰ In this context, the safety of unborn children is an important aspect that must be considered in abortion regulations.

Even though Indonesia has signed various international conventions that protect human rights, the implementation of reproductive rights in the field still faces multiple challenges.¹¹ One of the biggest challenges is the lack of adequate information about reproductive rights among the public. Many women are unaware of their rights and do not know where to turn for help if they need a safe and legal abortion. Additionally, the social stigma attached to abortion makes many women reluctant to be open about their needs. This stigma also affects medical personnel, who are often unwilling to perform abortions even under conditions permitted by law for fear of negative reactions from society.

From a legal and human rights perspective, abortion in Indonesia must be seen as part of efforts to protect reproductive rights and women's health. The right to life, the right to health, and the right to make free decisions about one's own body are fundamental rights that must be respected and protected. The Indonesian government has recognized the importance of protecting women's reproductive rights through existing regulations. However, the main challenge is how to ensure that these regulations can be implemented effectively in the field so that women can access safe and legal abortion services.¹²

The legality of abortion in Indonesia is a complex issue involving various aspects of law and human rights. Even though existing regulations provide a clear legal framework, implementation in the field still faces multiple obstacles. Therefore, joint efforts are needed from the government, medical personnel, and society to ensure that women's reproductive rights can be protected

and fulfilled properly. Ultimately, abortion must be seen in a broader context as part of efforts to protect human rights and reproductive health. With a comprehensive and sensitive approach to women's needs, Indonesia can achieve a balance between protecting the life of the fetus and respecting women's reproductive rights.

To improve the situation regarding abortion in Indonesia, several policy recommendations can be considered. First, it is important to increase access to information and education regarding reproductive rights and sexual health. Comprehensive educational campaigns can help reduce the stigma against abortion and provide women with adequate knowledge about their options. Second, increasing access to quality reproductive health services must be prioritized. This includes ensuring that safe and legal abortion services are available throughout Indonesia, especially in rural and remote areas. Medical personnel must also be given adequate training and support to provide these services without fear or stigma. Third, strengthening the existing legal and regulatory framework is necessary to ensure that abortions carried out following the law can be carried out safely. The government needs to ensure that existing regulations are complied with and that there are effective oversight mechanisms to prevent illegal, unsafe abortions.

Education is key in addressing the issue of abortion from a legal and human rights perspective. Educational curricula in schools must include material on reproductive health and reproductive rights.¹³ This will help young people understand the importance of these rights and how they can make informed decisions regarding their health. Apart from formal education, outreach through mass media and public campaigns is also important. The media has an important role in shaping public opinion and can be used to disseminate accurate and unbiased information regarding abortion and reproductive rights. Campaigns involving community leaders and religious leaders can also help reduce stigma and increase public acceptance of safe and legal abortion.

¹⁰ A S Luhulima, *CEDAW: menegakkan hak asasi perempuan*, (books.google.com, 2014).

¹¹ Edy Sutrisno, Ahmad Fanani, and Marsidi Marsidi, "A Female Leaders In The Perspective Of Islamic Law And Legal Regulations," *MILRev:Metro Islamic Law Review*, vol. 2, no. 1 (30 Juni 2023), pp. 27–51, <https://doi.org/10.32332/milrev.v2i1.6879>.

¹² Linda Fidawaty, "Aborsi dalam Perspektif Hak Asasi Manusia dan Hukum Islam (Analisis terhadap Peraturan Pemerintah No. 61 tahun 2014 tentang Kesehatan Reproduksi)," *Al-'Adalah*, vol. 14, no. 1 (2018), p. 107, <https://doi.org/10.24042/adalah.v14i1.2930>.

¹³ Qodariah Barkah, et al., "Abandonment of Women's Rights in Child Marriage; An Islamic Law Perspective," *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, vol. 17, no. 2 (2022), pp. 383–411, <https://doi.org/10.19105/al-ihkam.v17i2.6725>.

Protection of victims of sexual violence is an important aspect of discussions about abortion. Victims of sexual violence, especially rape, often need access to safe and legal abortion services.¹⁴ The government needs to ensure that victims of sexual violence can easily access these services without facing additional barriers. Comprehensive psychological and medical support should also be provided to victims of sexual violence. This includes pre- and post-abortion counseling, as well as other necessary health services. Legal protection for victims must also be strengthened to ensure that they are not blamed or experience further stigma.¹⁵

The abortion issue requires a multidisciplinary approach involving various sectors, including health, legal, educational, and social. Collaboration between governments, non-governmental organizations, and civil society is essential to create a supportive environment for women who need abortion services. Research and accurate data are also required to support evidence-based policymaking. Research on abortion trends, barriers faced by women, and the impact of existing policies can help in formulating more effective strategies to address this issue.

In any attempt to regulate abortion, it is important to remember that reproductive rights are part of human rights.¹⁶ Policies and regulations must always be based on human rights principles, including the right to life, the right to health, and the right to make free decisions regarding one's own body.¹⁷ Indonesia has an international commitment to protect human rights through various ratified conventions. Therefore, governments must ensure

that policies regarding abortion comply with international standards and respect women's human rights.

The role of society in dealing with the issue of abortion is very important. Society must be encouraged to be more open and supportive of women's reproductive rights. This can start by reducing the stigma around abortion and understanding that safe and legal abortion is an essential health service. Civil society organizations can play a major role in supporting women who need abortion services. They can provide counselling services, legal aid, and support educational campaigns. Collaboration with governments and the health sector can also strengthen efforts to ensure better access to abortion services. The legality of abortion in Indonesia is a complex issue and involves various legal, human rights, and social aspects. Although there are regulations governing abortion under certain conditions, implementation in the field still faces multiple challenges, including social stigma, lack of information, and limited access to health services. To overcome this challenge, comprehensive efforts are needed from multiple parties, including the government, medical personnel, and civil society. Education and outreach regarding reproductive rights, increasing access to reproductive health services, and protecting victims of sexual violence are some of the steps that can be taken to ensure that women's reproductive rights are protected.

Ultimately, abortion must be seen as part of efforts to protect human rights and reproductive health. With a comprehensive and sensitive approach to women's needs, Indonesia can achieve a balance between preserving the life of the fetus and respecting women's reproductive rights.¹⁸ Public awareness and support from various sectors are essential to create a supportive environment for women who need safe and legal abortion services. With good cooperation, Indonesia can ensure that women's reproductive rights are protected and respected through its human rights commitments.

¹⁴ Pruntus Sudarmaji and Muhamad Hasan Sebyar, "Perlindungan Hukum Bagi Anak Korban Kekerasan Seksual," *Journal of Law and Nation (JOLN)*, vol. 2, no. 4 (2023), pp. 398–407.

¹⁵ Nabilla Karnia Soraya and Diah Ratu Sari, "PERLINDUNGAN HUKUM TERHADAP ANAK KORBAN PEMERKOSAAN BERDASARKAN UU NOMOR 17 TAHUN 2016 TENTANG PERUBAHAN KEDUA ATAS UU NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK," *Journal of law and nation*, vol. 2, no. 4 (2023), pp. 294–312.

¹⁶ Zainab Akmal and Sheikh Adnan Ahmed Usmani, "Digital Rights and Women's Empowerment in Pakistan: An Analysis of Contemporary Islamic Legal Perspectives in the Age of Social Media," *MILRev:Metro Islamic Law Review*, vol. 3, no. 1 (11 April 2024), pp. 95–118, <https://doi.org/10.32332/milrev.v3i1.8642>.

¹⁷ Ricky Darmawan, "Penegakan Hukum Terhadap Malpraktek Dokter Yang Melakukan Aborsi (Studi Putusan No.288/Pid.Sus/2018/Pn. Njk)," *El-Iqthisadi: Jurnal Hukum Ekonomi Syariah Fakultas Syariah dan Hukum*, vol. 2, no. 2 (2020), 15, <https://doi.org/10.24252/el-iqthisadi.v2i2.13999>.

¹⁸ Erna Tri Rusmala Ratnawati, "ABORSI DAN HAK HIDUP JANIN DALAM PERSPEKTIF HAK ASASI MANUSIA DAN KESEHATAN," *Juris Humanity:jurnal juris Riset dan kajian hukum HAM*, vol. 4, no. 1 (2017), pp. 1–15.

Theoretical Approach to Abortion from Maqashid Sharia Perspective

Maqashid sharia combines *maqashid* (goal) and *sharia* (right path). *Sharia* contains moral principles, ethical values, and practical directions that guide individuals toward a life of balance and harmony. In this view, the main goal of *sharia* is to maintain the five principles of *sharia* law proposed by al-Syatibi, namely *hifzh al-din* (maintaining religion), *hifzh al-nafs* (maintaining the soul), *hifzh al-nasl* (maintaining offspring), *hifzh al-aql* (maintaining reason), and *hifzh al-maal* (maintaining wealth).

The consideration of *mashlahah* in abortion decisions, especially in situations that threaten the life of the mother, shows the relevance of Islamic law to contemporary conditions. In al-Syatibi's view, the concept of *mashlahah* is an important principle that considers benefits and harms in making legal decisions. This provides flexibility in interpreting Islamic law and adapting it to the needs of the times.¹⁹

The principles of *mashlahah* al-Thufi, such as the independence of reason in determining benefit and *mafsadat*, *maslahat* as an independent *syar'i* proposition, limited application of *maslahah* to *muamalah* and custom, and *maslahat* as the strongest *syara'* argument, have direct implications in the context of abortion.²⁰ Al-Tufi emphasized the importance of considering the public benefit in making legal decisions. The concept of *mashlahah* provides flexibility in legal interpretation, allowing the adaptation of Islamic law to contemporary needs and conditions, especially in cases that are not explicitly regulated in the text. In the context of abortion, the use of the *mashlahah* principle can help scholars consider various factors, including maternal health, social conditions, and public benefit, in making legal decisions.

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In Islam, laws related to abortion are based on basic principles such as preserving life, maintaining human honor and dignity, and protecting offspring. In the case of abortion, ethical and legal considerations are often complex, and scholars usually refer to concepts such as Allah's predestination, protection of life, and preservation of offspring.

In Islamic societies, attitudes towards abortion vary depending on religious understanding and cultural values. Although there is a tendency to reject abortion as an act that is contrary to spiritual teachings, there is also an understanding that in certain circumstances, such as when the mother's life is in danger or cases of rape, abortion may be justified.

Some clerics have issued fatwas on abortion that provide legal guidance in certain situations. These fatwas are often based on the principles of *maqashid sharia* and *mashlahah*, as well as deep ethical considerations related to protecting life and public welfare. In some countries with a majority Muslim population, such as Indonesia, abortion laws are strictly regulated by national laws that reflect religious and cultural values. For example, in Indonesia, abortion is only permitted in certain circumstances, such as when the mother's life is in danger or cases of rape.

Ibn Qudamah, in the book "*Al-Mughni*," states that emergencies allow abortion, such as when the life of the mother is in danger. He outlined that although abortion is generally prohibited, exceptions can be made if there is a serious threat to the mother's health or life.²² Imam Nawawi gives a detailed view of abortion law in the Shafi'i school. He explained that abortion can be allowed before the fetus reaches 120 days of age, after which the fetus is considered animate. Nawawi also noted that abortion may be permitted in cases of medical emergencies where the mother's life is in danger.²³ Al-Jaziri in "*Al-Fiqh 'ala al-Madhahib*

¹⁹ Abu Ishaq Ibrahim bin Musa Al-Syatibi, *Al-Muwafaqat*, (Kairo: Dar al ma'arif, 1997).

²⁰ Rohidin Rohidin, "Pengaturan Aborsi Korban Perkosaan Berbasis pada Prinsip Maslahah," *Pandecta: Research Law Journal*, vol. 10, no. 2 (2015), p. 258, <https://doi.org/10.15294/pandecta.v10i2.4957>.

²¹ Amalia Lathifah, "Interpretation Of Verses On Women In Islamic Law Politics," *MILRev: Metro Islamic Law Review*, vol. 2, no. 1 (30 Juni 2023), pp. 10–26, <https://doi.org/10.32332/milrev.v2i1.6872>.

²² Ibnu Qudamah, *Al-Mughni*, Vol 9, (Riyadh: Dar 'Alam al-Kutub, 1997).

²³ Imam Nawawi, *Al-Majmu' Syarh al-Muhadhdhab*, Vol 9, (Beirut: Dar al-Fikr, 2003).

al-Arba'ah" provides a comprehensive summary of the views of the four main schools (Hanafi, Maliki, Shafi'i, and Hanbali) regarding abortion. She explained the conditions that must be met to allow abortion, such as threats to the life of the mother or pregnancy due to rape.²⁴

Legal abortion is haram, except in emergencies, such as medical reasons: the life of the mother is threatened if the abortion is not performed, or conditions forced to have an abortion, such as the case of rape, which can be done if the fetal age has not reached 120 days. As for medical reasons, abortion can be done even though the gestational age has reached 120 days. This type of research is a content analysis using the approach of *ushul fiqh* and *maqashid sharia* is expected to be able to provide alternative jurisprudence for women.²⁵

In formulating laws on abortion, countries with a majority Muslim population often attempt to take into account the principles of *maqashid sharia*. This includes preserving life (*hifzh al-din*), maintaining health and well-being (*hifzh al-nafs*), and caring for offspring (*hifzh al-nasl*). Although there are fatwas that justify abortion in certain circumstances, there are also criticisms of the practice of abortion from the perspective of Islamic law. Some clerics argue that abortion goes against the basic principles of Islam, which emphasize the value of human life and the obligation to protect life.

One of the points of debate in the context of Islamic law is the appropriate time limit for carrying out an abortion. Some scholars argue that abortion can only be performed within a very limited time, for example, only in the first trimester of pregnancy. However, opinions about this time limit may vary among Islamic scholars.

In making decisions about abortion, ethical considerations play an important role in Islamic law. This includes consideration of the rights of the individuals involved, the social and psychological implications of abortion, as well as an understanding of the concept of moral responsibility in Islam.

Attitudes towards abortion in Islamic societies are often influenced by local culture and traditions.

In some societies, patriarchal culture and stigma against sexuality can impact views on abortion. However, within the *maqashid sharia* framework, it is important to separate religious teachings from culture and traditions that may conflict with pure Islamic principles. In *maqashid sharia*'s view, abortion can be permitted if it maintains public benefit and prevents greater harm. For example, if continuing the pregnancy would endanger the mother's life or if the fetus has a genetic abnormality that threatens the well-being of the mother and family, abortion can be considered an effort to maintain social balance and justice.

However, in the context of abortion, *maqashid sharia* places the importance of preserving life (*hifzh al-din*) above all else. Therefore, abortion can only be permitted in circumstances that truly threaten the life or health of the mother and should be a last resort after all efforts to save life have been exhausted.

In considering the public benefit, *maqashid sharia* also emphasizes the need to pay attention to the long-term impacts of abortion decisions. For example, while abortion may appear to be a temporary solution to a particular problem, it can have lasting psychological and social effects on the individual and society as a whole.

In cases of unclear abortion, *maqashid sharia* also allows *istihsan*, namely using wisdom and reasoning, to reach a decision that best suits the objectives of the sharia. This shows the flexibility of Islamic law in dealing with complex and unpredictable situations.

However, it is important to remember that any abortion decision must be based on an in-depth study of the principles of *maqashid sharia* and *mashlahah*, as well as taking into account the views of relevant *ulama* and religious authorities. In addition, consultation with medical and mental health experts is also important to understand the implications of abortion holistically.

In *maqashid sharia*'s view, the main purpose of abortion is to preserve the life and health of the individual while considering the general benefit and minimizing negative impacts on society as a whole. Therefore, every decision regarding abortion must be taken with great care and based on deep consideration of ethical values and Islamic law. In carrying out a *maqashid sharia* analysis of abortion, it is important to avoid narrow and dogmatic interpretations and pay attention to the

²⁴ Abd al-Rahman al-Jaziri, *Al-Fiqh 'ala al-Madhahib al-Arba'ah*, Vol 1 (Kairo: Dar al-Hadith, 2003).

²⁵ Zulfa Hudiyani, "Diskursus Aborsi Dalam Perspektif Fikih Klasik Dan Kontemporer," *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam*, vol. 2, no. 1 (2021), pp. 43–61, <https://doi.org/10.15575/as.v2i1.12172>.

social, cultural, and economic context that affects individuals and society. This makes it possible to make decisions that are most in line with pure Islamic principles and fight for the public benefit holistically. By understanding the concept of *maqashid sharia*, society can treat the issue of abortion more sensitively and wisely, avoiding dogmatic or extremist attitudes that can ignore the complexity of individual situations. Instead, they can adopt a balanced and comprehensive approach that considers religious, ethical, and human values.

In considering abortion, of *maqashid sharia* emphasizes the importance of maintaining a balance between preserving life (*hifzh al-din*) and considering the public benefit (*mashlahah*). It enables individuals and societies to make moral and responsible decisions that align with Islamic religious principles and universal human values. Thus, the *maqashid sharia* approach to abortion offers a comprehensive and balanced framework that enables individuals and society to address these complex and sensitive issues with wisdom and compassion. This reflects the essence of Islamic teachings, prioritizing justice, humanity, and understanding in all aspects of life.

In the context of *maqashid sharia*, human life is considered one of the main values that must be protected (*hifzh al-din*). Therefore, abortion is only permitted in circumstances that truly threaten the life or health of the mother as an effort to maintain life, which is the human right of every individual. However, *maqashid sharia* also recognizes that there are situations where abortion may be the best option to prevent greater harm. For example, in cases of pregnancy resulting from rape, abortion may be considered a necessary step to protect a woman's rights to her body and dignity.

The *maqashid sharia* approach to abortion also emphasizes the importance of paying attention to the psychological and social well-being of the individuals involved, including the mother, family, and society at large. In this case, decisions about abortion must be considered holistically, taking into account the long-term impact on the psychological and social well-being of individuals and society. In carrying out a *maqashid sharia* analysis of abortion, it is important to take into account the human and ethical values that underlie Islamic teachings. It enables individuals and societies to make moral and responsible decisions that consider each individual's

human rights and dignity. However, in carrying out the obligation to protect life (*hifzh al-din*), *maqashid sharia* also considers the public benefit (*mashlahah*). This means that in some situations, such as when the pregnancy threatens the mother's life or health, abortion may be considered the step most in line with the pure principles of the Islamic religion.

The *maqashid sharia* approach to abortion also emphasizes the importance of taking into account the social, cultural, and economic contexts that influence individuals and society. This makes it possible to make decisions following Islamic religious values and the real needs of individuals and society, allowing for the creation of social balance and justice. In the context of Islamic law, abortion decisions must be taken, taking into account the opinions of relevant ulama and religious authorities, as well as consulting with medical and mental health experts. This is important to ensure that decisions are made considering ethical, spiritual, and humanitarian aspects relevant to a particular situation.

The *maqashid sharia* approach to abortion also offers a comprehensive and balanced framework for addressing these complex and sensitive issues. This reflects the essence of Islamic teachings, which prioritize justice, humanity, and wisdom in all aspects of life, including in dealing with bioethical issues such as abortion. In the *maqashid* Syariah perspective, abortion decisions must take into account the basic principles of Islamic law, which include the protection of religion, life, offspring, reason, and property. This shows that abortion can only be justified in truly urgent situations and following the noble objectives of sharia. Apart from that, of *maqashid sharia* emphasizes the importance of maintaining the integrity of the family and society. Therefore, abortion decisions must also consider its impact on relationships between individuals, families, and society, as well as efforts to minimize potential conflict and social injustice.

In the context of abortion, of *maqashid sharia* emphasizes the importance of paying attention to women's human rights, including the right to their bodies and the right to control their reproduction. This underscores the need to ensure that abortion decisions are taken, taking into account the perspective and interests of women as individuals who are entitled to autonomy and dignity. However, of *maqashid sharia* also emphasizes the importance

of paying attention to the values of justice and balance in making decisions about abortion. This means that decisions about abortion must take into account the various factors involved, including religious values, individual and societal needs, and the long-term impact of the decision.

In analyzing the issue of abortion, *maqashid sharia* also emphasizes the importance of taking into account the public benefit and the objectives of sharia as a whole. This means that abortion decisions must be taken, taking into account its impact on general welfare and efforts to achieve the noble goals of sharia, such as preserving life, preserving offspring, and protecting religion and reason. In carrying out a *maqashid sharia* analysis of abortion, it is important to consider the basic principles of Islamic law, which include justice, humanity, and wisdom. This enables individuals and society to make moral and responsible decisions that consider Islamic religious values and the real needs of individuals and society. The *maqashid sharia* approach to abortion also emphasizes the importance of paying attention to the social, cultural, and economic context that affects individuals and society. This makes it possible to make decisions that are in accordance with Islamic religious values and the real needs of individuals and society, allowing for the creation of social balance and justice.

In the context of Islamic law, decisions regarding abortion must be taken, taking into account the opinions of relevant *ulama* and religious authorities, as well as consulting with medical and mental health experts. This is important to ensure that decisions taken consider ethical, spiritual, and humanitarian aspects relevant in a particular situation.

Conclusion

The theoretical approach to abortion from the *maqashid sharia* perspective shows the complexity of this issue in the context of Islamic law. *maqashid sharia* offers a holistic view that combines religious principles with ethical and humanitarian considerations. With the five basic principles put forward by al-Syatibi, namely the maintenance of religion (*hifzh al-din*), soul (*hifzh al-nafs*), descendants (*hifzh al-nasl*), reason (*hifzh al-aql*), and wealth (*hifzh al-maal*), this approach emphasizes the importance of considering various aspects of life in making decisions about abortion. In this context, *maqashid sharia* emphasizes that

abortion should not be carried out carelessly and is only permitted in urgent situations and fulfills the objectives of sharia. This includes situations where the mother's survival is threatened, or a serious medical condition does not allow the pregnancy to continue.

Such decisions must be taken carefully, taking into account *maslahah* (public good) and *mafsadat* (harm), and involve consultation with medical experts and religious authorities. The principles of *mashlahah*, as explained by al-Tufi, expand flexibility in legal interpretation, allowing for the adaptation of Islamic law to contemporary needs and conditions. This is especially relevant in abortion cases, where there is not always explicit guidance in religious texts. This approach emphasizes the importance of context and balance in decision-making, which can be adapted to current medical and social developments. In addition, the *maqashid sharia* perspective also highlights the need to respect women's rights, including the right to their bodies and the right to make decisions related to reproductive health. This reflects the values of justice and humanity in Islamic law, which support ethical and responsible. Overall, *maqashid sharia's* approach to abortion underscores the importance of the principles of justice, balance, and humanity in Islamic law. By considering all these aspects, Islamic law can provide relevant and adaptive guidance in dealing with contemporary issues such as abortion while remaining faithful to the sharia's primary goal of achieving the common good and avoiding harm.

References

- Akmal, Zainab, and Sheikh Adnan Ahmed Usmani, "Digital Rights and Women's Empowerment in Pakistan: An Analysis of Contemporary Islamic Legal Perspectives in the Age of Social Media," *MILRev:Metro Islamic Law Review*, vol. 3, no. 1, 11 April 2024. <https://doi.org/10.32332/milrev.v3i1.8642>.
- Al-Jaziri, Abd al-Rahman, *Al-Fiqh 'ala al-Madhahib al-Arba'ah Vol 1*. Kairo: Dar al-Hadith, 2003.
- Al-Syatibi, Abu Ishaq Ibrahim bin Musa. *Al-Muwafaqat*. Kairo: Dar al ma'arif, 1997.
- Al-Tufi, Najm al-Din, *Risalah fi Maqasid al-Shariah*. Beirut: Dar al-Fikr, 1987.
- Barkah, Qodariah, Arne Huzaimah, Siti Rachmiyatun, Andriyani, and Zulmi Ramdani, "Abandonment of Women's Rights in Child Marriage; An

- Islamic Law Perspective.” *Al-Ihkam: Jurnal Hukum dan Pranata Sosial*, vol. 17, no. 2, 2022. <https://doi.org/10.19105/al-Ihkam.v17i2.6725>.
- Darmawan, Ricky, “Penegakan Hukum Terhadap Malpraktek Dokter Yang Melakukan Aborsi (Studi Putusan No.288/Pid.Sus/2018/Pn. Njk),” *El-Iqthisadi: Jurnal Hukum Ekonomi Syariah Fakultas Syariah dan Hukum*, vol. 2, no. 2, 2020. <https://doi.org/10.24252/el-iqthisadi.v2i2.13999>.
- Dewi, S., A Nugroho, and T Wulandari, “Implementasi Regulasi Hukum Terkait Aborsi dalam Kasus Perkosaan di Indonesia: Studi di Beberapa Provinsi,” *Jurnal Hukum dan Kesehatan*, vol. 06, no. 3, 2018.
- Fidawaty, Linda, “Aborsi dalam Perspektif Hak Asasi Manusia dan Hukum Islam (Analisis terhadap Peraturan Pemerintah No. 61 tahun 2014 tentang Kesehatan Reproduksi),” *Al-’Adalah*, vol. 14, no. 1, 2018. <https://doi.org/10.24042/adalah.v14i1.2930>.
- Hudiyani, Zulfa, “Diskursus Aborsi Dalam Perspektif Fikih Klasik Dan Kontemporer.” *Al-Ahwal Al-Syakhsiyyah: Jurnal Hukum Keluarga dan Peradilan Islam*, vol. 2, no. 1, 2021. <https://doi.org/10.15575/as.v2i1.12172>.
- Lathifah, Amalia, “Interpretation Of Verses On Women In Islamic Law Politics.” *MILRev:Metro Islamic Law Review*, vol. 2, no. 1, 30 Juni 2023. <https://doi.org/10.32332/milrev.v2i1.6872>.
- Luhulima, A S. *CEDAW: menegakkan hak asasi perempuan*. books.google.com, 2014.
- Mulia, Elsa, and S Syamsurizal, “Meta Analisis Bioetika Terhadap Aborsi: Perspektif Moral dan Medis,” *JBB: Jurnal Biologi Babasal*, vol. 1, no. 1, 2022.
- Nawawi, Imam, *Al-Majmu’ Syarh al-Muhadhdhab Vol 9*. Beirut: Dar al-Fikr, 2003.
- Pratama, H, B Sutrisno, and D Lestari, “Dampak Psikologis Aborsi pada Korban Perkosaan: Analisis Kasus di Rumah Sakit Rujukan.” *Jurnal Psikologi Klinis dan Kesehatan Mental*, vol. 7, no. 2, 2019.
- Qudamah, Ibnu, *Al-Mughni*, Vol 9. Riyadh: Dar ’Alam al-Kutub, 1997.
- Rahmawati, P, “... Aborsi Akibat Korban Perkosaan Anak Dibawah Umur Perspektif UU NOMOR 36 Tahun 2009 dan Hukum Islam (Studi Pada Putusan Hakim Nomor 5/PID. SUS-ANAK” *repository.uinjkt.ac.id*, t.t.
- Ratnawati, Erna Tri Rusmala, “ABORSI DAN HAK HIDUP JANIN DALAM PERSPEKTIF HAK ASASI MANUSIA DAN KESEHATAN,” *Juris Humanity: jurnal juris Riset dan kajian hukum HAM*, vol. 4, no. 1, 2017.
- Rohidin, Rohidin, “Pengaturan Aborsi Korban Perkosaan Berbasis pada Prinsip Masalah,” *Pandecta: Research Law Journal*, vol. 10, no. 2, 2015. <https://doi.org/10.15294/pandecta.v10i2.4957>.
- Santoso, W, D Rahardjo, and R Putri, “Persepsi Tenaga Medis terhadap Keterlibatan dalam Aborsi untuk Korban Perkosaan di Indonesia,” *Jurnal Etika Kedokteran*, vol. 8, no. 1, 2020.
- Sebyar, Muhamad Hasan, “The Role of Women in Improving Well-being Family Perspective Maqashid Syaria.” *Hukum Islam*, vol. 21, no. 2, 2021.
- Soraya, Nabilla Karnia, and Diah Ratu Sari, “PERLINDUNGAN HUKUM TERHADAP ANAK KORBAN PEMERKOSAAN BERDASARKAN UU NOMOR 17 TAHUN 2016 TENTANG PERUBAHAN KEDUA ATAS UU NOMOR 23 TAHUN 2002 TENTANG PERLINDUNGAN ANAK,” *Journal of law and nation*, vol. 2, no. 4, 2023.
- Sudarmaji, Pruntus, and Muhamad Hasan Sebyar. “Perlindungan Hukum Bagi Anak Korban Kekerasan Seksual.” *Journal of Law and Nation(JOLN)*, vol. 2, no. 4, 2023.
- Sugiyono, *Metode penelitian kuantitatif, kualitatif, dan R&D*. Alfabeta, 2018.
- Sutrisno, Edy, Ahmad Fanani, and Marsidi Marsidi, “A Female Leaders In The Perspective Of Islamic Law And Legal Regulations.” *MILRev:Metro Islamic Law Review*, vol. 2, no. 1, 30 Juni 2023. <https://doi.org/10.32332/milrev.v2i1.6879>.
- Utami, M, “Tindak Pidana Aborsi Pemerksaan Perspektif Kesehatan, Undang-Undang Dan Hukum Islam,” *Requisitoire Law Enforcement*, 2023.
- Wicaksono, Aji Benny, and Muhamad Hasan Sebyar, “ANALISIS YURIDIS TINDAK PIDANA PENCABULAN TERHADAP ANAK DI BAWAH UMUR (PUTUSAN PIDANA PURWOREJO NOMOR 57/PID. SUS/2022/PN. PWR),” *JOURNAL OF LAW AND NATION*, vol. 2, no. 4, 2023.
- Wijaya, R, L Hakim, and P Andini, “Persepsi Masyarakat terhadap Aborsi Akibat Perkosaan: Studi di Kawasan Perdesaan dan Perkotaan.” *Jurnal Sosiologi dan Antropologi*, vol. 5, no. 4, 2017.