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Perpetrators of Abortion Due to Rape

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ABSTRACT

This study examines the perpetrators of abortion as a result of rape in a review of Islamic law. The formulation of the problem in this study is how the perpetrators of abortion as a result of rape in view of Islamic law. The method used in this research is a qualitative research approach with a descriptive research type. The discussion in this research is in the form of the process of human creation in Islam, the law of women as perpetrators of abortion due to rape in the perspective of the Koran, Hadith, and the perspective of the scholars. This research resulted in the conclusion that abortion should not be done because it is the same as killing a human being. However, on the other hand and in certain circumstances, by adhering to Islamic law through a review of maqashidu al- shari'ah, which has the concept of obtaining benefits and avoiding harm, abortions carried out by women victims of rape can be legally permitted. law, if it does not have the opportunity to endanger the life of the woman.

Keywords: Abortion; Islamic Law; Rape

ABSTRAK

Penelitian ini mengkaji tentang pelaku tindakan aborsi akibat pemerkosaan dalam tinjauan hukum Islam. Perumusan masalah dalam penelitian ini yakni bagaimana pelaku aborsi akibat pemerkosaan dalam tinjauan hukum Islam. Metode yang dipakai dalam penelitian ini ialah pendekatan penelitian kualitatif dengan jenis penelitian deskriptif. Pembahasan dalam penelitian ini berupa proses penciptaan manusia dalam Islam, hukum perempuan sebagai pelaku aborsi akibat pemerkosaan dalam perspektif Alquran, Hadis, dan perspektif para ulama. Penelitian ini menghasilkan kesimpulan bahwa aborsi tidak boleh dilakukan karena sama halnya dengan melakukan pembunuhan kepada manusia. Akan tetapi di sisi lain dan pada keadaan tertentu, dengan berpegangan pada hukum Islam melalui tinjauan maqashidu al-syari'ah, yang mana memiliki konsep untuk memperoleh kemaslahatan dan menjauhi ke-mudharatan, tindak aborsi yang dijalankan oleh perempuan korban pemerkosaan dapat diperkenankan secara hukum, apabila hal tersebut tidak berpeluang membahayakan nyawa perempuan tersebut.

Kata Kunci: Aborsi; Hukum Islam; Pemerkosaan

Introduction

Along with the dynamic development of the times, development in all aspects such as political, social, economic and cultural has had a negative impact, namely the existence of various kinds of criminal acts that frighten the community. As technology becomes more modern and sophisticated, it encourages criminal acts to continue to increase in various different ways, leading to public unrest. This must be a major concern for the government and the general public. Crime is no longer a problem that can be underestimated because in Indonesia itself it is experiencing development (Puspitasari et al., 2021: 135-136). One of the crimes that is often encountered is rape. These forced immoral acts often occur against women.

Women as victims of rape can experience deep trauma from this unwanted incident, even experiencing pregnancy. Women who become pregnant as a result of forced sexual intercourse will experience it very hard. If you don't want the baby you are carrying, the only way is to terminate the womb or what is called abortion. According to a report by the National Population and Family Planning Agency (BKKBN), citing data from the Good Mention Institute in the 2022 sustainability report, unplanned pregnancies in Indonesia were recorded at 40 percent (BKKBN, 2022). Meanwhile, based on the Indonesian Demographic and Health Survey (SDKI), the abortion rate in Indonesia reached 228 per 100,000 live births (Madarina, 2022). Based on the statistical data above, the number of unplanned pregnancies and abortions in Indonesia is quite worrying.

Abortion in the Big Indonesian Dictionary (KBBI) can be interpreted as the process of aborting a pregnancy (Kemdikbud, 2016). Meanwhile, in the medical world, the term abortion is called abortion. In its meaning, abortion refers to the process where the ovum and sperm are removed from the encounter before the fetus can live outside the womb. There are three types of abortion known in the medical world, including: (1) Spontaneous (natural) pregnancy abortion that occurs without intervention; (2) Intentional (artificial) abortion;

(3) Abortion with medical or therapeutic assistance (Muftisany, 2021: 2-4). Meanwhile, according to Abul Fadl Mohsin Ebrahim, the definition of abortion is the process of ending a pregnancy, either intentional or unintentional, directly due to a woman's physical disability or through human assistance, such as using certain drugs or using the services of a doctor or shaman to practice abortion (Munawaroh, 2015: 295-296).

Some previous research is described as follows. Zulfahmi Alwi in a journal article entitled "Abortion in the View of Islamic Law", explains the Islamic legal perspective regarding abortion universally (Alwi, 2013: 294). This research still has shortcomings because it only explains the Islamic legal perspective on abortion universally. Therefore, Riza Yuniar Sari in a journal article entitled "Abortion of Rape Victims Perspective of Islamic Law and Human Rights", views abortion carried out by rape victims as more appropriate to carry out because it prioritizes the benefit of every human being (Sari, 2013: 77). The strength of the research conducted by Riza Yuniar Sari is that it focuses on the perspective of Islamic law regarding abortion due to rape.

The formulation of the problem from the background above is how do abortions occur as a result of rape in terms of Islamic law? Is it haram and sinful for the perpetrator? What is the Islamic legal basis for abortion resulting from rape? These are some questions that can be raised regarding this problem. Considering that this is often the case in Indonesia, the explanation of the answer to the question should be explained in a more detailed Islamic legal perspective.

Research Method

Methods are an important part of research, this is because this part can make it easier for writers to obtain data about the object being studied or researched. In this journal, the author uses qualitative methods. Qualitative research itself means a form of research that is used as a lesson to develop theoretical concepts by emphasizing the quality part, namely in the form of events, phenomena and social symptoms (Ghony & Almanshur, 2012: 25).

The type of research used in this journal article is descriptive research. Descriptive research has the meaning of a type of research where solving the problem is carried out by investigating, illustrating, or describing a subject or object based on visible facts, and includes analysis and drawing conclusions (interpretation) on the data (Nawawi, 2000: 63). According to Bogdan and Taylor, the definition of a qualitative approach is descriptive data resulting from research procedures in the form of written or spoken words and observed attitudes (Meleong, 2007: 4). The aim of this qualitative approach is to obtain complete information about perpetrators of abortion due to rape in view of Islamic law.

Result and Discussion

The Process of Human Creation in Islam

In the Koran it has been explained that the creation with the most perfect form possible is humans. Based on the Koran Surah Al-Hajj (22): 5, the process of human creation can be classified into several stages, including: (a) The stage of creating humans from the essence of the earth; (b) The germ stage, namely the stage of mixing of egg cells and sperm cells in the uterus; (c) Stage of blood clotting or adhering substances ('alaqah); (d) Stage of a lump of flesh (mudghah); (e) Bone stage ('izham); (f) Stage of imbuing the spirit (nafkh al-ruh) (Rohmawati, 2015: 67-70).

“O people, if regarding resurrection (from the grave) you are still in doubt, then (understand) We have indeed created you from earth, then as a drop of semen, then as a clot of blood, then as a lump of flesh with complete and incomplete events. , so that We can explain to you and We place in the womb, the things We will until a predetermined time, then We give birth to you as babies, then you (gradually) become adults, and among you there are those who die and (there are also) whose age is prolonged until he becomes forgetful (senile), so that he does not know the things he once knew. And you saw that the surface of the earth was barren, so when We sent water on it, the surface of the earth blossomed and became fertile and all kinds of beautiful plants grew.” (Al-Hajj (22):5)

Meanwhile, in the hadith it is shown that there is a stage in the process of human creation by showing the time starting from the fetus which is 120 days old with

three stages, with each stage having the same time period, namely 40 days. The sequence of these stages is nutfah, 'alaqah, and then mudghah which will continue on the 120th day where the spirit will be blown by an angel (Sari, 2013: 62-63).

Indeed, one of you was gathered by his creator in his mother's belly for 40 days, which then became 'alaqah and then mudghah or what is usually called a lump of flesh was created. Then the angel was ordered by Allah to breathe the soul into him. This angel is also ruled in 4 matters, namely sustenance, death, charity, and he is included in the category of poor or happy people. By the One who has no God but Him, verily, one of you who does the deeds of the inhabitants of heaven, up to one cubit of them, but is recorded as an inhabitant of hell, up to one of you who only has one cubit, but is recorded as an inhabitant of heaven (HR. Bukhari and Muslim).

Laws on Abortion Perpetrators Due to Rape from the Perspective of the Koran and Hadith

In the Koran, there is not a single verse that allows abortion. In fact, issues regarding the fetus and the womb have been discussed thoroughly in the Koran. However, there is not a single verse that provides legality for the act of abortion (Muftisany, 2021:5). In the texts of the Koran, specifically there is no law for carrying out abortion, but there is a prohibition against killing a human soul by without rights. This is stated in the Koran Surah An-Nisa' (4): 93.

“Whoever deliberately kills a believer, then Jahannam will be his reward. He will forever remain in that hell, and of course Allah will be angry with him and curse him and prepare a painful punishment for him.”

This is also in line with the hadith originating from Ibn Mas'ud which was narrated by Imam Bukhari and Imam Muslim that the Messenger of Allah said, which means: Indeed, one of you will be gathered by his creator in his mother's belly within 40 days. And after that a frozen blood clot will form. Then, on the 40th day, the third one will turn into a lump of flesh, which then Allah orders the angel to breathe into the spirit, and record 4 things, namely sustenance, death, charity, and bad or happy fate.

When talking about the act of abortion, of course it cannot only be viewed from one perspective, because this act is very complex and is one of the humanitarian problems that cannot stand alone (Munawaroh, 2015: 300-301).

Laws on Abortion Perpetrators Due to Rape from the Ulama's Perspective

There are several views from fiqh scholars regarding the act of abortion. Yusuf Qardawi, referring to the provisions of Islamic law, is of the opinion that the act of abortion is something that is not permitted and is included in a crime against living creatures, therefore the punishment for the act of abortion is very severe for those who carry it out (Yusra, 2012: 8). Another scholar, namely Muhammad Mekki Naciri, also believes that the act of abortion is haram as agreed by all Islamic legal literature, this is because the act of abortion is an act of abuse that is not permitted, but there are exceptions for the right reasons (Ebrahim, 1997 : 56). However, the opinions of ulama vary greatly, especially in determining when a woman is permitted to have an abortion.

The law allowing abortion is also justified by the Hanafi school of thought. This school of thought believes that abortion is permissible if the pregnancy has reached 120 days because the creation process has not yet occurred. This school of thought also emphasizes the reasons for allowing abortion if a fetus has not yet been formed. This means that this school of thought allows abortion if it is carried out before the exhalation of the spirit, but it must be supported by rational conditions (Anshor, 2006: 93). Some scholars from various schools of thought also believe that abortion is permissible if the gestational age is 80 days, this is because the creation process enters the age of 40 days and occurs after the mudghah stage.

The Hambali school of law allows the practice of abortion, when it is in the lump of flesh (mudghah) stage, namely the phase where the soul is prepared, more precisely 40 days before the soul is impregnated, through the conditions in the mudghah a human structure has been formed, although few have been witnessed by experts (Agusrimanda, 2017: 8) . In contrast to the Hambali school of thought, the Syafi'i school of thought believes that the act of abortion at 120 days of age is still considered haram even if it is accompanied by supporting reasons (Anshor, 2006: 98), namely because this school of thought holds that life begins from the conception stage, one of the figures From this school of thought, namely al-Ghazali explains in the book *Ihya Ulumuddin*,

that the act of abortion carried out before the soul is impregnated is not punished as haram, while the fetus is punished as haram. This does not mean that the act of abortion carried out before the impregnation of the soul is good, more precisely, the act of abortion is condemned as makruh tanzih and haram. The majority of scholars of this school of thought are of the opinion that the punishment for abortion perpetrators after the process of imbuing the soul is that they must pay ghurrah (Yusra, 2012: 8).

The Maliki school of thought believes that the act of abortion is forbidden by consensus if it is carried out after the impalement of the soul. This is based on the following hadith:

"From Abi Abdurrahman Abdillah bin Mas'ud Radhiyallahu 'Anhu, who said to Rasulullah SAW he told us, indeed one of you gathered in your mother's belly in the form of a germ that was 40 days old, and then experienced the phase of a blood clot ('alaqah) for 40 days, then becomes a lump of flesh (mudghoh) with the same time conditions. Next, the angels were ordered to breathe in the spirit and record 4 things, including sustenance, age, deeds, and harm or happiness (HR. Muslim).

Some fuqaha also argue that before the process of human creation occurred in the fetal change phase which occurred after entering the fourth month of pregnancy, this means that most fuqaha agree that they prohibit abortions carried out after entering the fourth month, this is because these actions are classified as jinayah (Alhafidz, 2010 : 162).

One of the scholars in the book *Al-Nihayah* who believes that it is permissible to carry out abortions on fetuses that are not yet 4 months old is Ramli. The reason why this action is permitted is that there is no soul in the creature. On the other hand, one of the clerics who firmly forbids this act of abortion is Ibnu Hajar, who has explained it in his book, namely *At-Tuhfah* (Yanggo, 2010: 33). Yusuf al-Qardhawi also believes that the process by which sperm cells meet with egg cells, and then the two of them will give rise to new living creatures and then settle in the uterus. For this reason, the creatures that reside in the womb must be protected, even if they result from an illicit relationship. As for the story of Rasulullah SAW who also ordered the Ghamdiah woman to commit adultery which should be punished by stoning so that she would wait until the woman

gave birth, then the woman was also ordered to wait until her child no longer needed to drink milk, then the woman would be sentenced to stoning (Ahmad, 2018: 176) . From the excerpt from this story, it can be understood that abortion is strictly prohibited. By the Prophet postponing the process of stoning the woman, it can provide an understanding that as humans we must be able to maintain the life of the baby in the womb, even though the pregnancy is the result of an unlawful act, the baby in the womb is basically a sacred creature, and of course a burden. from the mistakes and sins of their own parents.

It can be underlined that the legal beginning of the act of abortion is haram, which is in accordance with the opinion of the ulama and the four schools of thought that have been explained above which are also based on the origin of the germ or what is usually called the process of meeting sperm cells and egg cells. which is the initial process of life, which means that any activity that has the aim of aborting or trying to thwart the life process of the fetus is the same as eliminating life. Judging from the original legal reasons for not allowing abortion, this certainly has loopholes that can change the original law to allow abortion or abortion by considering several strong reasons.

One of the reasons why abortion is permitted is viewed from an absolute emergency perspective, namely, there is a reason from the media which says that if the pregnancy continues, it could threaten the lives of both parties or one of them. Meanwhile, if viewed from the perspective of the nature of muqayyad, one of them is the result of an act of rape (Agusrimanda, 2017: 11). This is based on the opinion of the Shafi'i School which has been explained previously, where this school of thought holds that the act of abortion resulting from an act of rape is permissible, where the woman feels regret and heartache due to the act of rape. The Syafi'i School provides relief from carrying out abortions due to rape if the gestational age is no more than 120 days (Sari, 2013: 67).

Using Islamic law that follows the Imam Syafi'i school of thought has an important meaning in efforts to maintain the soul. This is because in the context of

establishing a law the act of abortion takes into consideration 2 dangerous situations. Firstly, judging from the mental condition of the woman, if the pregnancy continues, it will certainly endanger the woman's life, because the act of rape will have a very negative impact on the victims, not only physically traumatized but also psychologically traumatized. Second, if the woman is mentally disturbed, of course the fetus in her womb will also experience disturbances (Sari, 2013: 72).

Therefore, adhering to Islamic law, which uses the *maqashidu al-syari'ah* approach which has the concept of gaining benefit and avoiding harm, the act of abortion due to rape is permitted, it is illogical if the woman continues to maintain her womb which does not necessarily have certainty in life, and also uncertain in assuming obligations.

Conclusion

According to Islamic law, the practice of abortion is not permissible because it is the same as committing murder on a human being. However, on the other hand and in certain circumstances, by adhering to Islamic law through reviewing *maqashidu al-syari'ah*, which has the concept of obtaining benefits and avoiding harm. With this, it can be concluded that the practice of abortion carried out by rape victims can be legally permitted if it does not have the potential to endanger the woman's life. In the current era, it is important to pay attention and carry out strict supervision of abortions resulting from rape. Apart from that, education and understanding of religion play an important role for teenagers so that they do not fall into abortion and rape. On the other hand, thorough and comprehensive outreach can be held by the government and religious leaders to all levels of society.

References

- Agusrimanda. (2017). Tinjauan Hukum Islam Terhadap Legalitas Aborsi Akibat Pemerkosaan (Studi Terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 Pasal 31 Huruf B). *Journal of Islamic Studies*, 1(1). <http://dx.doi.org/10.30983/it.v1i1.326>

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Ahmad, S. (2018). Hukum Aborsi Akibat Perkosaan (Analisis Hukum Islam terhadap Peraturan Pemerintah Nomor 61 Tahun 2014 tentang Kesehatan Reproduksi). *Jurnal El-Mahlahah*, 8(2). <https://doi.org/10.23971/el-mas.v8i2.1321>

Alhafidz, A. W. (2010). *Fikih Kesehatan*. Jakarta: Amzah.

Alwi, Z. (2013). Abortus dalam Pandangan Hukum Islam. *Hunafa: Jurnal Studia Islamika*, 10(2). <https://doi.org/10.24239/jsi.v10i2.33.293-321>

Anshor, M. U. (2006). *Fikih Aborsi: Wacana Penguatan Hak Reproduksi Perempuan*. Jakarta: Kompas. BKKBN. (2022). Kehamilan Tidak Direncanakan Picu Lahirnya Bayi Stunting Baru. Bkkbn.

<https://www.bkkbn.go.id/berita-kehamilan-tidak-direncanakan-picu-lahirnya-bayi-stunting-baru>

Ebrahim, A. F. M. (1997). *Biomedical Issues, Islamic Perspectives*. Terj. Aborsi Kontrasepsi dan Mengatasi Kemandulan. Jakarta: Mizan.

Ghony, M. D., & Almanshur, F. (2012). *Metodologi Penelitian Kualitatif*. Yogyakarta: Ar-Ruzz Media.

Kemdikbud. (2016). KBBi Daring. <https://kbbi.kemdikbud.go.id/entri/aborsi>

Madarina, A. (2022). Informasi Seputar Aborsi di Indonesia yang Jarang Diketahui. *Hallosehat*. <https://hallosehat.com/kehamilan/melahirkan/persalinan/aborsi-ilegal-dampak-depresi-ibu-hamil/>

Meleong, L. J. (2007). *Metodologi Penelitian Kualitatif*. Bandung: PT. Remaja Rosdakarya. Muftisany, H. (2021). *Fikih Muslimah Praktis - Hukum Aborsi Hingga Hukum Waxing*. t.k.:

INTERA.

Munawaroh. (2015). Aborsi Akibat Pemerkosaan dan Kedaruratan Medis Menurut Hukum Islam. *Mizan: Journal of Islamic Law*, 3(2). <https://doi.org/10.32507/mizan.v3i2.168>

Nawawi, H. (2000). *Metodologi Penelitian Bidang Sosial*. Yogyakarta: Gajah Mada University Press. Puspitasari, N. P. R., Sepud, I. M., & Karma, N. M. S. (2021). *Tindak Pidana Aborsi Akibat*

- Perkosaan. Jurnal Preferensi Hukum, 2(1).
<https://doi.org/10.22225/jph.2.1.3058.135-139> Rohmawati. (2015). Tinjauan Hukum Islam terhadap Legalitas Aborsi Akibat Perkosaan dalam PP No. 61 Tahun 2014. AHKAM, 3(1).
<https://dx.doi.org/10.21274/ahkam.2015.3.1.65-94>
- Sari, R. Y. (2013). Aborsi Korban Perkosaan Perspektif Hukum Islam dan Hak Asasi Manusia. AL-HUKAMA: The Indonesian Journal of Islamic Family Law, 3(1).
<https://doi.org/10.15642/al-hukama.2013.3.1.34-82>
- Yanggo, H. T. (2010). Fikih Perempuan Kontemporer. Bogor: Ghalia Indonesia.
- Yusra, N. (2012). Aborsi dalam Perspektif Hukum Islam. Marwah: Jurnal Perempuan, Agama Dan Jender, 11(1). <http://dx.doi.org/10.24014/marwah.v11i1.496>

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