

THE LAW OF CIRCUMCISION FOR WOMEN ACCORDING TO THE SYAFI'I MAZHAB, MAQOSIDUS SHARIA, AND CONSTITUTION

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Abstract: The implementation of self-circumcision in Indonesia was sheltered by the government, in this case, the Ministry of Health, in 2010 with the issuance of Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/ 2010 concerning Female Circumcision. Problems arose when the 2010 rule was repealed in 2014, resulting in discomfort among the people of Marbau District, North Labuhanbatu Regency. This study will analyze the enlightenment of the theory of legal certainty, maqashid asy-syari'ah, regarding Circumcision in the Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 in Marbau District, North Labuhanbatu Regency. The research method used the library (library research) and (empirical research). The Primary sources are observations, interviews, and Regulations of the Minister of Health in 2010 and 2014. The research results show that in terms of legal certainty theory, the Law is made so that it can be implemented by the community, while The 2014 repeal regulation is uncertain because it is difficult to implement. In the maqashid asy-shari'ah aspect, Circumcision is part of religious care (*hifzud din*), on the other hand, it does not mean that in the practice of Circumcision, harming girls or neglecting to protect oneself or one's soul (*hifzhun nafs*), but for the sake of giving obedience, and it is useful to control the lust of a girl when she grows up.

Keywords: *Female Circumcision; Shafi'i School; Theory of Legal Certainty; Maqashid Sharia*

Abstrak: Pelaksanaan khitan sendiri di Indonesia telah dinaungi oleh pemerintah dalam hal ini Kementerian Kesehatan pada tahun 2010 dengan dikeluarkannya Peraturan Menteri Kesehatan Republik Indonesia Nomor 1636/MENKES/PER/XI/2010 tentang Sunat Perempuan. masalah muncul ketika aturan pada tahun 2010 ini dicabut pada tahun 2014, sehingga terjadi kegelisahan di tengah masyarakat Kecamatan Marbau Kabupaten Labuhanbatu Utara. Penelitian ini akan menganalisis tinjauan teori kepastian hukum, maqashid asy-syari'ah tentang Khitan dalam Peraturan Menteri Kesehatan Republik Indonesia Nomor 6 Tahun 2014 di Kecamatan Marbau Kabupaten Labuhanbatu Utara. Metode penelitian yang digunakan adalah pustaka (library research) dan (empirical research). Sumber primer, terdiri dari hasil observasi, dan wawancara, Peraturan Menteri Kesehatan tahun 2010, dan tahun 2014. Hasil penelitian menunjukkan bahwa pada aspek teori kepastian hukum, hukum dibuat agar dapat dijalankan oleh masyarakat, sedangkan pencabutan aturan tahun 2014 tersebut menjadi suatu hal yang sifatnya tidak pasti, karena sulit dijalankan. Pada aspek maqashid asy-syari'ah, Khitan adalah bagian dari pen jagaan agama (*hifzud din*), sebalik itu bukan berarti dalam praktik khitan mencelakai anak perempuan atau mengabaikan menjaga diri atau jiwa (*hifzhun nafs*), tapi demi memberikan kehormatan, dan bermanfaat mengontrol nafsu anak perempuan itu ketika dewasa.

Kata Kunci: *Khitan Perempuan; Mazhab Syafi'i; Teori Kepastian Hukum; Maqashid Syariah*



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Introduction

Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 caused anxiety and uproar, especially in the Marbau District Community, North Labuhanbatu Regency. Circumcision of girls is common in this sub-district with the Regulation of the Minister of Health of the Republic of Indonesia Number 1636 the year 2010 concerning Female Circumcision, the community is increasingly assisted by the facilities provided by the government through the Ministry of Health in every district/city and sub-district and even villages throughout Indonesia.¹

The new regulation revokes the Regulation of the Minister of Health of the Republic of Indonesia Number 1636 the year 2010 concerning Female Circumcision, it turns out that it impacts conflicting thoughts and debates in society. In addition, there is a public perception that the government does not support religious activities which are an obligation for Muslims in Marbau District, North Labuhanbatu Regency regarding the obligation to perform female Circumcision.

Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning Revocation of Regulation of the Minister of Health of the Republic of Indonesia Number 1636 the year 2010 concerning Female Circumcision, which was issued in 2014 clearly contradicts the principles contained in Articles 5 and 6 of Law Number 12 of 2011 concerning Formation of Legislation. This is because there are many principles that do not seem to be of concern to regulators, including the absence of legal certainty, the difficulty of implementing them, the lack of order, and the lack of clarity on the purpose of the formulation of existing regulations.²

Everything listed above is due to the fact that female Circumcision is a form of implementation of Islamic teachings and shari'ah according to the Shafi'i school of thought in Indonesia, especially in Marbau District, North Labuhanbatu Regency. The existence of a Minister of Health Regulation turns out to have a negative value and hurts its implementation in the field. It is very difficult for the people of Marbau Subdistrict, North Labuhanbatu Regency, to abandon religious teachings, which have also become customs and habits commonly carried out from generation to generation out female Circumcision.³

Based on the cultural aspects and beliefs of the Indonesian people, until now, there are still requests for female Circumcision to be carried out, the implementation of which must still pay attention to the safety and health of the circumcised woman and not to perform female genital mutilation (female genital mutilation).⁴ Female Circumcision is mandatory for the Marbau community in North Labuhanbatu Regency. Non-negotiable obligations must be applied and carried out; in addition to the community's values of Islamic religious teachings in submission to carry out female Circumcision, the community has applied this rule from generation to generation in local customs.

Literature Review

In the Shafi'i school of thought, which obliges female Circumcision, this results from *ijtihad* from *istinbat al-ahkam* contained in the Koran and Sunnah of the Prophet SAW. Imam an-Nawawi, one of the scholars from the Shafi'i school of thought, has written in his book that Circumcision is obligatory for girls and boys.⁵ According to the Syafi'i school, the Law on female Circumcision is not

¹ Yulita Dwi Pratiwi, "Pengaturan Sunat Perempuan dalam Peraturan Perundang-Undangan di Indonesia," *Novum : Jurnal Hukum* 3, no. 2 (April 15, 2016): 139–150.

² Muhammad Andri Gunawan, Holijah Holijah, and Arief Wisnu Wardhana, "Perlindungan Hukum Terhadap Dokter Dalam Memberikan Tindakan Sirkumsisi/Khitan," *Doctrinal* 6, no. 2 (November 12, 2021): 31–65.

³ Zainuddin Sinaga, "Personal Interview," 2022.

⁴ Amirul Fajar Tanjung, "Personal Interview," 2022.

⁵ Abu Zakariyya Muhyidin Yahya ibn Syarf An Nawawi, *Al-Majmu' Syarh al-Muhazzab* (Madinah: Maktabah al-Masjid an-Nabawi asy-Syarif, 1998), 300.

only a form of honor for women but also obligatory. This obligation is the same as the obligation for a man to perform Circumcision, so it is doubtful that the slaughter will be done, and he cannot be made the priest of a man if he is still uncircumcised. This is the importance of carrying out Circumcision for men and women in the view of the Shafi'i school of thought.

Imam ad-Dimyathi explained that there is an obligation to circumcise girls by cutting off the parts that need to be circumcised, but the most important thing is to scratch.⁶ The case of Circumcision, which many priests refer to as a reference, is a hadith narrated by Abu Dawud from Umm 'Athiyyah al-Ansari, which explains the Prophet's order not to overdo Circumcision. The benefits of Circumcision include being able to give joy to women and happiness to their future husbands.⁷

Looking at the Fatwa of the Indonesian Ulema Council regarding Circumcision, it is only emphasized that male and female Circumcision is a form of *fitrah* (rules) and Islamic *syi'ar*, especially for women, so Circumcision carried out is worth *makrumah*, and is a recommended form of worship. It is very unfortunate; in the fatwa, there is no law regarding Circumcision, whether it is obligatory or Sunnah.⁸

The final part of the recommendation given by the Indonesian Ulema Council in its fatwa stated:

1. We are asking the government cq., the Ministry of Health, to make this fatwa a reference in establishing rules/regulations on the issue of female Circumcision.

2. Advise the Government cq., Ministry of Health to provide counselling and training to medical staff to perform female Circumcision following the provisions of this fatwa.⁹
3. The 1945 Constitution has guaranteed the implementation of religious teachings in Article 28 E, paragraph (1) and Article 29, paragraph (2), expressly stating that there is freedom for every believer of religion to worship according to the teachings he adheres. In addition, in Article 18 B, in paragraph (2), it is stated that the state, in this case, the government and its officials, have recognized and respected the existence of customary Law and its traditional rights to be implemented and implemented, even though it is closed with a sentence as long as it does not conflict with the principles country and applicable laws.

The theory in Islamic Law that there is worship that has a rational dimension is called *ta'aqquli* or *ma'qulat al-ma'na*, and there is a dogma that is *ta'abbudi/ghair ma'qulat al-ma'na*,¹⁰ Therefore, if the circumcision procession cannot be rationalized medically and logically, then it can be understood as dogmatic worship because Circumcision is part of Islamic religious identity.¹¹

Ni'am and Zahiroh commented on the comments that identified Circumcision as having benefited from a medical point of view. Even though Circumcision is a form of religious activity believed to be in Islamic

⁶ Abu Bakar ibn as-Sayid Muhammad Syatha Ad-Dimyathi, *Hasyiyah l'anah Ath-Thalibin 'ala Hal al-Fazh Fath al-Mu'in Li Syarh Qurrat al-'Ain* (Bairut: Darul Fiqr, 1998), 1998.

⁷ Agus Hermanto, "Khitan Perempuan Antara Tradisi Dan Syari'ah," *KALAM* 10, no. 1 (June 30, 2016): 257–294.

⁸ M. Asrorun Ni'am Sholeh, "Fatwa MUI Tentang Khitan Perempuan," *AHKAM: Jurnal Ilmu Syariah* 12, no. 2 (August 7, 2012), accessed March 26, 2023, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/964>.

⁹ Tim Komisi Fatwa MUI, "Apa Hukum dan

Kajian tentang Sunat bagi Perempuan," *Majelis Ulama Indonesia*, December 9, 2021, accessed March 26, 2023, <https://mui.or.id/mui-provinsi/mui-sulsel/32775/apa-hukum-dan-kajian-tentang-sunat-bagi-perempuan/>.

¹⁰ Muhammad Kurtubi, "Child Playing Online Game in the Sadd Al-Zari'ah's Perspective," *Nusantara: Journal Of Law Studies* 1, no. 1 (December 14, 2022): 9–20.

¹¹ Roudhotul Jannah and Sulhani Hermawan, "Hukum Sunat Perempuan Dalam Pemikiran Musdah Mulia," *Jurnal Al-Hakim: Jurnal Ilmiah Mahasiswa, Studi Syariah, Hukum dan Filantropi* 4, no. 1 (May 20, 2022): 1–14.

religious dogma, even though it has not been found medically useful, in this case, Circumcision for women, Circumcision does not necessarily negate it. If this is approved, then over time, it will extend to denying the benefits of male Circumcision, as happened in the United States with the pro-genital integration movement.

Methods

This type of research is normative-empirical. Namely, a study that departs from two things; the first is norms or laws, identical with laws and regulations¹², and the opinions of scholars based on logic and scientific and legal standards.¹³ The normative type is Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning Revocation of Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision, and Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision, as well as the opinion of the Shafi'i school of thought regarding Circumcision in his book *al-Umm*. The type of research from the empirical side is the application of female Circumcision carried out by the people of Marbau District, North Labuhanbatu Regency.

There are two research approaches, the case approach¹⁴ and the comparative legal approach (*comparative normative approach*).¹⁵ The sample of research subjects consisted of 12 (twelve) people, the sample of research subjects from medical staff consisted of 6 (six) people, and the sample of subjects from religious leaders consisted of 6 (six) people. It was listed below in the tabular form.

¹² Dwi Astuti Wahyu Nurhayati and Novi Tri Oktavia, "Relevance Of Al Mawardi's Reflection In The Development Of Islamic Economic Activities," *Journal of Nusantara Economy* 1, no. 1 (December 10, 2022): 48–58.

¹³ Johnny Ibrahim, *Teori Dan Metodologi Penelitian Hukum Normatif* (Malang: Banyu Media, 2014), 56.

1) Community Informants

Table 1. Names of Community Informants, Age and Origin of Villages/Kelurahan in Marbau District, North Labuhanbatu Regency,

No.	Name	Age	Origin of Village/Kelurahan
1.	Nurul Khairina	35 years old	Crooked
2.	Muhammad Ilham Nasution	39 Years	
3.	Ahmad Jali	45 Years	South Marbau
4.	Zainuddin Sinaga	49 Years	
5.	Linda	33 Years	Source Mulyo
6.	A. Insan Hasanuddin Ritonga	48 Years	
7.	Ahmad Munawir	51 Years	Aek Tapa
8.	M. Azhar	35 years old	
9.	Sofiah	43 Years	4-way intersection
10.	Agustiar Lokot	49 Years	
11.	Ahmad Mubarak	50 years	Bargot Island
12.	Hamdan Pulungan	52 Years	

b) Medical Informant

Table 2. Names of Medical Staff Informants in Marbau District, North Labuhanbatu Regency, Age and Origin of Village/Kelurahan

No.	Name	Age	Origin of Village/Kelurahan
1.	Dewi, Am.Keb.	38 Years	Crooked
2.	Siti Fatimah Ritonga, Am.Keb.	41 Years	South Marbau
3.	Masnuriani Harahap, Am.Keb.	43 Years	Source Mulyo

¹⁴ khairudin Khairudin, "The Practice of Buying and Selling Black Market Goods on The Perspective of Islamic Economic Law," *Nusantara: Journal Of Law Studies* 1, no. 1 (2022): 77–85.

¹⁵ Soerjono Soekanto and Sri Mamudji, *Normative Legal Research; a Brief Overview*, (Jakarta: Rajawali Pers, 1998), h. 50-52.

No.	Name	Age	Origin of Village/Kelurahan
4.	Rosmina Ginting, Am. Keb.	39 Years	Aek Tapa
5.	Florida, Am. Keb.	40 Years	4-way intersection
6.	Mahesta Agustina Ginting, Am.Keb.	33 Years	Bargot Island

c) Religious Leader Informant

Table 3. Names of Informants Religious Leaders, Age and Origin of Villages/Kelurahan in Marbau District, North Labuhanbatu Regency

No.	Name	Age	Origin of Village/Kelurahan
1.	H. Sahrul Ramadhani	51 Years	Crooked
2.	H. Syawalul Fitra	53 Years	South Marbau
3.	H. Khairil	48 Years	Source Mulyo
4.	HM Nasir	47 Years	Aek Tapa
5.	H. Amirul Fajar Tanjung	49 Years	4-way intersection
6.	H. Fikri	52 Years	Bargot Island

Result And Discussion

Law of Circumcision According to the Shafi'i School

Circumcision, in the opinion of various priests of the madhab, has different laws. As stated in the 2008 Fatwa of the Indonesian Ulama Council concerning the Law for the Prohibition of Circumcision of Women, it includes many opinions from scholars from various schools of thought. It is stated that, in the Hanafi, Maliki, and Hanbali schools, the Law on female Circumcision is Sunnah, while in the Shafi'i school, it is punished as an obligation that must be carried out. For example, Imam ibn Qudamah, who is a

scholar from the Hanbali school of thought, explains:

So the Law of Circumcision of men is obligatory, while the Law of Circumcision of women is a right that is part of the honour of these women and is not obligatory on them.¹⁶

The above quote is part of the opinion of the Hanbali school, which emphasizes that Circumcision is obligatory for boys but not for girls. Understandably, in the Syafi'i School, the opinion is used by the Indonesian people in general and by the Muslim community in Marbau District, North Labuhanbatu Regency, so it has consequences for the use of the results of ijtihad from scholars in the Syafi'i School.

According to the Syafi'i School, the Law of female Circumcision is a form of honour for women and is obligatory to implement. This obligation is the same as the obligation for a man to perform Circumcision, so it is doubtful that the slaughter will be done, and he cannot be made the priest of a man if he is still uncircumcised. This is the importance of carrying out Circumcision for men and women in the view of the Shafi'i school of thought. ¹⁷Below is stated the opinion of other scholars, still from the Shafi'i school of thought, namely Imam ad-Dimyathi, regarding the Law of female Circumcision and the implementation of Circumcision following the recommendations of the Prophet SAW, as follows:¹⁸

“It is obligatory to carry out female Circumcision by cutting off the part that must be circumcised and prioritized in carrying out the female circumcision process with just a little scratch. This follows the hadith narrated by Abu Dawud and other hadith priests. Indeed, the Prophet SAW said, Circumcision

¹⁶ Faiz Izuddin Masykur and Fadhliah Mubakkirah, “Tinjauan Hukum Islam Terhadap Khitan Bagi Perempuan (Studi Komparasi Antara Ulama Klasik Dan Ulama Kontemporer),” *Comparativa: Jurnal Ilmiah Perbandingan Mazhab dan Hukum* 3, no. 2 (2022): 139–160.

¹⁷ Mira Susilawati, Azhar Pagala, and Nur Syamsi, “Pandangan Ulama Kota Samarinda

Terhadap Khitan Bagi Perempuan Dalam Perspektif Hukum Islam,” *Mitsaq: Islamic Family Law Journal* 1, no. 1 (February 13, 2023): 71–80.

¹⁸ Abu Bakr ibn as-Sayid Muhammad Syatha ad-Dimyathi, *Hasyiyah l'annah ath-Thalibin `ala Hal al-Fazh Fath al-Mu'in li Syarh Qurrat al-Ain*, Juz IV, (Bairut: Dar al-Fikr, 1998), p. 198.

is small and should not be excessive. Circumcision performed for women can please their husbands because it will increase the pleasure in intercourse. One history states that Circumcision of women can brighten the aura of the face due to the flow of facial expressions and blood.¹⁹

Imam ad-Dimyathi explained in detail how circumcision of women is carried out, namely by cutting off some of it, but the most important thing is just a little bit (in the form of a scratch), as narrated by Abu Dawud in a hadith sourced from Umm `Athiyyah al-Ansari. The hadith from the history of Abu Dawud is listed below:²⁰

“Have told us Sulaiman ibn `Abdurrahman ad-Dimasyqi and `Abdul Wahhab ibn `Abdurrahim al-Asyja'i, said both of them, have told us Marwan, have told us Muhammad ibn Hassan, said he `Abdul Wahhab al- Kufi, from `Abdul Malik ibn `Umair, from Ummi `Athiyyah al-Ansari, a woman will circumcise in Medina, so the Prophet SAW said to her, do not overdo it in Circumcision, then in fact (do not exaggerate in Circumcision) it can make women happy, and favoured by her husband. (Narrated by Abu Dawud)”

The hadith above relates to the warning of the Prophet SAW to female friends who want to perform Circumcision on women.²¹ While mentioning, so that you do not go too far in cutting, just light scratches. The pronunciation used is *la tunhiki*; do not overdo it in Circumcision. The meaning of not exaggerating is what the Syafi'i School

further interprets as a small scratch.²²

There are suspicions or accusations that Circumcision of women can cause harm to circumcised women. In fact, the Apostle SAW had warned long ago about the procedure for performing Circumcision, and its purpose, besides giving glory to women, is also to avoid the harm that can be caused when Circumcision is not appropriate. With the guidance of the Prophet SAW. When Circumcision is done by ignoring the guidance of the Prophet SAW, which mentions not to overdo Circumcision by cutting it, the circumcised woman is certainly harmed.²³

Therefore, in the hadith narrated by Imam at-Thabrani, Abu Dawud from Umm `Athiyyah, which was previously listed, the Prophet SAW used the word *la tanhaki*, interpreted as not exaggerating, as a way to avoid harm when performing Circumcision on women. Circumcision is carried out apart from being part of worship because it carries out Islamic sy'ar; apart from that, it also benefits the woman who is circumcised and can please her husband when the woman gets married later. This is what Imam ad-Dimyathi emphasized in the previous quote, because of the circumcision *li ziyadatih fi lazzat al-jima` wa, asra li al-wajh ai aktsar li ma'ih wa dima'ih*,²⁴ to add to the delicacy in having sexual intercourse between husband and wife, brightening the face, due to the large flow of water on the face and the flow of blood.²⁵

The concept of Circumcision in the Regulation of the Minister of Health of the Republic of Indonesia

The concept of Circumcision of girls in the

¹⁹ Lukman Hakim, “Khitan Perempuan Dalam Perspektif Hukum Islam,” *Jurnal Ilmiah Ar-Risalah: Media Ke-Islaman, Pendidikan dan Hukum Islam* 15, no. 1 (October 9, 2017): 139–147.

²⁰ Abu Dawud Sulaiman ibn al-Asy`ats ibn Ishaq ibn Basyir ibn Syidad ibn `Amru al-Azdi as-Sijistani, *Sunan Abu Dawud*, Juz XIV, (Bairut: Dar al-Kutub, 1996), h. 14. 4587th Hadith.

²¹ Musda Asmara and Lilis Sahara, “Problems with Choosing a Mate in Islam for People Who Choose a Mate through Social Media,” *NUSANTARA: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 40–49.

²² Ashabul Fadhli, “Meramu Ketentuan Hukum Islam Terkait Khitan Perempuan,” *JURIS (Jurnal Ilmiah Syariah)* 14, no. 1 (October 18, 2016): 47–61.

²³ Ibnu Amin, “Khitan Wanita Perspektif Medis Dan Hukum Islam,” *Jurnal AL-Ahkam* 13, no. 2 (2022): 1–22.

²⁴ Ad-Dimyathi, *Hasyiyah I`anah*, h. 198.

²⁵ Nurma Sayyidah, “Hadis Tentang Hukum Khitan Perempuan (Kajian Sanad Dan Matan),” *Jurnal Studi Ilmu-ilmu Al-Qur'an dan Hadis* 17, no. 1 (2016): 145–158.

perspective of Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning Revocation of Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision, that female Circumcision is not a medical procedure, then it is stated that female Circumcision is seen as having no benefit at all that can be proven scientifically.²⁶

Female genital mutilation is not permissible, then the letter "d" states that female Circumcision is in the concept of Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning Revocation Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision is no longer following global developments and policies.

Some things need to be observed regarding the mandate given by the Ministry of Health, specifically to the Health Advisory Council and Shari'a, which orders to make a certain guidelines. The reason is that female Circumcision guarantees the safety and health of the circumcised woman. Despite the facts on the ground, there have been no cases where the Circumcision of girls has been found to affect or harm girls who are circumcised.²⁷

If indeed cases were found by the Ministry of Health, the number of cases and the negative impacts they had caused should have been listed.²⁸ Instead, in analyzing this problem, the Ministry of Health gave a

mandate to the Health Advisory Council and Syara'k to issue guidelines for female Circumcision,²⁹ which aims to protect the safety and health of circumcised girls.

I am impressed that the practice of female Circumcision that has been carried out by Muslim communities in Indonesia, especially in Marbau District, North Labuhanbatu Regency, has had cases of causing harm or negative impacts on girls after Circumcision was carried out. In essence, Circumcision of girls has been going on for a long time, and the genital mutilation (*female genital mutilation*) has never been performed at all by those who perform the Circumcision, so it is not acceptable in common sense to the information contained in the Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES /PER/XI/2010 concerning Female Circumcision.³⁰

Overview of Maqashid asy-Syari'ah regarding Circumcision in the Regulation of the Minister of Health

The case of Circumcision is a case in carrying out the teachings of the Islamic religion, apart from the existence of *khilafiah* in judging circumcision cases; in this case, it concerns the Circumcision of girls. The teachings regarding Circumcision are sourced from the Koran when Allah SWT explains Abraham. As contained in QS. An-Nahl/16:123, QS. Ar-Rum/30:30, QS. Al-Baqarah/2:124, and QS. An-Nisa'/4:125. There is a repetition of the words monotheism, *millah*, and the word *hanif*, in these verses, which reinforces the argument by Imam an-Nawawi in the Shafi'i

²⁶ Ninik Rahayu, "Kesetaraan Gender Dalam Aturan Hukum Dan Implementasinya Di Indonesia Gender Equality In The Rule Of Law In Indonesian And Implementation)," *Jurnal Legislasi Indonesia* 9, no. 1 (2012): 15–32.

²⁷ Ali Sander and Sri Sunantri, "Tradisi Khitan Perempuan," *Jurnal SAMBAS: (Studi Agama, Masyarakat, Budaya, Adat, Sejarah) Journal of Religious, Community, Culture, Costume, History Studies* 3, no. 1 (July 27, 2020): 28–41.

²⁸ Muhamad Imam Muddin, "Inheritance System Mayorat on the Komerling Tribe in Urf Perspective," *Nusantara: Journal Of Law Studies* 1,

no. 1 (December 16, 2022): 21–32.

²⁹ Wahyuziaulaq Wahyu and Ahmad Azmi Perkasa Alam, "Interfaith Marriage Perspective of Fiqh Law and Positive Law," *Nusantara: Journal Of Law Studies* 1, no. 1 (December 16, 2022): 33–39.

³⁰ Aris Prio Agus Santoso et al., "Kajian Yuridis Tindakan Circumsisi Oleh Perawat Pada Praktik Keperawatan Mandiri (Studi Kabupaten Sidoarjo)," *JISIP (Jurnal Ilmu Sosial dan Pendidikan)* 6, no. 2 (March 1, 2022), accessed March 27, 2023, <https://ejournal.mandalanursa.org/index.php/JISI/P/article/view/2816>.

School that Circumcision is obligatory on girls, just as it is obligatory to circumcise boys.³¹

Previous studies have explained that there are differences of opinion among schools of thought about the legal status of the Circumcision of girls, but in the Shafi'i school, the Circumcision of girls is considered mandatory and must be carried out. Due to the understanding and *istinbath al-ahkam* from the Shafi'i School regarding the obligation of female Circumcision, it has causality towards its followers in Indonesia, specifically in Marbau District, North Labuhanbatu Regency.³²

For people who belong to the Shafi'i School, Circumcision is believed to be a form of obedience in carrying out religious orders. For this reason, the existence of the Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning the Repeal of the Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision, is perceived as a rule that does not support the community in carrying out religious orders and teachings that are believed, especially in the understanding of the Shafi'i School.

Talking about *maqashid asy-shari'ah*, the highest hierarchically in the *dharuriyah* section is protecting religion (*hifzhud din*); because of that, the practice of Circumcision for girls is something that must be carried out because leaving it is part of neglecting religion and syi' care ar religion, and was

punished for being negligent in carrying out female Circumcision.³³ Review of the theory of legal certainty, *maqashid asy-syari'ah* regarding Circumcision in the Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning the Repeal of the Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision which was implemented in Marbau District, Labuhanbatu Regency North. Regarding legal certainty, the legal regulations issued by the Ministry of Health are certain, but there is confusion in them.³⁴

Among them is the reason for repealing the 2010 rule, which seems to ignore the interests of the Muslim community who want to practice their religious beliefs, even though the state guarantees it in the 1945 Constitution. On the other hand, we still remind the public to practice midwives not to do female genital mutilation, even though in practice in the community, female genital mutilation has never been done but only applied by scratching the tip of the clitoris to peel off part of the skin. This follows the guidelines contained in the hadith of the Prophet SAW in the history of Abu Dawud and others.³⁵

In *maqasid asy-shari'ah* terms, the existence of a regulation from the Ministry of Health that repealed the 2010 rule is a case that is not good ³⁶because it does not see the practices carried out by Muslim communities, which protect the rights of girls, not in order to hurt. Circumcision is part of religious care (*hifzhud din*), on the other hand, it does not

³¹ Ainol Ainol Ainol, "Khitan Perempuan Dalam Hukum Islam; Kritik Hadits Dalam Sunah Abu Dawud Nomor 5271," *Isti'dal: Jurnal Studi Hukum Islam* 2, no. 2 (June 19, 2015): 112–122.

³² Nurasiah Nurasiah, "Khitan Dalam Literatur Hadis Hukum," *AHKAM: Jurnal Ilmu Syariah* 15, no. 1 (February 21, 2019), accessed March 27, 2023, <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/2851>.

³³ Nurahmansyah Nurahmansyah, "Praktek Khitan Pada Perempuan Dalam Perspektif Hukum Islam Di Desa Rawakalong Kecamatan Gunung Sindur Kabupaten Bogor," *Mozaic: Islam Nusantara* 5, no. 1 (April 12, 2019): 35–60.

³⁴ Fitri Kurniati, Fitri Fujiana, and Uray Fretty

Hayati, "Kajian Literatur: Sunat Perempuan Ditinjau Dari Aspek Umum Dan Kesehatan," *Al-Asalmiya Nursing: Journal of Nursing Sciences* 11, no. 1 (August 6, 2022), accessed March 27, 2023, <https://jurnal.stikes-alinsyirah.ac.id/keperawatan/article/view/2124>.

³⁵ Mukhammad Zamzami, "Perempuan dan Narasi Kekerasan: Analisis Hukum dan Medis Sirkumsisi Perempuan," *Asy-Syir'ah: Jurnal Ilmu Syari'ah dan Hukum* 51, no. 1 (April 5, 2017): 53–78.

³⁶ Muhammad Fitri Adi, "Hadhonah Rights of Children (Not Mumayyis) Based on Compilation of Islamic Law and Child Protection Act," *NUSANTARA: Journal Of Law Studies* 2, no. 1 (March 15, 2023): 9–22.

mean that the practice of Circumcision harms girls or neglects to protect oneself or the soul (*hifzhun nafs*) but for the sake of giving honour, and it is beneficial to control the lust of the girl when she grows up.³⁷

Conclusion

Circumcision of girls in the Shafi'i School is punished as a mandatory matter. There is no legal difference between Circumcision for girls and boys. It is just that in the technical implementation of Circumcision, there are differences if Circumcision for boys is done by cutting the tip of the pubic skin up to the *hasyafah* limit, while Circumcision for girls is done by scratching and slightly peeling off the tip of the skin from the clitoral sex organ.

In general, the rules of the Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 have several considerations made by the Ministry of Health in revoking the regulation on female Circumcision or Circumcision. Among the most important things explained in the 2014 regulations, it is stated that Circumcision is not a medical activity; it also states that until now, there has been no scientifically clear evidence about the benefits of it Circumcision for women. Then another consideration was mentioned, Circumcision of girls is seen as not following global developments. The regulation also states that as a cultural consideration and public belief, if the practice of female Circumcision persists, it cannot be done utilizing female genital mutilation, known as the medical term female genital mutilation.

Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning Revocation of Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision, there is no legal certainty. This is because the rules are ambiguous; on the one hand, repealing the rules regarding female Circumcision, on the

other hand providing technical directions for the implementation of Circumcision that are not permitted, such as the prohibition against performing female genital mutilation (cutting off the female genitalia). Maqashid asy-shari'ah, which prioritizes protecting religion (*hifzhud din*), is not implemented or even seems to be ignored in the Regulation of the Minister of Health of the Republic of Indonesia Number 6 of 2014 concerning Revocation of the Regulation of the Minister of Health of the Republic of Indonesia Number 1636/MENKES/PER/XI/2010 concerning Female Circumcision. Although several sections state that the community still desires Circumcision for reasons of faith and other reasons, the new regulations that repeal the old rules regarding Circumcision are still contrary to one of the parts of maqasid asy-shari'ah, namely protecting religion. Circumcision of girls is part of syi'ar Islam; therefore, the government must implement it as a form of obedience to the 1945 Constitution, which states that the state guarantees individual freedom in practising their religion and belief, including, in this case, carrying out Circumcision of girls.

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³⁷ Jauharotul Farida et al., "SUNAT PADA ANAK PEREMPUAN (KHIFADZ) DAN PERLINDUNGAN ANAK PEREMPUAN DI

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