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The Legality of Abortion Without Spousal Consent in Islamic Jurisprudence

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Abstract

Introduction: *The issue of abortion without spousal consent remains a contentious topic in Islamic jurisprudence, reflecting broader debates on women's autonomy and reproductive rights within marriage. Islamic family law traditionally emphasizes mutual agreement between spouses in major decisions, including those related to pregnancy. However, the question of whether a woman can independently decide to terminate a pregnancy without her husband's approval remains subject to differing interpretations among scholars and legal schools.*

Purposes of the Research: *This study aims to investigate the legality and ethical implications of unilateral abortion by women under Islamic jurisprudence, focusing particularly on the role and requirement of spousal consent.*

Methods of the Research: *The research adopts a normative legal methodology, conducting a textual and thematic analysis of primary Islamic legal sources, including the Qur'an, prophetic traditions (Hadith), and the classical juristic rulings (fiqh), alongside contemporary scholarly opinions and legal frameworks in Muslim-majority countries.*

Results Main Findings of the Research: *The findings reveal that while most Islamic legal traditions require spousal consultation or consent, certain conditions such as threats to the mother's life or health may justify a woman's independent decision to abort. The study underscores a spectrum of legal opinions, from those mandating strict spousal consent to those permitting unilateral decisions based on the principle of avoiding harm (darar), and suggests that a balance can be achieved through a maqasid al-shari'ah (objectives of Islamic law) approach that prioritizes the well-being of the mother while respecting the marital partnership.*

Keywords: Abortion; Family Law; Islamic Jurisprudence; Reproductive Rights; Spousal Consent.

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INTRODUCTION

The controversy surrounding abortion remains a subject of dispute across multiple domains, including medical, legal, religious, and societal perspectives. Abortion in Islamic family law presents intricate issues with women's reproductive rights, the obligations of spouses, and the moral and ethical principles governed by Islamic jurisprudence.[1] Indonesia, a nation with a

[1] Moustafa H Hegab, "Abortion: Medical and Moral Aspects in Islamic Perspectives" (Leiden, The Netherlands: Brill, 2013), 177–85, https://doi.org/https://doi.org/10.1163/9789401209830_012.

predominantly Muslim populace, encounters problems over abortion due to the interplay between statutory legislation, religious doctrines, and evolving societal practices. A critical part of the study pertains to women's freedom to obtain an abortion without spousal consent, which prompts significant inquiries regarding women's sovereignty over their bodies and the perspective of Islamic family law on this matter.

Islamic family law, referred to as *fiqh al-ahwal al-syakhsiyyah*, governs multiple facets of familial life, encompassing marriage, divorce, child custody, and reproductive matters.[2] Islamic law imposes stringent regulations on abortion, however it is not wholly prohibitive. Classical and contemporary scholars have provided diverse conclusions regarding the permissibility of abortion,[3] considering criteria such as gestational age, mother health, and fetal status.[4] The situation becomes very intricate when abortion occurs without the husband's consent, as it pertains to the rights and responsibilities of spouses within marriage, which are meticulously governed by Islamic law.

Marriage is regarded as a sacred covenant, *mithaqan ghalizhan*, that establishes a reciprocal relationship between spouses. The husband is obligated to give maintenance and protection, whilst the wife is obligated to exhibit obedience and fidelity to her spouse. The rights and obligations grow increasingly complex in the context of reproduction. The husband possesses the right to procreate, whereas the wife retains the right to make decisions regarding her own body. When these two rights collide, such as in the case of abortion without the husband's agreement, the issue of how Islamic law reconciles these interests emerges.

Favorable legislative stipulations in Indonesia govern abortion under Law Number 17 of 2023 about Health,[5] which permits abortion under specific circumstances, including as when the pregnancy poses a life-threatening risk or the fetus has a grave, incurable anomaly. This legislation does not clearly govern the husband's consent in the abortion procedure. This generates legal ambiguity, particularly in instances where a wife opts for an abortion without

[2] Maimanah Maimanah et al., "Delay in the Division of Inheritance: A Theoretical Review within Legal System Framework in Indonesia," *Syariah: Jurnal Hukum Dan Pemikiran* 24, no. 1 (2024): 241–57, https://doi.org/https://doi.org/10.18592/sjhp.v24i1.12916.

[3] Siti Nur Rahmah, Anwar Hafidzi, and Arie Sulistyoko, "Hukum Aborsi Menurut Imam Al-Ghazali Dan Yusuf Al-Qardhawi," *Journal Of Islamic And Law Studies* 2, no. 1 (2018), https://doi.org/https://doi.org/10.18592/jils.v2i1.4560.

[4] Alireza Bagheri et al., "Abortion in Different Islamic Jurisprudence: Case and Commentaries," *Asian Bioethics Review* 3, no. 4 (2011), https://muse.jhu.edu/article/461976.

[5] Wahyudi, *Hukum Kesehatan: Suatu Tinjauan Aspek Yuridis* (Sleman, Yogyakarta: Penamuda Media, 2024).

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her husband's approval. Is the choice legally warranted or does it constitute a breach of the husband's rights? This issue is further exacerbated by Indonesia's legal framework, which incorporates Islamic law via statutes like the Compilation of Islamic Law (KHI).

KHI is Presidential Instruction Number 1 of 1991, applicable to Muslims in Indonesia, governing numerous facets of family law, including the rights and responsibilities of spouses.[6] KHI does not explicitly govern abortion, particularly in cases when the husband's permission is absent. This has led to various interpretations among researchers and legal professionals. Some contend that abortion conducted without the husband's agreement may constitute a breach of the husband's rights, particularly if the abortion lacks a justifiable rationale. Some contend that women possess an inherent right to their bodies, asserting that the choice to undergo an abortion should be determined solely by the woman's medical and psychological factors, without requiring her husband's approval.

This issue is inextricably linked to the social and cultural conditions of Indonesia, where patriarchal attitudes remain significantly entrenched. In some instances, women frequently encounter societal pressure to acquiesce to their husbands' judgments, especially regarding issues pertaining to their own bodies.[7] This engenders gender inequity, as women lack complete autonomy over their reproductive choices. The topic of women's access to abortion without spousal consent is particularly pertinent, since it relates to overarching themes of gender equality and marital justice. The matter of abortion is intricately linked to human rights, particularly women's reproductive rights. The United Nations (UN) asserts that reproductive rights constitute a subset of human rights, encompassing the right to decide the number and spacing of pregnancies, access to reproductive health information and services, and the right to be free from discrimination, coercion, and violence related to reproduction.[8] Abortion is considered an aspect of a woman's reproductive rights, particularly in cases of undesired pregnancies or those that jeopardize her physical and mental well-being. This right frequently conflicts with religious and cultural traditions, placing women in a challenging predicament.

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[6] Al Fitri and M SH, "Pembaruan Hukum Keluarga Di Indonesia Melalui Kompilasi Hukum Islam," *Mahkamah Agung RI* 1 (2020): 1–21.

[7] Utari Dewi Fatimah, "Perlindungan Hukum Hak Kesehatan Reproduksi Perempuan," *Jurnal Hukum Sasana* 5, no. 2 (2019): 212–33, https://doi.org/https://doi.org/10.31599/sasana.v5i2.101.

[8] Dewi Murni, "Kesehatan Reproduksi Menurut AlQuran Surat Al Baqarah/2 Ayat 222-223," *Jurnal Ulunnuha* 8, no. 2 (2019): 219–29, https://doi.org/https://doi.org/10.15548/ju.v8i2.1254.

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Abortion is frequently regarded as a prohibited conduct, haram under Islamic law, unless in specific cases deemed emergencies.[9] If a pregnancy endangers the mother's life, abortion may be authorized based on the concept of emergency. Certain scholars contend that the husband possesses the authority to grant consent about abortion,[10] because the husband is considered the head of the family who is responsible for the welfare of his wife and children. Some contend that women possess an inherent right to their bodies, asserting that the choice to undergo an abortion should be determined solely by the woman's medical and psychological factors, without the necessity of her husband's agreement.

The topic of abortion is interconnected with the principle of *maslahah* (the common good) in Islamic jurisprudence.[11] This concept posits that legal choices ought to be grounded in considerations of public good.[12] Abortion may be permitted if the pregnancy poses a threat to the woman's bodily or mental health, in accordance with the principle of *maslahah*. Nonetheless, a more complex issue emerges when abortion occurs without the husband's agreement, as this may lead to discord within the household and impact the family's general welfare. The husband perceives a claim to the fetus in the womb, whereas the wife asserts her rights over her own body. The abortion question pertains to the concept of sharia *maqashid* (objectives of sharia), which encompasses the safeguarding of religion, life, intellect, lineage, and property.[13] The safeguarding of the soul, or *hifz al-nafs*, in relation to abortion is a fundamental issue that warrants consideration. Abortion may be permitted if the pregnancy poses a threat to the mother's life.

The matter of abortion without spousal consent has sparked debate in numerous nations, particularly those with a mostly Muslim population. In several Middle Eastern nations, abortion is permitted solely under specific circumstances, such as when the pregnancy poses a

[9] Asra Sakira, "Aborsi Dan Hak Kesehatan, Reproduksi Perempuan Dalam Hukum Islam Dan Hukum Negara," *Al-Ubudiyah: Jurnal Pendidikan Dan Studi Islam* 3, no. 2 (2022): 11–27, https://doi.org/https://doi.org/10.55623/au.v3i2.120.

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

[11] Aulia Rahmi, "Mashlahah Dalam Fatwa MUI No. 4 Tahun 2005 Tentang Aborsi Kasus Pemerkosaan" (Universitas Islam Negeri Sultan Syarif Kasim Riau, 2020).

[12] Ririn Fauziyah, Agus Sholahudin Shidiq, and Burhanatut Dyana, "Maslahah Sebagai Kerangka Berfikir Dan Tujuan Hukum Islam," *Asasi: Journal of Islamic Family Law* 1, no. 2 (2021): 159–78, https://doi.org/https://doi.org/10.36420/asasi.v2i2.

[13] Muhammad Faisal Hamdani, "Abortion in Islam: A Fiqh Examination of Medical and Social Indications," *Journal of Ecohumanism* 3, no. 3 (2024): 1111–24, https://doi.org/https://doi.org/10.62754/joe.v3i3.3446.

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risk to the mother's life or when the fetus exhibits serious deformities.[14] The approval of a husband is frequently a prerequisite for the execution of an abortion. This has elicited condemnation from women's rights organizations, which view the mandate as discriminatory towards women and a violation of their reproductive rights.[15]

The topic of abortion without spousal consent has sparked debate among intellectuals, legal professionals, and women's advocates in Indonesia.[16] Some contend that women possess an inherent right to their bodies, asserting that the choice to undergo an abortion should be determined solely by the woman's medical and psychological factors, without requiring her husband's approval. It is contended that the husband possesses the authority to grant consent regarding abortion, as he is seen as the head of the family, accountable for the well being of his wife and children.

METHODS OF THE RESEARCH

This study employs normative legal research utilizing a qualitative technique to investigate women's abortion rights without spousal consent within the framework of Islamic family law. Primary data is sourced from Islamic legal texts, including the Qur'an, Hadith, and both classical and contemporary fiqh literature, whereas secondary data is derived from pertinent laws and regulations, such as Law Number 17 of 2023 regarding Health and the Compilation of Islamic Law (KHI), in addition to scholarly literature, journals, and articles addressing the topics of abortion and women's reproductive rights. The data gathering method involved literature reviews of legal documents, ulema fatwas, and judicial rulings pertaining to abortion. The data analysis was conducted descriptively and analytically, employing legal interpretative methodologies (including *istinbāṭ* and hermeneutical approaches to textual sources) and comparative analysis to juxtapose the perspectives of scholars and legal practices across diverse Muslim nations. This comparative analysis specifically examines the evolution of juristic

[14] Mehdi Moradinazar et al., "Epidemiological Features of Spontaneous Abortion in the North Africa and the Middle East from 1990 to 2019: Results from the Global Burden of Disease Study 2019," *Journal of Family & Reproductive Health* 16, no. 3 (2022): 183, https://doi.org/10.18502/jfrh.v16i3.10579.

[15] Lauren J Ralph and Lee A Hasselbacher, "Adolescents and Abortion Restrictions: Disproportionate Burdens and Critical Warnings.," *The Journal of Adolescent Health : Official Publication of the Society for Adolescent Medicine* 73 2 (2023): 221–23, https://doi.org/10.1016/j.jadohealth.2023.05.002.

[16] Ismail Jalili et al., "The Legitimacy of Abortion: A Socio-Legal Analysis of Islamic Jurisprudence and Indonesian Law," *De Jure: Jurnal Hukum Dan Syar'iah* 16 (2024): 382–405, https://doi.org/https://doi.org/10.18860/j-fsh.v16i2.29077.

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opinions across different Islamic legal schools (*madhahib*), contrasts classical and contemporary fatwas, and evaluates the legislative approaches of various Muslim-majority countries (such as Indonesia and Pakistan) to identify patterns, divergences, and evolving principles in the application of Islamic law to abortion rights over time. This study employs a *maqashid al-sharia* framework to analyze abortion policies, focusing on the protection of women's rights and family welfare. While the value of this approach is recognized, the specific method of its application how the five essential objectives are operationalized to evaluate scholarly and legal literature on abortion requires clearer articulation, which this study provides. The analytical results are systematically given to offer a thorough grasp of women's abortion rights without spousal consent within the framework of Islamic family law.

RESULTS AND DISCUSSION

Abortion, in fiqh terminology, is referred to as *ijhadh* or *isqath al-hamal*,[17] has been a subject of extensive discourse in the rich tradition of Islamic jurisprudence from the ancient to the modern day. Fiqh experts from different sects have provided varied perspectives on the legal status of abortion, considering issues such as gestational age, medical justifications, and social circumstances. From the standpoint of classical fiqh, abortion is predominantly seen as an impermissible conduct, particularly if the fetus attains a specific developmental stage. In specific situations, such as when the pregnancy endangers the mother's life, abortion may be authorized on the basis of emergency. This perspective is founded on the exegesis of religious scriptures, particularly the Qur'an and Hadith, alongside overarching sharia principles such as the safeguarding of life (*hifz al-nafs*) and the common good (*maslahah*).[18]

The Qur'an does not include specific passages on abortion; however, some verses can be interpreted to elucidate the position of the fetus and its right to life. In Surah Al-Isra', verse 31, Allah SWT states, "And do not slay your offspring out of apprehension of destitution." We shall be the providers for them and for you. "In fact, their extermination constitutes a grave transgression." This line is frequently cited by scholars to substantiate the prohibition against

[17] Sajida Faraz, Shams Ul Hussain Zaheer, and Naila Rafique, "Analytical Study of The Legitimacy of Abortion In Islamic Jurisprudence," *Sociology & Cultural Research Review* 3, no. 01 (2025): 982–1003.

[18] Ahdiana Yuni Lestari et al., "Abortion in the Perspective of Islamic Law and Health Law," *Kosmik Hukum* 24, no. 3 SE-ARTICLE (2024): 166–77, https://doi.org/10.30595/kosmikhukum.v24i3.22798.

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the murdering of children, especially embryos in utero. Furthermore, Surah Al-Mu'minun, verses 12-14, elucidates the process of human creation from a drop of semen to the development of a complete fetus. This verse serves as the foundation for scholars to categorize the stages of pregnancy into several phases, therefore influencing the legal status of abortion.[19] Classical scholars, including Imam Shafi'i, Imam Malik, Imam Abu Hanifah, and Imam Ahmad bin Hanbal, concur that abortion after the fetus has attained the stage of *nafkh al-ruh* (the infusion of the soul) is prohibited.[20] Most scholars assert that this stage transpires after 120 days, or four months, of gestation, referencing a hadith narrated by Abdullah bin Mas'ud, in which the Prophet Muhammad (PBUH) stated, "Indeed, each of you is formed in his mother's womb for 40 days as a nutfah, then becomes 'alaqah for 40 days, then becomes *mudghah* for 40 days, after which Allah sends an angel to breathe the spirit into him." Subsequent to this time, the fetus is regarded as a human being entitled to life, rendering abortion an unequivocally forbidden act of murder.[21]

Prior to the stage of *nafkh al-ruh*, classical scholars had diverse perspectives on abortion. Certain scholars, like Imam Abu Hanifah, permit abortion within the first 40 days of pregnancy, asserting that the fetus has not yet assumed human form at this period. This perspective is predicated on the belief that prior to the *nafkh al-ruh* stage, the fetus lacks legal standing as a human person, therefore rendering abortion not classified as murder. Nevertheless, other scholars, such Imam Shafi'i, continue to forbid abortion even prior to 40 days, contending that the fetus possesses the capacity to develop into a human being, and terminating it may be regarded as an act that undermines the potential for life. The perspective on abortion in modern fiqh has progressed in tandem with scientific advancements and societal transformations. Modern scholars generally exhibit greater flexibility in their perspectives on abortion, particularly when it is conducted for compelling medical or societal justifications. In instances where the pregnancy endangers the mother's life, most modern experts concur that abortion is

[19] Gilla K Shapiro, "Abortion Law in Muslim-Majority Countries: An Overview of the Islamic Discourse with Policy Implications," *Health Policy and Planning* 29, no. 4 (2014): 483–494, https://doi.org/https://doi.org/10.1093/heapol/czt040.

[20] Merve Ünal, "Hafsa Kesgin. İslam Hukukunda Kürtaj. İstanbul: Kitâbi Yayınları, 2018. TT - Hafsa Kesgin. Abortion in Islamic Law. İstanbul: Kitâbi Publications, 2018.," *İlahiyat Tetkikleri Dergisi*, no. 58 (2022): 116–18, https://doi.org/10.5152/ilted.2022.2264154.

[21] Ahnaf Nur Fauzan Romadhon and Tajul Arifin, "Aborsi Dalam Perspektif Hadits Riwayat Ahmad Bin Hanbal No 18989," *MUSHAF JOURNAL: Jurnal Ilmu Al Quran Dan Hadis* 3, no. 2 (2023): 205–17, https://doi.org/10.54443/mushaf.v3i2.122.

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allowed based on the principle of need. This notion is grounded in the rules of fiqh, which assert that an emergency permits actions that are otherwise prohibited (*al-emergency tubih al-mahzurat*). Furthermore, abortion may be permitted if the fetus is diagnosed with serious, incurable anomalies, as this might inflict misery on families and society.[22]

Contemporary scholars evaluate abortion laws by considering not just medical reasons but also social and psychological factors. In instances where conception transpires due to sexual assault[23] or incest, Certain scholars permit abortion on the basis that compelling women to carry a pregnancy under such circumstances may result in significant psychological anguish. This perspective is grounded in the principle of *maslahah*, prioritizing women's welfare and mental health over the preservation of pregnancy. Nonetheless, this perspective is not widely acknowledged, since several experts maintain that the fetus possesses an inherent right to life that warrants protection, irrespective of the circumstances surrounding the pregnancy.[24] The advancement of medical technology has impacted modern researchers' perspectives on abortion. Advancements in ultrasound and genetics have enabled the early detection of prenatal anomalies.

The topic of abortion is intrinsically linked to women's reproductive rights, a significant problem in modern fiqh discourse. Modern researchers are more cognizant of the significance of granting women autonomy in decisions regarding their own bodies, particularly with abortion. This perspective is grounded in the principle of gender justice in Islam, which underscores equality between men and women in rights and responsibilities.[25] This presents a dilemma, as Islamic family law designates the husband as the head of the household, responsible for the wellbeing of his wife and children. Consequently, abortion decisions sometimes include weighing women's rights against their husbands' rights.[26]

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[22] Ma'moon Al-Refa'e, "Abortion in Islamic Criminal Legislation: Its Pillars and Punishment (Comparative Fiqhi Study)," *An-Najah University Journal for Research - B (Humanities)* 25, no. 5 (2011): 1397–1434, https://doi.org/10.35552/0247-025-005-009.

[23] Miftahul Utami, "Criminal Action of Abortion Rape Health Perspective Legal and Islamic Law," *Requisitoire Law Enforcement* 14, no. 2 (2023): 46–51, https://doi.org/https://doi.org/10.59651/relae.v14i2.81.

[24] Nur Azizah, Mhd Syahnan, and Budi Sastra Panjaitan, "The Legality of Abortion by Medical Personnel for Rape Victims in Indonesia: A Perspective from Maqashid Sharia by Al-Syatibi and Al-Tufi," *Madania: Jurnal Kajian Keislaman* 28, no. 1 (2024): 35–44, https://doi.org/http://dx.doi.org/10.29300/madania.v28i1.3847.

[25] Aep Saepul Anwar and Imam Sofi, "Konsep Dan Isu Gender Dalam Perspektif Islam: Studi Telaah Kedudukan Laki-Laki Dan Wanita Dalam Pandangan Islam," *Jurnal Paris Langkis* 5, no. 1 (2024): 151–61, https://doi.org/https://doi.org/10.37304/paris.v5i1.15494.

[26] Pamela J Henry, Russell L Steiger, and Andrea K Bellovary, "The Contribution of Gender Equality to the Coexistence of Progressive Abortion and Sexual Orientation Laws," *Sex Roles* 86 (2022): 263–81, https://api.semanticscholar.org/CorpusID:246024017.

Modern researchers' perspectives on abortion are shaped by advancements in international law and human rights. The Cairo Declaration on Human Rights in Islam asserts that every individual possesses the right to life, which must be safeguarded from the moment the fetus is in utero.[27] The proclamation acknowledges that under specific circumstances, such as when the pregnancy endangers the mother's life, abortion may be authorized. This indicates that while Islam highly values fetal life, the interests and welfare of the mother must also be considered.

In Indonesia, scholarly perspectives on abortion have evolved in accordance with social and legal transformations. For instance, in the Compilation of Islamic Law (KHI),[28] While it does not directly govern abortion, it contains stipulations that delineate the rights and responsibilities of spouses within marriage. This provision serves as a foundation for comprehending Islamic law's perspective on abortion within the framework of marriage.[29] Moreover, Law Number 17 of 2023 about Health permits abortion in some circumstances, including when the pregnancy poses a risk to the mother's life or when the fetus has significant defects. The rule inadequately addresses the husband's consent in the context of abortion, prompting inquiries over the accommodation of women's reproductive rights within positive law.

A. The Struggle Between Maternal Autonomy and Spousal Consent in Reproductive Decisions

Women's reproductive rights encompass the autonomy to make choices about one's own body, including the option to either continue or terminate a pregnancy. Conversely, the rights of husbands in Islam are frequently regarded as supplementary to their obligations as the family head, responsible for safeguarding the wellbeing of their wife and children. When these two rights conflict, such as in the instance of abortion without the husband's agreement, a significant challenge emerges regarding how Islam reconciles the two rights. This struggle encompasses not just theological aspects but also intricate social, cultural, and legal issues. This disagreement is frequently sparked by divergent viewpoints over who possesses greater

[27] Oliver Nikolić, "The Cairo Declaration on Human Rights in Islam," *Strani Pravni Zivot* 64, no. 3 (2020): 89–97, https://doi.org/https://doi.org/10.5937/spz64-28285.

[28] Muhammad Ali Fauzi, Heppi Septiani, and Zainatus Sholehah, "Harmonisasi Hukum Adat Dengan Hukum Islam," *COMSERVA : Jurnal Penelitian Dan Pengabdian Masyarakat*, (2023): https://doi.org/10.59141/comserva.v3i07.993.

[29] Wahyudi, "Hukum Adat, Hukum Islam Dan Hukum Barat," in *Hukum Islam* (Padang: Hei Publishing Indonesia, 2024), 155–69.

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authority in making decisions around pregnancy. In Muslim countries, the husband is regarded as the head of the household, possessing specific responsibility over family matters, especially decisions concerning children. This perspective frequently contradicts the reality that women directly undergo pregnancy, childbirth, and child-rearing.[30] In the matter of abortion, women are predominantly impacted, both physically and psychologically. Consequently, it is very reasonable for women to assert a more substantial entitlement to determine the continuation of their pregnancy. This perspective is frequently contested by enduring patriarchal standards prevalent in numerous Muslim communities.

Islamic law permits women to make decisions regarding their health, including matters relating to pregnancy. Some scholars permit abortion if a woman encounters a significant threat to her life due to pregnancy, arguing that it preserves the mother's life. The principle of emergency (saving life) became the primary rationale for making this decision without the husband's approval, resulting in a new conflict. The husband, as a marital partner, frequently perceives himself entitled to participate in significant choices. For him, the pregnancy created by his wife is not solely her responsibility, but also an integral component of the family being established together.[31]

This husband's viewpoint is grounded in the principle of shared responsibility within marriage. In Islam, marriage is regarded as a complementary partnership, wherein the husband and wife possess distinct yet equally significant obligations. The husband is tasked with providing for the family, but the woman is charged with managing the household and educating the children.[32] In this context, pregnancy and childbirth are regarded as a collective obligation. When a wife elects to undergo an abortion without her husband's consent, it may be regarded as a breach of the concept of shared responsibility. This perspective is not universally embraced. Contemporary researchers contend that women's reproductive rights must not be subordinated to those of their husbands. They assert that women possess complete

[30] Fakhriyah Annisa Afroo, Nenan Julir, and Rema Syelvita, "Attending Walimatul 'Ursy : Pregnant Women Due To Adultery Perspectif Islamic Law," *Jurnal Kawakib* 5, no. 1 (2024): 35–42, https://doi.org/https://doi.org/10.24036/kwkib.v5i1.222.

[31] Srirahma Srirahma and Sri Nanang Meiske Kamba, "Effectiveness of Article 53 On Marrying Pregnant Women In Compilation Of Islamic Law," *Estudiante Law Journal* 4, no. 3 (2022): 739–58, https://doi.org/https://doi.org/10.33756/eslaj.v4i2.18362.

[32] Ayse Elmali-Karakaya, "Interfaith Marriage in Islam: Classical Islamic Resources and Contemporary Debates on Muslim Women's Interfaith Marriages," *Religions* 13, no. 8 (2022): 726, https://doi.org/https://doi.org/10.3390/rel13080726.

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autonomy over their bodies, and that the choice to proceed with or terminate a pregnancy is a personal right that should not be infringed upon by others, especially the husband. This perspective is grounded in the principle of gender equity in Islam, which asserts that men and women possess equal standing before Allah.[33] Consequently, it is deemed unjust for a woman to be compelled to carry a pregnancy that poses a risk to her well-being only due to her husband's lack of consent. There is an argument that, in certain circumstances, engaging husbands in abortion decisions may exacerbate women's conditions. In instances of pregnancy resulting from rape, incorporating the husband in the decision-making process may inflict further agony on the mother. In this context, women may want to make independent decisions without consulting their husbands. This does not imply that the husband has no function whatsoever; however, in some circumstances, his position may need to be diminished for the greater benefit.

Conversely, some perspectives highlight the significance of contemplation in the decision-making process about abortion. Deliberation is a fundamental value in Islam, underscoring the significance of discourse and consensus in problem resolution.[34] In the context of abortion, mutual deliberation between spouses may serve as an equitable resolution to the contradiction between women's reproductive rights and husbands' rights. Through deliberation, both sides can comprehend one other's perspectives and arrive at mutually agreed decisions. This method presents its own obstacles, particularly if one party perceives itself as more powerful or entitled than the other. The fatwas of contemporary academics significantly contribute to this research. The Indonesian Ulema Council (MUI) has promulgated fatwa Number 4 of 2005 regarding abortion, which fundamentally prohibits the procedure while stipulating that it is permissible only under specific circumstances, such as a significant threat to the mother's life or in cases of pregnancy resulting from rape.[35] This fatwa underscores the significance of the husband's agreement in abortion decision-making, although it does not fully reconcile the tension

[33] Tazeen M Ali, "Embodied Experiences and Islamic Feminist Ethics: Gender Equality and Abortion in US Muslim Women's Interpretive Communities," *Journal of Feminist Studies in Religion* 40, no. 2 (2024): 23–40, https://doi.org/10.2979/jfs.00019.

[34] Marc Herzog, "Islam, Democracy and Dialogue in Turkey: Deliberation in Divided Societies," *Australian Journal of International Affairs* 66, no. 3 (2012): 404–6, https://doi.org/10.1080/10357718.2012.681469.

[35] Mohamad Abdun Nasir, "The Majelis Ulama's Fatwā on Abortion in Contemporary Indonesia.," *The Muslim World* 101, no. 1 (2011): 33–52, https://doi.org/10.1111/j.1478-1913.2010.01341.x.

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between women's reproductive rights and husbands' rights, as divergent interpretations remain possible.

B. The Role of Maslahah and Equity in Islamic Perspectives on Abortion

In Islamic jurisprudence, the ideas of justice and *maslahah* (public interest) serve as the primary foundation for decision-making about human life, including the issue of abortion. Justice necessitates that each individual be treated equitably in accordance with their rights, devoid of discrimination or baseless bias. *Maslahah* is an endeavor to guarantee that actions yield optimal advantages for all stakeholders while mitigating harm or detriment. In the context of abortion, these two concepts are particularly pertinent as the decision encompasses not just the mother and fetus but also the husband, family, and society at large.

The notion of justice in Islam underscores the necessity for equilibrium between the rights and responsibilities of every individual.[36] The mother's right to preserve her health and the fetus' right to life must be weighed appropriately. The woman, during pregnancy and childbirth, has substantial responsibility for the gestational process, which frequently entails considerable bodily and psychological repercussions. Conversely, the fetus possesses the right to protection and the potential for life, as prescribed by Islamic doctrine. In instances of conflict between maternal rights and fetal rights, justice necessitates that judgments be grounded in profound and objective deliberations, rather than mere emotional responses or societal influences. If the continuation of the pregnancy jeopardizes the mother's life, fairness necessitates prioritizing the mother's right to live. Nevertheless, if the mother's condition is not critically jeopardized, the unborn right to protection must take precedence.

Maslahah is a crucial element in the decision making process about abortion. *Maslahah* in Islam denotes the pursuit of the collective welfare and the prevention of harm[37], *maslahah* can be implemented by evaluating the effects of the decision on all stakeholders concerned. When an abortion is conducted for pressing medical reasons, such as a significant risk to the mother's life, the decision may be regarded as a type of *maslahah*, as it seeks to preserve the mother's life,

[36] Dyah Ayu Vijaya Laksmi, "The Principle of Justice in Islamic and Civil Inheritance Law: Legal Disparities, Dispute Resolution, and Harmonization," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 10, no. 1 (2025): 122–33, https://doi.org/10.30863/ajmpi.v10i1.8352.

[37] Mayadina Rohmi Musfiroh, Fatma Mohamed Mansour Saqr, and Alfa Syahriar, "The Urgency of Maslahah in the Formulation of Fatwa and Legislation in Indonesia: An Analytical Study," *Ulul Albab: Jurnal Studi Dan Penelitian Hukum Islam;* 8, no 1 (2024): https://doi.org/10.30659/jua.v8i1.37242.

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which is paramount in Islam. Conversely, if the abortion is conducted without a compelling justification, such as financial constraints or psychological unpreparedness, the decision may be deemed detrimental, as it poses risks to multiple stakeholders, including the fetus, mother, and family.

The implementation of justice and *maslahah* principles in abortion decision making necessitates a comprehensive strategy. The decision is predicated not solely on legal or religious factors, but also encompasses social, cultural, and psychological dimensions. In instances of pregnancy resulting from rape in Pakistan, the choice to terminate the pregnancy is frequently regarded as a means of justice and *maslahah*, as it seeks to shield the mother from further anguish associated with the pregnancy.[38] The principle of justice necessitates prioritizing the mother's right to self-protection, whereas the *maslahah* principle underscores the need of mitigating the adverse effects of the pregnancy. In instances of unwanted pregnancies that do not pose a threat to the mother's life, the choice to terminate may not entirely align with the concepts of justice and *maslahah*, since it could be regarded as an excessive action concerning the fetus' right to life.

The husband's role in abortion decision-making must also be examined within the framework of justice and *maslahah* principles. The husband, as a marital partner, bears the obligation to safeguard the welfare of his wife and children. In the context of abortion decision-making, husbands ought to participate in a fair and constructive discourse. Nonetheless, the husband's involvement must not overshadow or infringe upon the wife's rights. The idea of justice necessitates that spouses possess equal opportunities to express their opinions, whereas the *maslahah* principle underscores the need of achieving a resolution that maximizes advantages for all involved parties. In specific medical emergencies, the decision to proceed with an abortion may need to be made without the husband's agreement to preserve the mother's life.

In particular circumstances where a mother encounters a significant risk to her life due to pregnancy, however her husband declines to consent to an abortion, what actions should be

[38] Qurratul-Ain-Munir-Minhas and Samia Maqbool Niazi, "Abortion and Rape Laws in Pakistan," *Islamic Studies* 59, no. 3 (2020): 359–76, https://doi.org/https://doi.org/10.52541/isiri.v59i3.1067.

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taken? In this context, the principle of justice necessitates prioritizing the mother's right to life, whilst the principle of *maslahah* underscores the significance of preserving the mother's life for the welfare of the family collectively. What if the husband persists in wanting to continue the pregnancy? This exemplifies a problem that is challenging to resolve and necessitates a considerate approach, along with an awareness of the specific circumstances of each situation.

The concepts of justice and *maslahah* do not invariably yield a clear or conclusive resolution in every circumstance. The implementation of these two principles may necessitate compromise or modification to guarantee that the decisions made are genuinely equitable and advantageous for all stakeholders. In instances of abortions conducted for economic reasons, the principle of justice may necessitate that the mother receives financial or social assistance to sustain the pregnancy, whereas the *maslahah* principle underscores the need to prevent the pregnancy from imposing an excessive burden on the family. In such circumstances, an equitable resolution may necessitate cooperation among families, communities, and the government to furnish essential support.

C. The Effects of Unilateral Abortion Decisions on Marital Stability and Trust

Abortion conducted without the husband's consent may precipitate significant conflicts within married life. In Islamic family law, marriage is regarded as a partnership founded on the principles of complementarity and cooperation between spouses.[39] When a wife decides on an abortion without consulting her husband, it not only engenders emotional discord but may also erode the trust that underpins the marital connection. Such judgments are sometimes regarded as a breach of the principle of discussion advocated in Islam, which underscores the significance of collaborative dialogue in addressing significant issues within the home. The influence of abortion conducted without the husband's consent on household harmony warrants thorough examination.

The primary consequence of abortion without the husband's consent is the emergence of communication rifts between the partners. Transparent and candid communication is essential for sustaining a successful marital connection. When a female makes significant decisions, such

[39] Zeyad Jaffal, Shawabkeh Faisal, and Ali Hadi and Al Obeidi, "Toward Constructive Harmonisation of Islamic Family Law and CEDAW: A Study on the UAE's Reservation to CEDAW Article 16 and Equal Rights to Marriage and Family Relations," *Australian Journal of Human Rights* 28, no. 1 (2022): 139–62, https://doi.org/10.1080/1323238X.2022.2122689.

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as abortion, without informing her husband, it may be regarded as a sort of self-isolation or disregard for the husband's role within the family. The husband may see a diminished sense of value as an equal partner in the marriage, potentially resulting in anger, disappointment, or neglect of his familial responsibilities. Ultimately, this deficiency in communication can undermine the emotional connection between spouses, fostering a chasm that is challenging to close.

Abortion conducted without the husband's agreement may incite moral and spiritual discord within the household. In Islamic belief, the fetus is regarded as a divine command from Allah that necessitates protection by both parents.[40] When a wife elects to terminate a pregnancy without her husband's consent, it may be deemed an action antithetical to religious doctrines, particularly if the decision is made absent a compelling justification such as a threat to the mother's life or an urgent medical problem. The husband may perceive this decision as a transgression of his religious principles, resulting in spiritual and emotional discontent. This type of dispute not only influences the spousal relationship but also affects their perception of parental roles in the education of their children in the future.

A significant effect is the formation of distrust within the marital partnership. When a wife decides to undergo an abortion without informing her husband, it may engender suspicions over her motives and loyalty to the marriage. Husbands may start to doubt whether their wives genuinely value the marriage or are merely emphasizing their own personal interests. This skepticism may evolve into more extensive suspicions, such as regarding the wife's management of domestic matters or her interactions with those beyond the household. If mismanaged, this distrust can undermine the basis of domestic harmony and potentially result in divorce.

Abortion conducted without the husband's consent may adversely affect the wife's mental and emotional well-being.[41] While these decisions may be taken for good reasons, such as safeguarding physical health or preventing trauma from an unwanted pregnancy, the abortion

[40] Rebaz Rasul Khdir, Kamal Mohammed Abubaker, and Baqer Jawad Shamsulddin, "Abortion between the Right to Life of Fetus and The Right to Privacy of Woman An Analytical and Comparative Study between Law and Islamic Sharī'ah," *Zanco Journal of Humanity Sciences* 29, no. 1 (2025): 138–64, https://doi.org/https://doi.org/10.21271/zjhs.29.1.7.

[41] Daniel I Tannenbaum, "The Effect of Child Support on Selection into Marriage and Fertility," *Journal of Labor Economics* 38, no. 2 (2019): 611–52, https://doi.org/10.1086/705928.

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process frequently imposes a considerable psychological cost on women. This load may be intensified if the wife has shame or anxiety due to making a decision without her husband's approval. This guilt may stem from her perception of having breached religious or cultural conventions, or from concerns for her husband's response upon discovering the decision. In such circumstances, the female may exhibit introversion, avoid conversations with her spouse, or display signs of despair. This would undoubtedly adversely affect the overall harmony of the household.

Issues stemming from abortion conducted without the husband's agreement may also impact the relationship between the husband and wife, as well as their interactions with extended family members, including parents, siblings, and the broader community. In Muslim civilizations, pregnancy and childbirth are regarded as significant components of familial identity.[42] An abortion performed by a wife without her husband's agreement may be regarded as a disgrace or scandal, potentially harming the family's reputation. A husband's family may experience embarrassment or disappointment if they perceive that he believes his wife is not honoring marital and familial traditions. The wife's family may feel obligated to protect their daughter, so intensifying the discord between the two families. In such circumstances, pressure from extended families can intensify the strain between spouses, complicating the maintenance of their relationship.

The enduring consequences of abortion conducted without the husband's consent disrupt the equilibrium of the marital connection. In certain instances, disputes stemming from these choices may be settled by open discourse and mediation by third parties, such as family members or clerics. Nonetheless, in several instances, this struggle may inflict emotional scars that are challenging to mend. For instance, the husband may struggle to fully trust his wife, while the wife may perceive her husband as lacking adequate support or understanding regarding her circumstances. Ultimately, this may result in a frigid and strained relationship, characterized by mutual dissatisfaction and an unwillingness to undertake definitive measures for improvement.

[42] Mir Azad Kalam et al., "Linkages between Consanguinity, Pregnancy Outcomes and Offspring Mortality in Twenty-First Century India.," *Scientific Reports* 14, no. 1 (2024): 22522, https://doi.org/10.1038/s41598-024-69151-7.

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Abortion without the husband's consent may also impact a couple's capacity to navigate other issues in their marriage. When trust and communication are compromised, couples may struggle to collaborate on several issues, including financial management, child-rearing, or conflicts with extended relatives. Under these circumstances, the household may transform into an environment rife with tension and conflict, wherein both parties experience the weight of unresolved issues. If not managed judiciously, this may render the marriage insecure and may culminate in divorce.

Nonetheless, the influence of abortion conducted without the husband's consent on home tranquility is not invariably enduring. In certain instances, partners may leverage this scenario to fortify their connection via candid communication and enhanced comprehension. If a husband and wife are amenable to discussing the rationale behind the abortion decision and together seeking a resolution, it may facilitate the restoration of trust and communication that have been compromised. In this process, it is crucial for both sides to demonstrate empathy and comprehension of their partner's circumstances. Intervention by a neutral third party, such as a marriage counselor or cleric, can assist couples in discovering an equitable and advantageous resolution to this dispute.

CONCLUSION

The right of a woman to obtain an abortion without spousal consent within Islamic family law is a complex issue situated at the intersection of individual autonomy, shared marital responsibilities, and the overarching principles of justice (*'adl*) and public benefit (*maslahah*). While a wife possesses sovereignty over her own body and health, the spousal partnership necessitates that such a significant decision consider the husband's perspective, with conflicts often arising from divergent views on decision-making authority, especially in medical emergencies or exceptional cases like rape. Applying the principles of justice and *maslahah* is crucial to balance the rights of both parties, prioritizing the preservation of the mother's life in cases of grave danger while acknowledging that proceeding without spousal agreement can risk marital harmony through communication breakdowns and eroded trust. Consequently, the practical implications advocate for holistic resolution strategies centered on open communication, mutual empathy, and consultation, providing critical guidance for married

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couples. Theoretically, these findings contribute to contemporary Islamic jurisprudence (*fiqh*) by demonstrating the dynamic application of the objectives of Islamic law (*maqasid al-shari'ah*) in resolving modern bioethical dilemmas, thereby offering policymakers and religious institutions a nuanced framework to develop regulations and guidelines that are not only just and proportional but also effectively safeguard the welfare of all involved.

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