

Abortion Due to Unwanted Pregnancy: Perspective of Islamic Law and Positive Law

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Abstract

This article is intended to look at the variants of the legal implications of abortion, both from the perspective of Islamic law and positive law in Indonesia. This research uses a juridical-normative approach which is based on the laws and regulations and the fatwas of ulama. The results showed that abortion can be classified into two, namely abortion for medical reasons and abortion not for medical reasons. Legally, abortion for medical reasons and performed by a doctor with integrity is a justified act. Both Islamic law and positive law in Indonesia justify this action by meeting certain conditions. The act of abortion that is not accompanied by medical indications is a prohibited act in Islamic law and positive law at the same time. This research is expected to contribute in completing the assessment of the variant of abortion in terms of Islamic law and positive law. However, this research needs to be continued by considering quantitative data on abortion, so that the resulting legal opinion is truly oriented towards the general benefit.

Keywords: Abortion; Unwanted Pregnancy; Medical Considerations; Islamic law; Positive Law.

Abstrak

Artikel ini dimaksudkan untuk melihat varian implikasi hukum atas tindakan aborsi, baik dari perspektif hukum Islam maupun hukum positif di Indonesia. Penelitian ini menggunakan pendekatan yuridis-normatif yang bersumber pada peraturan perundang-undangan dan fatwa-fatwa ulama. Hasil penelitian menunjukkan bahwa tindakan aborsi dapat diklasifikasikan menjadi dua, yaitu aborsi karena alasan medis dan aborsi tidak karena alasan medis. Secara hukum, aborsi karena alasan medis dan dilakukan oleh dokter yang berintegritas adalah tindakan yang dibenarkan. Baik hukum Islam maupun hukum positif di Indonesia membenarkan tindakan ini dengan memenuhi persyaratan tertentu. Adapun tindakan aborsi yang tidak disertai indikasi medis merupakan perbuatan terlarang dalam hukum Islam dan hukum positif sekaligus. Penelitian ini diharapkan dapat berkontribusi dalam melengkapi penilaian terhadap varian tindakan aborsi dari sisi hukum Islam dan hukum positif. Namun demikian, penelitian ini perlu dilanjutkan dengan mempertimbangkan data-data

kuantitatif atas tindakan aborsi, sehingga pendapat hukum yang dihasilkan betul-betul berorientasi kemaslahatan umum.

Keywords: Aborsi; Kehamilan Tidak Diinginkan; Kondisi Darurat; Pertimbangan Medis; Hukum Islam; Hukum Positif.



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Introduction

Abortion as a social reality that is rampant in the midst of society. Abortion is widespread due to shifts in values and is considered a common thing. Abortion is synonymous with women, and many are carried out not only for medical reasons, but also because of environmental problems related to the notion of freedom (freedom/liberalism) that is used in a society. Freedom is the entry point for rampant abortion cases in society. Abortion is an act of concern for the current moral condition. It is estimated by WHO that unsafe abortion is very common. About 20 million unsafe abortions occur every year, about 70,000 thousand cases of unsafe abortions occur in developing countries causing maternal deaths.

Based on the Annual Records of the National Commission on Violence Against Women (CATAHU Komnas Perempuan) found 24.76 cases of sexual violence that occurred during 2016-2020. Among these cases, there were 7,344 rapes or 29.6% of all cases of sexual violence. CATAHU Komnas Perempuan has not found valid data on the number of rape victims who have safe abortions (Purba, 2021).

In Indonesia, which is a country with a Muslim majority, it turns out that abortion is very significant. Abortion is strictly prohibited by law but the practice is increasing all the time (Faisal & Ahmad, 1998). In 10 big cities the abortion rate reaches two million per year or 43% of live births or 30% of pregnancies. The reason is because of an unwanted pregnancy (Utomo, 2002).

The number of mothers who die every year increases, caused by abortion because they are not ready to have children due to promiscuity. It is very difficult to accurately determine the frequency of abortions because there is no clear data regarding artificial abortions, which occur very often, unless complications occur and require hospitalization. In BKBN there are two million reports of abortion cases that occur in Indonesia every year, in one year only 2 million people are known to be killed (Tutik, 2010). Meanwhile, in other data, the abortion rate currently reaches 2.3 million and continues to increase every year. dr.Boyke Dian Nugraha, a gynecologist and sex consultant, in a seminar on Sex Education for Students at the National University of Jakarta stated that abortions that occur in Indonesia every year reach 750,000 to 1.5 million. Apparently, the data is in line with data on promiscuity in Indonesia which reflects the adoption of secularistic values of freedom. Based on this, it can be understood that abortion is a social problem related to the notion of freedom

(freedom/liberalism) which was born from the notion of secularism, namely the separation of religion from life (Zallum, 1998).

Abortion in contemporary jurisprudence has been discussed with various *ijtihad* produced. Scholars have different understandings in the exact order and timing of gestational age for the start of this phase of life. The Qur'anic texts and hadiths talk about the phase of the beginning of the creation of man in chapters al-Mu'minun 12-14, al-Insan 2, al-Hajj 5, and al-Qiyamah 37, al-Maidah 32 and al-Isra 33 became the basis of the analysis of the *fuqaha*.

In Indonesia, legalization and regulations regarding abortion have been discussed starting from laws to fatwas. However, the process of legalizing and regulating abortion has not been able to quell prominent differences of opinion, abortion is still a topic that is always interesting to debate. Abortion is an act that cannot be compared with eastern culture, because eastern culture is a culture that adheres to religion. Abortion is not just an individual problem but a real problem that must be solved because it is not only a woman's health but also has a serious impact on the demographic situation of the whole country.

Based on the data found, the number of abortions that occur is the result of freedom and promiscuity resulting in unwanted pregnancies. Therefore, the author tries to express the view of abortion due to unwanted pregnancy in terms of Islamic law and Indonesian positive law and the risks for women.

Method

This study uses a normative juridical approach by using qualitative data obtained through content analysis techniques. Sources of data are the opinions of scholars regarding abortion law, as well as laws and derivative regulations regarding abortion. The opinions of scholars taken in this study are sourced from four schools of thought, as well as a number of contemporary scholars whose legal opinions are widely referenced by Muslims in various countries, while the legal literature is in the form of the Criminal Code (KUHP) which is the main book of criminal law in Indonesia. Indonesia.

Results and Discussion

About Abortion (Normative Approach)

Abortion is taken from the words *abortus* (Latin) and *abortion* (English) which means abortion or miscarriage (Yanggo, 2002). in the Big Indonesian Dictionary of Abscess it is stated as: 1) The emitted embryo can no longer live (before the fourth month of gestation); miscarriage or miscarriage; 2) Cessation of normal growth (for living things); 3) Miscarriage (fetus) (Sugono et al., 2008).

In the Indonesian Encyclopedia, abortion is defined as ending a pregnancy before 28 weeks' gestation or the fetus has not reached a weight of 1,000 grams. Sardikin Ginaputra from the Faculty of Medicine, University of Indonesia stated that abortion is the termination of pregnancy or conception before the fetus can live outside the womb (Aini, 2015). In Arabic abortion is called *al-Ijhād* which

comes from the word *ajhāda-yajhiḍu* which means a woman who gives birth to her child forcibly in an incomplete state of creation (Yusup, 2016). Fiqh scholars use the words *isqath al-haml*, *al-ijhadh*, *tharh*, *ilqa'* and *inzal* in the use of the term abortion. These five are mentioned by Abdullah bin Abd al-Mukhsin al-Thariqi, this understanding contains closeness so that one can be used to express the act of abortion (Zuhdi, 1992). The language institute specifies that "*ijhād*" means removing the fetus from the womb before the fourth month of pregnancy. In the medical world, abortion is known as removing the products of conception or fertilization, before the fetus can live outside the mother's body (Zuhdi, 1992). Abortion can also be interpreted as a baby born by force or a baby born by itself.

According to the expert's view, for example Sardikin Guna Putra, abortion is ending a pregnancy on the products of conception before the fetus can live outside the womb. Nani Soendo said, Abortion is removing the fruit of pregnancy when the fetus is still so small that it can no longer survive (Istiarti et al., 2006). The American Psychological Association (APA) Dictionary of Psychology defines abortion as premature expulsion of the fetus from the uterus (viability), which can be carried out in an involuntary (spontaneous) or intentional (induced) manner (Setyasari & Afiatin, 2015).

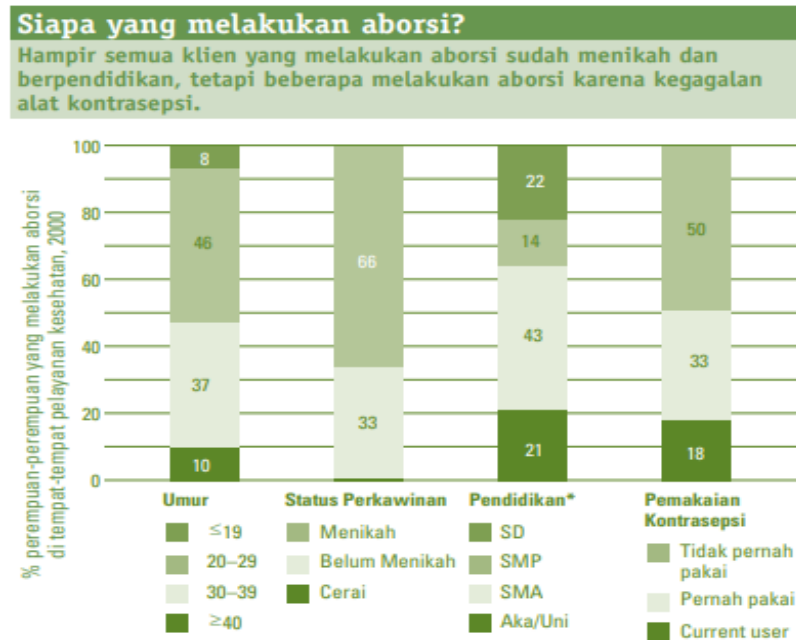
Masfuk Zuhdi classifies abortion into two types. First, spontaneous abortion (*spontaneus abortus*), namely abortion that occurs automatically without coercion, due to syphilis, accidents, and so on. Second, intentional abortion (*abortion provocatus/induced pro abortio*) is further grouped into two types, namely *abortion artificialis therapicus*, namely abortion due to medical indications performed by a doctor. Such as pregnancy that endangers the mother or the baby-to-be due to serious illnesses such as severe tuberculosis and severe kidney disease; and *abortion provocatus criminalis*, which is abortion performed without a medical indication. such as abortion due to casual sex or unwanted pregnancy (Zuhdi, 1992).

Abortion can occur due to two factors. First, the baby factor. Growth abnormalities in the fetus as a result of conception are the most common abnormalities cause abortion in early pregnancy. caused by a genetic disorder, such as a single mutation; various diseases; and maybe some paternity factor. Second, maternal factors, 10–25% of abortions are performed due to maternal age. The younger the age of the mother, the more prone to abortion, and pregnancy at an old age is also prone to abortion. Age under 35 years of age risk of abortion by 15%, age 35-45 years around 20-35%, and age over 45 years risk of more than 50. Paternal age is also at risk for the incidence of abortion, the incidence of abortion increased by 12-20% in fathers who are more than 40 years old. Old paternal age can cause chromosomal translocations in sperm which can lead to abortion.

Abortion in Indonesia in a research report conducted by the Guttmacher Institute states that millions of women experience unplanned pregnancies and most of them choose to have abortions. It is an astonishing fact that according to

them it is estimated that around two million abortions are induced in Indonesia every year. This estimate is quite high compared to other countries in Asia.

Graph 1. Who has had an abortion



Information:

SD=Elementary School; SMP=Junior High School; SMA=High School; Academy/Union=Academy/University. Total percentage is not equal to 100 percent due to rounding

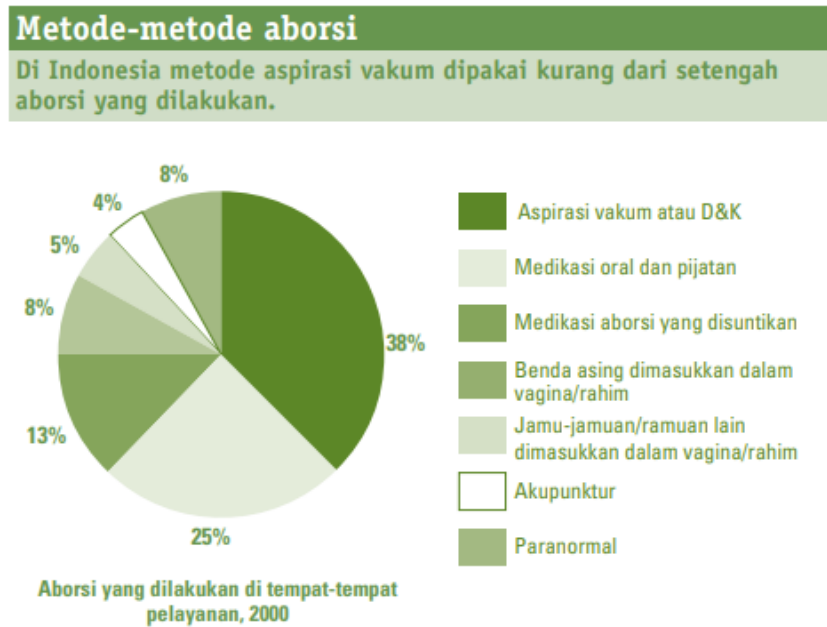
Most abortions carried out in Indonesia are carried out in an unsafe way, which has a very risky impact and threatens the safety of life, the level of security of the facilities chosen by the woman also varies and depends on the woman's place of residence.

The World Health Organization (WHO) estimates that abortion is responsible for 14% of maternal deaths in Southeast Asia. But the death rate due to abortion is different from that in Indonesia, which increased to 16%. However, the unsafe complications were much higher than the mortality rate for these women. Southeast Asia estimates that three out of every 1,000 women aged 15-44 years are hospitalized annually for complications from abortion.

In 2021 Komnas Perempuan released a press release regarding the Annual Records of the National Commission on Violence Against Women (CATAHU Komnas Perempuan) stipulating 786 cases of sexual violence that existed during 2016-2020. Among the cases of sexual violence, 7344 of them were rape. Among rape cases, there are victims who also experience abortions for various reasons. Despite recording an increase in the number of rape cases all the time, Komnas

Perempuan's CATAHU has not yet obtained valid data on the number of women victims of rape who need access to safe abortion services.

Graph 2. How to have an abortion



Source:

https://www.guttmacher.org/sites/default/files/report_pdf/aborsi_di_indonesia.pdf

Komnas Perempuan (national commission for Indonesian women) also received complaints about forced abortion cases, although not only for rape cases. Based on complaints submitted to Komnas Perempuan, there were 147 cases of forced abortion from 2016-2021. Perpetrators of abortion vary from being forced by parents, relatives or girlfriends.

In the Indonesian context, based on 2010 RISKESDAS data, the Health Research and Development Agency of the Indonesian Ministry of Health, in its study (2012) found the national rate of miscarriage was 4%. Of all miscarriages, 6.54% of them were abortions. Abortion is greater for married women over the age of 35 years, with high school education, not working and living in urban areas. The dominant method used to terminate a pregnancy is a curettage. Herbal medicine, pills and injections are alternative actions. Regarding the incidence of unplanned pregnancy, the cases found ranged between 1.6% and 5.8%. Of all unplanned pregnancies, 6.71% of them were intentionally aborted. Unfortunately, abortion-related data, for various reasons, are not subject to further updating, while research and studies conducted are more sporadic.

From a formal legal perspective, based on Law No. 36 of 2009 concerning Health, the abortion arrangements that can be carried out are based on two conditions, *videlicet* for pregnant women with medical urgency advice or rape

victims. Specifically in the case of rape, Composition 75 Paragraph (2) b states that "everyone is prohibited from having an abortion except pregnancy because of rape which can cause brain trauma to the victim". This law has also been passed down in Government Regulation no. 61 of 2014 concerning Reproductive Health and Regulation of the Minister of Health (Permenkes) No. 3 of 2016 concerning Training and Implementation of Abortion Services for Medical Emergency Proposals and Pregnancy Due to Rape.

Abortion Law in Islam

There are three elements in every abortion practice. First, the presence of a fetus or embryo being fertilized in the womb. Second, abortion occurs by itself, and is more often caused by a deliberate act by humans. Third, the birth that occurs prematurely. The methods commonly used in abortion can be in the form of surgery, visiting illegal clinics that provide abortion services, as well as through traditional healers.

Abortion in Indonesia is known as "Abortus Provocatus Criminalis". sanctions are imposed on the perpetrators of abortion; a doctor, midwife, or traditional healer who assists in carrying out the abortion; and people who support abortion. Article 229 of the Criminal Code (KUHP) states that intentionally handling a woman or causing her to lose her pregnancy, is punishable by a maximum imprisonment of four years. If the action is based on profit motive or habit, the penalty can be increased by one third.

Abortion is a forbidden act, because it is prohibited by religion, prohibited by the state and causes feelings of regret. Abortion makes feelings of guilt and depression worse, and abortion creates a burden (Arisandi, 2012). Abortion laws can be classified into several types. If the fetus is still in the form of nuthah (not yet 40 days old in the first phase), it may be aborted. If the fetus is clearly in human form, then it cannot be aborted even though the spirit has not been breathed. If the fetus is alive, then it is forbidden to abort and there is no conflict about this (Al-Izazy, 2007).

It is illegal to have an abortion when the gestational age is past four months, because it is considered to kill a person's life. This act is a category of unlawful killing based on syar'i arguments. There is not a single verse in the Koran that allows the practice of abortion by Muslims. On the other hand, there are many verses that state that the fetus in the womb is very noble. The Qur'anic verse that forms the legal basis for abortion is explained in several suras as follows:

وَلَا تَقْتُلُوا أَوْلَادَكُمْ حَشِيَّةَ إِمْلَاقٍ نَحْنُ نَرْزُقُهُمْ وَإِيَّاكُمْ إِنَّ قَتْلَهُمْ كَانَ خِطْئًا كَبِيرًا

"Do not kill your children for fear of poverty. We are the ones who will provide sustenance for you too" (Q.S. al-Isra': 31).

This verse explains that having an abortion is because the parents are afraid that the poor will bear the burden of the child, so he kills the baby branch. Poverty cannot be used as an excuse to have an abortion (Dewi & Suhandi, 2011). Allah Swt. says in the letter al-Hajj verse 5, as follows:

يَا أَيُّهَا النَّاسُ إِن كُنْتُمْ فِي رَيْبٍ مِّنَ الْبَعْثِ فَإِنَّا خَلَقْنَاكُمْ مِّن نُّرَابٍ ثُمَّ مِّن نُّطْفَةٍ ثُمَّ مِّن عَلَقَةٍ ثُمَّ مِّن مُّضْغَةٍ مُّخَلَّقَةٍ وَغَيْرِ مُخَلَّقَةٍ لِّنُبَيِّنَ لَكُمْ وَنُقَرُّ فِي الْأَرْحَامِ مَا نَشَاءُ إِلَىٰ آجَلٍ مُّسَمًّى ثُمَّ نُخْرِجُكُمْ طِفْلًا ثُمَّ لِتَبْلُغُوا أَشُدَّكُمْ وَمِنْكُمْ مَّن يُتَوَفَّىٰ وَمِنْكُمْ مَّن يُرَدُّ إِلَىٰ أَرْذَلِ الْعُمُرِ لِكَيْلَا يَعْلَمَ مَن بَعْدَ عِلْمٍ شَيْئًا وَتَرَى الْأَرْضَ هَامِدَةً فَإِذَا أَنْزَلْنَا عَلَيْهَا الْمَاءَ اهْتَزَّتْ وَرَبَتْ وَأَنْبَتَتْ مِن كُلِّ زَوْجٍ بَهِيجٍ

“O people! If you doubt (the day of) resurrection, then verily We have created you from clay, then from a drop of semen, then from a clot of blood, then from a lump of flesh which is perfect and imperfect, so that We may explain it to you; and We fixed in the wombs according to Our will until the appointed time, then We brought you out as babies, then (gradually) you came to adulthood, and some of you were passed away and some of you were returned to a very old age (senile), so that he no longer knows something that he already knew. And you see the earth is dry, then when We have sent down water (rain) on it, the earth lives and becomes fertile and grows various types of beautiful pairs (plants).” (Qs. Al-Hajj: 5)

This verse provides information that the process of human life There is no pregnancy that occurs by chance or accident, every fetus that is formed has become the plan of Allah Swt., everyone who creates humans from soil, then becomes a clot of blood and becomes a fetus, which is then blown by the spirit, all of this is not happened by chance. There are no verses or hadiths that specifically discuss this abortion, but the texts prohibit killing people's souls without rights, as Allah says:

وَمَن يَقْتُلْ مُؤْمِنًا مُّتَعَمِّدًا فَجَزَاؤُهُ جَهَنَّمُ خَالِدًا فِيهَا وَغَضِبَ اللَّهُ عَلَيْهِ وَلَعَنَهُ وَأَعَدَّ لَهُ عَذَابًا عَظِيمًا

“Whoever kills a believer on purpose, his recompense is the Hellfire, he will abide in it forever. Allah was angry with him, and cursed him and prepared a great punishment for him.” (Q.S. al-Nisa': 93)

In addition to the verse above, it is also explained in several letters regarding this, as follows:

فَلْيَتَعَلَّمُوا أَنَّهُ مَا حَرَّمَ رَبُّكُمْ عَلَيْكُمْ إِلَّا تَشْرِكُوا بِهِ شَيْئًا وَبِالْوَالِدَيْنِ إِحْسَانًا وَلَا تَقْتُلُوا أَوْلَادَكُمْ مِّنْ إِمْلَاقٍ نَّحْنُ نَرِزُقُكُمْ وَإِيَّاهُمْ وَلَا تَقْرَبُوا الْفَوَاحِشَ مَا ظَهَرَ مِنْهَا وَمَا بَطَّنَ وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ دَلِكُمْ وَصَّيْتُكُمْ بِهِ لَعَلَّكُمْ تَعْقِلُونَ

“Say (Muhammad), “Let me recite what God has forbidden you. Do not associate Him with anything, do good to parents, do not kill your children because they are poor. It is We who provide sustenance to you and to them; Do not approach abominable deeds, whether visible or hidden, and do not kill those whom Allah has forbidden except for a just cause. Thus He commands you so that you understand” (Q.S. al-An’am: 151).

This verse describes the killing of children because of economic concerns or because of illegal acts that often occur in the community which cannot be used as medical reasons for having an abortion. There are still many verses that emphasize the prohibition of abortion, such as Q.S. al-Isra': 31, Q.S. al-Maidah: 32, and so on.

In this abortion issue, the life or death of the fetus is not in question. This means that the abortion of a fetus that does not yet have signs of life as found in humans, namely there is respiration (breathing), circulation (blood circulation) and brain activity, including abortion. A fetus that is 16 weeks old can be likened to a human, because its blood circulation, which is a sign of life, has functioned as it should. If the notion of life is interpreted as a sign that life is starting to function, then this conclusion becomes very reasonable as the words of the Prophet Muhammad Saw.:

عَنْ زَيْدِ بْنِ وَهَبٍ عَبْدِ اللَّهِ قَالَ حَدَّثَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَهُوَ الصَّائِقُ الْمَصْدُوقُ إِنَّ أَحَدَكُمْ يُجْمَعُ خَلْفَهُ فِي بَطْنِ أُمِّهِ أَرْبَعِينَ يَوْمًا نُطْفَةً ثُمَّ يَكُونُ فِي ذَلِكَ عَاقَةً مِثْلَ ذَلِكَ ثُمَّ يَكُونُ فِي ذَلِكَ مُضْغَةً مِثْلَ ذَلِكَ ثُمَّ يُرْسِلُ الْمَلَكُ فَيَنْفُخُ فِيهِ الرُّوحَ

“From Zaid bin Wahab, from Abdillah, he said: Rasulullah SAW. explained to us (he is a true and trustworthy person) that indeed everyone is collected in his mother's stomach for forty days as nutfah (semen), then 'alaqah (clots of blood) at the same time, then an angel is sent to blow spirit to him” (H.R. Muslim).

It is understood that an abortion before reaching the age of 16 weeks is considered an abortion, both for medical reasons and because it is motivated by other reasons that are not legal according to law. Unemployment of a fetus aged 16 weeks and over must be included in the definition of murder because it is alive.

Jurisprudence experts agree that it is haraam to abort a womb that is four months old, that is, after the spirit is breathed in. However, there are differences of opinion regarding Muhammad Romli's law in his book al-Nihayah explaining that a womb less than four months old may be aborted because at that age the fetus does not yet have a life. There are also those who view it as makruh because the fetus is in the process of growing. Among the Shafi'i there are differences of opinion, al-Qazali in the book Ihya ulum al-din and Ibn Hajar in the book al-Tuhfah are the Syafiiyah scholars forbid (Elimartati & Firdaus, 2019).

Mahmud Shaltut and Yusuf al-Qardawi are two contemporary scholars who forbid abortion, whether the fetus is four months old, especially if it is more than four months old. If it's an emergency, an abortion can be done. If the ovum and sperm meet or bear fruit, then abortion is a crime and the law is haram even though the fetus has not been given a life. Because the existing seed already has life in the womb is experiencing growth which will become a creature. The creature is called a human, his soul must be protected and glorified. When an abortion is carried out, the act is more evil and there will be more sins if the fetus is alive, meaning that it has become a living being.

Mahmud Saltut said that the emergency was based on a medical diagnosis. If the pregnancy is maintained it will cause death, abortion is one way to save the mother. In an emergency situation like this Islam allows to choose to do the lightest of two emergencies:

اذتعارضت مفسدتان روعى اعظمهما ضررا بارتكاب اخفهما

"If there are two harms, then the one with the greatest harm must be preserved by doing the least harmful"

The author is of the opinion that an emergency in terms of health and threatening one or both of them is allowed to carry out an abortion. But if the emergency is due to economic conditions or the result of an illicit relationship or what the author calls an unwanted pregnancy, it is forbidden to have an abortion. Because it refers to the verses, hadiths that have been mentioned above and the opinions of scholars.

The Indonesian Ulema Council (MUI) decided on abortion that abortion is an illegal act since the implantation of a blastocyst in the mother's uterine wall (nidasi). Abortion is allowed because there is an age, whether it is an emergency or a necessity. The emergency conditions related to pregnancy that allow abortion are: 1) Pregnant women suffer from severe physical illness such as advanced stage cancer, tuberculosis with caverna and other serious physical ailments that must be determined by a team of doctors; 2) In circumstances where the pregnancy threatens the life of the mother.

Meanwhile, the conditions of intent related to pregnancy that may allow abortion are: 1) The fetus being conceived is detected as suffering from a genetic defect which if it is born later it will be difficult to cure; 2) Pregnancy due to rape as determined by the competent team, which includes the victim's family, doctors, and clerics. Permissibility of abortion as referred to must be done before the fetus is 40 days old. Abortions that are allowed due to old age can only be carried out in health facilities that have been referred by the government. While abortion due to pregnancy due to adultery, the law is absolutely forbidden.

The perpetrators of abortion have not received the appropriate punishment. Abortion carried out without medical reasons is a criminal act that is carried out intentionally. The problem here is whether the act of abortion is equated with the act of killing humans who already live in the natural world who already have rights and obligations before the law.

Equating abortion with murder is a wrong view. So which law is more just, the author argues that people who have an abortion intentionally without medical reasons either in the womb before four months or after four months must be subject to a fine. Yusuf Qardawi is of the opinion that diyat is a punishment if a baby is born and then dies. If a baby is born and dies then the property fine is lighter. The perpetrator of the abortion, whether it is a shaman, doctor or woman, is obliged to pay a fine.

The author strongly agrees with the fine imposed by Islamic law on abortionists, because it is a criminal act, but must go through a court process. The fine is certainly light, so it is better to apply corporal punishment to make the perpetrators aware. Therefore, according to the author, the articles in the Criminal Code that ensnare the perpetrators of abortion that are even more severe must be applied. The articles in the KHUP are as follows:

1. Article 299: four years in prison or a maximum fine of four thousand rupiahs, threatened for those who intentionally treat a woman and order her to be treated with the intention of abortion;
2. Article 346: four years in prison for women who intentionally abort their pregnancy or order someone else to do so;
3. Article 384: five years and six months in prison for those who intentionally abort or kill a woman with their consent;
4. Article 347 paragraph 1: Twelve years in prison for anyone who intentionally aborts a woman without her consent;
5. Article 374 paragraph 2: if the act can result in the death of the woman, then the penalty is fifteen years in prison.

Impact of Abortion

Abortion will have a negative impact on a woman's physique, including: (i) a tear in one side of the uterus; (ii) penetration of the uterine wall due to forced use of the device; (iii) severe bleeding; (iv) make menstruation abnormal; (v) the remnants of the contents that are not completely out can trigger cancer; (vi) infections and sores on the walls of the genitals that affect other surrounding organs.

However, abortion still has a number of positive impacts under certain conditions, such as pregnant women who face dangerous complications, such as heart, lung, kidney, hypertension, and so on which, if not aborted, have the potential to threaten the lives of women. This includes unplanned abortions by families experiencing economic backwardness, for example because of a mother

who is the breadwinner of the family and already supports several children, even though she is very poor; due to pregnancy as a result of rape.

The fatal consequences of abortion on health and even cause death in women. The information circulating that the abortion did not result in anything, said that after the abortion he could go home immediately. This misinformation causes women without thinking to have an abortion without thinking about the risks. There are a number of risks of abortion for women. First, the risk of physical safety and health. such as: Sudden death due to heavy bleeding or failed anaesthesia, Damage to the cervix (cervical lacerations) which will cause defects in the next child, A torn uterus (uterine perforation), Cancer of the ovaries (ovarian cancer)cervical cancer (cervical cancer),Breast cancer (due to an imbalance of the female hormone estrogen),Liver cancer (Liver cancer), Being infertile or unable to have children again, Abnormalities in the placenta or placenta which will cause defects in the next child and heavy bleeding during the next pregnancy, Infections in the lining of the uterus and pelvic cavity infections. Second, the risk of psychological or psychiatric disorders.Abortion has an impact on the soul and mental or psychic. Among these psychiatric symptoms are:loss of self-esteem (82%), unable to enjoy sexual intercourse again (59%), repeated nightmares about the baby (63%), screaming hysterically (51%), wanting to commit suicide (28%), and using illegal drugs (41%).

Conclusion

This study shows that the act of abortion can be classified into two kinds. First, abortion is accompanied by medical indications and is handled by a professional doctor. Second, abortion is not for medical reasons and/or is not handled by a professional doctor. Legally, the first type of abortion is justified, both by Islamic law and positive law in Indonesia, of course, by meeting certain criteria and requirements. Meanwhile, the second type of abortion is prohibited under Islamic law and positive law. The maximum penalty for this act is up to fifteen years in prison. Usually this action is preceded by an unwanted pregnancy which according to Islamic law is also a forbidden act. Apart from the legal side,

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