

FORCE MAJEURE IN ABORTION: A REVIEW OF ULAMA FATWAS AND INDONESIAN HEALTH LAW

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ABSTRACT

Abortion is an issue that frequently sparks controversy within the Muslim community. One such controversy was triggered by a fatwa issued by the Indonesian Women's Ulama Congress (KUPI), an organization focused on women's empowerment, which permits abortion for rape victims without restrictions on the stage of pregnancy. The fatwa is regarded as a step toward protecting victims from severe psychological distress. However, the permissibility of abortion continues to generate debate, particularly concerning the health implications for women who undergo the procedure. From a humanitarian perspective, abortion is also viewed as the loss of life, especially when the fetus has already developed fully. Although KUPI offers positive considerations, abortion remains contrary to the principles of Islamic law, particularly *Maqasid al-Shariah*, which emphasizes the safeguarding of human life (*Hifz al-Nafs*) and lineage (*Hifz al-Nasl*). Moreover, abortion is also prohibited under Indonesian positive law. This study employs a qualitative approach using discourse analysis to examine the KUPI fatwa on abortion. The method focuses on analyzing how arguments and justifications are constructed within the fatwa in relation to Islamic law and health law perspectives. The findings show that the fatwa places primary emphasis on the psychological emergency faced by rape victims. By examining this emphasis within the frameworks of Islamic legal objectives and Indonesian health law, the study demonstrates how emergency-based fatwa reasoning may overlook interconnected social, legal, and medical consequences that are equally critical in determining women's long-term protection. As a result, the analysis suggests that reliance on psychological necessity alone risks narrowing the scope of emergency justification and may unintentionally expose victims to broader harms if not supported by a more comprehensive legal and ethical framework. This study contributes to knowledge by bridging the gap between religious fatwas and positive legal frameworks, offering a more comprehensive perspective on abortion regulation in emergency situations.

Introduction

The practice of abortion remains a highly debated topic in the Muslim world, with diverse perspectives and fatwas addressing the issue. Historically, the dominant view in classical Islamic jurisprudence strongly opposes abortion, as the termination of pregnancy is generally considered a violation of the Quranic principle of the sanctity of human life (Ardestani et al., 2016; Hessini, 2007). Although Islamic law typically adopts a firm stance against abortion, deeper interpretations and specific exceptions permit the procedure under limited circumstances. Islam does not present a monolithic position on abortion; rather, its various perspectives are shaped by factors such as gestational age, maternal health conditions, and the circumstances surrounding the pregnancy (Clarke & Mühlrad, 2021; Faisal Hamdani & Ishaq, 2024). The Muslim community's response to abortion laws is likewise diverse. Some permit abortion for certain reasons, others disapprove, and some strictly prohibit it (Jin, 2019). From the perspective of *Maqasid al-Shariah*, abortion should not be performed arbitrarily and is only permissible when justified by fundamental reasons, such as safeguarding the life of the mother or addressing medical conditions that threaten the continuation of the pregnancy (Azizah & Panjaitan, 2024; Abdul Shukor et al., 2024; Yaakob et al., 2020; Faidi, 2018). Meanwhile, in some Muslim circles, abortion is considered permissible as long as the fetus has not reached 120 days of gestation. This view is based on the belief that after four months (120 days), the soul is breathed into the fetus, marking the beginning of human life (Abed et al., 2023).

Arguments surrounding the issue of abortion also come from authoritative figures who play an important role in shaping public discourse, including health experts and religious scholars who generally hold conservative views on the matter (Camelia et al., 2025). Abortion is a complex medical procedure as it involves interconnected health, legal, and ethical considerations (Bank & Eftekhari, 2020). Meanwhile, religious leaders such as KH. Ma'ruf Amin argued that abortion is prohibited except in specific circumstances, such as saving the mother's life or in cases of pregnancy resulting from sexual violence. In Indonesia, abortion is not widely accepted and is prohibited except under certain emergency conditions (Mustafid, 2015).

Abortion regulations in Indonesia are governed by Law No. 36 of 2009 on Health, which restricts abortion to particular situations, including threats to the mother's life and pregnancies resulting from rape. However, access to legal abortion services remains limited due to legal, cultural, and religious constraints. In a Muslim-majority country, abortion is often viewed as contrary to religious teachings, and this perception is reinforced by conservative stigma directed at women who undergo the procedure (Fitri & Israhadi, 2024). The legal framework attempts to balance the sanctity of life with the principles of *darūrah* (necessity) and *maṣlahah* (public interest) (Jalili et al., 2024). The prohibition of abortion in Indonesia is rooted in the principle of protecting human life from the earliest stages of fetal development, reflecting the moral and religious values upheld by the majority of society. This policy aims to safeguard women's physical and mental health and reduce the risk of unsafe abortions, which often lead to serious complications and even death. However, strict restrictions may inadvertently encourage illegal abortions without medical supervision, posing significant risks to women's safety and affecting public health more broadly (Moehas, 2019). Overall, abortion policies in Indonesia reflect an attempt to balance health considerations, moral principles, and religious values. While these policies aim to protect morality and women's well-being, they would benefit from a more open and comprehensive approach to reproductive health. Enhanced public understanding, comprehensive education, and improved access to safe reproductive health services can help reduce the risks associated with unsafe abortion while preserving the core values upheld by Indonesian society (Fatimah, 2021; Tanuwijaya, 2014).

Abortion is a complex issue that requires serious attention because it involves ending fetal life before it reaches full development. Although abortion is not entirely equated with murder, it must be approached with caution and seriousness, particularly as it concerns the right to life, a fundamental human right inherent in every individual (Alkali et al., 2015). In this context, the Indonesian Women's Ulama Congress (KUPI) issued a fatwa permitting abortion for rape victims without restrictions on the stage of pregnancy. This fatwa is grounded in the recognition that women, especially in the modern era, are increasingly vulnerable to sexual violence. One of its main considerations is the effort to protect victims from severe psychological distress that could undermine their quality of life. The fatwa emphasizes that safeguarding women from the dangers of pregnancy resulting from rape is the responsibility of all parties (Mukhlisih et al., 2018). The decision to continue or terminate a pregnancy should therefore be based on medical or

psychiatric considerations. Furthermore, the KUPI fatwa declares that forced pregnancy due to rape constitutes a form of tyranny, and the state is obliged to guarantee protection and provide fair and safe access to health services for women (Kodir, 2022). This policy reflects a progressive perspective on the needs of women in emergency situations while also opening space for dialogue on balancing the right to life of the fetus with the right of women to receive support in coping with trauma caused by sexual violence.

KUPI is a movement that brings together women scholars in Indonesia. It plays a significant role in advancing gender equality and women's empowerment, with a primary focus on advocating for women's rights. In addition, the movement seeks to empower women by opposing all forms of violence legitimized in the name of religion, while also addressing various gender-related and other crucial issues concerning women (Rofiah, 2022). Considering its role and position in Indonesia, KUPI has the authority to issue fatwas, even though these fatwas are not legally binding. The fatwas issued are intended to promote the common good for both women and men (Fahmina, 2022).

A key question that arises is whether such fatwas represent a breath of fresh air for women or, conversely, whether they are viewed as conflicting with religious ethics and fundamental considerations of women's reproductive health. It should be emphasized that abortion, particularly in emergency contexts, requires a delicate balance between the principles of religious law, medical necessity, and state regulations. Fatwas permitting abortion in certain circumstances are often grounded in the principle of emergency, yet differing interpretations by health authorities can create gaps in implementation. Given the sensitivity of such cases, an in-depth study is needed—one that not only considers the legal and religious dimensions but also harmonizes the protection of both women and fetuses within a framework of justice and humanity. Therefore, this study seeks to bridge these differences through comprehensive analysis, offering inclusive and sustainable solutions.

Literature Review

The issue of abortion is a complex matter that encompasses multiple dimensions, including legal, religious, ethical, and social aspects. To ensure that the research remains focused, this study establishes operational definitions for key terms used in the analysis of abortion. One of the primary terms requiring definition is fatwa. In this study, fatwa refers to the perspective of Yusuf al-Qaradhawi, who defines it as an Islamic legal ruling issued in response to questions posed by individuals or groups (Madnur et al., 2023). Meanwhile, Atho Mudzar, as cited in Madnur et al., (2023), defines fatwa as a legal opinion addressing questions related to Islamic jurisprudence that emerged in the 7th and 8th centuries Hijri (Madnur et al., 2023). A fatwa is a legal opinion that plays a crucial role in the development of Islamic law, serving as an alternative solution to various evolving legal needs (Mujib, 2015). In the context of Islamic law, its regulations are based on the Quran and Sunnah and coexist alongside state law. In Indonesia, a country with a Muslim-majority population, Islamic law significantly influences the formation of norms and regulations that shape societal life (Taher & Handayani, 2018). Abortion, on the other hand, is defined as the intentional termination of a pregnancy by removing the fetus from the womb before it reaches a gestational age at which it can survive outside the uterus, approximately 24 weeks (Farhana, 2022).

Various studies have made important contributions to understanding how Islamic law, Indonesian positive law, and human rights can complement one another in addressing these issues. Hamdani and Ishaq (2024) highlighted the importance of integrating Islamic fiqh with modern medical approaches, particularly in emergencies such as threats to a mother's life. Their research encourages dialogue between scholars and medical practitioners to develop empathetic and ethical guidelines, while also promoting policy reforms aimed at overcoming stigma and resolving ethical dilemmas related to abortion (Faisal Hamdani & Ishaq, 2024). The high incidence of illegal abortions has been linked to inadequate sex education and weak internalization of moral values within families, as emphasized by Simangunsong (2017) who examines this issue within the Indonesian context (Simangunsong, 2017). This study underscores the need for a comprehensive approach to addressing the issue through strengthened social control, moral education, and law enforcement grounded in reproductive rights.

Within the framework of Islamic law, Firdaus et al., (2021) and Abed et al., (2023) note that abortion for medical reasons is often justified, particularly before a certain gestational age, such as 40 days. However, abortion without medical indications remains prohibited under both Islamic law and positive law (Firdaus et al., 2021). Abed et al., (2023) emphasized the importance of further quantitative research to support more robust legal formulations and enhance women's safety. Meanwhile, Rahajeng (2020) offered a perspective on the relationship between abortion and human rights, stressing the need for Islamic law to be more adaptive to contemporary human rights standards, including safe and legal access to abortion services. This approach highlights the importance of bridging the gap between religious morality and modern legal demands. From an ethical standpoint, Mirkhandan (2023) demonstrated how Islamic values can shape views on women's rights over their bodies while fostering inclusive and context-sensitive ethical dialogue.

Overall, these studies complement one another in building an integrative framework of understanding. Abortion is not only a medical or legal issue but also encompasses moral, religious, and human rights dimensions. Therefore, a multidisciplinary approach involving collaboration among scholars, medical experts, policymakers, and the public is essential to create policies that are responsive to women's needs while remaining aligned with ethical values and principles of justice. However, none of the studies discussed above specifically address emergencies, including the KUPI fatwa on abortion and its relationship with Health Law. In this context, the KUPI fatwa affirms the permissibility of abortion for rape victims without a gestational age limit, as a response to the urgent need to protect women's rights and reduce the psychological trauma caused by unwanted pregnancy. This fatwa provides an important basis for further discussion on the intersection of religious, health, and legal aspects in the context of abortion during emergencies.

Methodology

This research adopts a qualitative approach, employing discourse analysis to examine the fatwa issued by the KUPI regarding the permissibility of abortion for rape victims without limiting the gestational age (Creswell & Poth, 2018). The approach seeks to understand the basis of the arguments, their legal implications, and the social responses to the fatwa (Fairclough, 2013). Research data were obtained from two main sources: primary and secondary. Primary data consist of official KUPI fatwa documents accessed through the Kupipedia platform, along with other literature directly related to abortion policy in the context of the fatwa. Secondary data comprise books, scientific articles, and other supporting documents that provide a broader perspective on abortion policy in emergencies, particularly those analyzed from the standpoint of Islamic law and health regulations in Indonesia. Accordingly, this research not only examines fatwa texts as the object of study but also situates the issue within a more holistic context, connecting theological and normative arguments with the surrounding social and legal realities. This approach enables a more comprehensive exploration of the dynamics of thought and policy on abortion in Indonesia.

Force Majeure in Relation to Abortion

Abortion, according to the Oxford Dictionary, is defined as an act aimed at terminating a human pregnancy (John L. Osposito, 2022). Similarly, Black's Medical Dictionary defines abortion as the removal of a fetus before reaching a gestational age considered viable for life, generally before 24 weeks of pregnancy (F. Ismail et al., 2018). Abortion, also known in Latin as *abortus provocatus*, refers to the deliberate act of prematurely terminating or removing a fetus from the womb. This process involves intentional human intervention, whether through mechanical methods, drugs, or other means. The World Health Organization (WHO) defines abortion as "the expulsion or extraction of a fetus or embryo from its mother weighing less than 500 grams" (Shakhatreh et al., 2022). In Islamic law, scholars employ various terms to describe abortion, including *isqāt*, *ijhād*, *ilqā*, *taih*, and *inzāl*. These terms share a similar meaning: the removal of a fetus from the uterus before it reaches the stage of complete development (Alwi, 2013).

Force majeure is etymologically defined as a compelling or coercive circumstance (Jamil et al., 2020). Terminologically, *force majeure* refers to a situation in which a person is unable to fulfill obligations that would normally be carried out under ordinary circumstances due to an emergency or conditions beyond their control (Hidayat & Komarudin, 2017). It can also be interpreted as a situation in which an action that is ordinarily prohibited becomes permissible because of an unavoidable emergency. A compelling circumstance is thus an event that imposes consequences on the parties involved (Rasuh, 2016). In this context, abortion under conditions of *force majeure* (emergency) refers to medical measures taken to protect the physical and mental health of the mother in highly urgent or dangerous situations. The decision to perform an abortion is made by weighing the principle of benefit against potential harm. Such situations involve assessing whether continuing the pregnancy may pose a greater risk to the mother's life or health, both physically and psychologically, thereby making abortion a necessary step to prevent more severe damage. In 1999, a global study by the United Nations revealed that the main reasons for deciding to have an abortion include several key factors: saving the mother's life, protecting women's physical and mental health, cases of rape or incest, abnormalities in the embryo, economic and social considerations, and women's personal decisions (Atefe Bank, 2020; Ishola et al., 2021). This suggests that policies and perspectives on abortion must take into account diverse considerations in order to create fair and empathetic solutions.

Abortion is essentially a prohibited practice in several Southeast Asian countries, including the Philippines, Malaysia, Vietnam, and Indonesia. Although prohibited, certain considerations apply in some of these jurisdictions. The Philippines permits abortion in limited circumstances, such as to protect the mother's health or in cases of rape or incest (Marecek et al., 2017; Roche et al., 2023). Malaysia bans abortion but provides a relatively broad range of exceptions, with the decision to determine whether a patient meets these criteria resting entirely in the hands of the physician (Mardin et al., 2022). In Vietnam, abortion rights have historically functioned as a population control measure, aimed at encouraging small families during the difficult post-war reconstruction years (Radics, 2024). In Indonesia, abortion is permitted under specific conditions, such as in cases of rape or when the mother's life would be endangered by giving birth (Jayanti, 2023).

In public international law, the doctrines of *force majeure*, necessity, and emergency serve to prevent legal responsibility for certain actions. These doctrines apply in situations involving "uncontrollable forces" or "unforeseen events" beyond the control of a party or state. Examples include extreme climate events such as hurricanes, heavy rains, windstorms, blizzards, and floods (Dellinger, 2017). In civil law, *force majeure* refers to unexpected and unavoidable events that hinder the fulfillment of obligations and allow exemption from liability. Such events are external and independent of the primary obligation, including natural disasters, government policies, or actions by third parties (Fazli, 2018). Although *force majeure* is recognized as a principle in civil law and reflected in various provisions of the Civil Code, the Code itself does not provide an explicit definition (Apriyani et al., 2021).

From the above explanation, *force majeure* (emergency) can be understood as a condition that may arise at any time beyond human control. Such circumstances may justify changes in policy, provided they are based on fundamental considerations.

Abortion Cases in Indonesia from the Perspective of Indonesian Law

Indonesia, a vast archipelago of more than 17,000 islands, has long grappled with the persistent problem of sexual violence, with rape crimes emerging as a deeply troubling phenomenon within the country's complex social fabric (Astuti & Lestari, 2020; Nirwana et al., 2022). Sexual violence against women in Indonesia is deeply rooted in socio-cultural norms and gender-based inequalities that have contributed to the normalization and perpetuation of these harmful practices (Astuti & Lestari, 2020). Over time, sexual violence has often been regarded as normal, particularly by perpetrators. Victims, on the other hand, frequently feel silenced, lacking the courage or adequate support to resist or seek justice. This situation creates a vicious cycle of violence that is difficult to break. Worse still, communities shaped by entrenched norms often fail to provide adequate protection or support, whether through an unresponsive legal system or through social stigma that exacerbates victims' suffering.

According to studies examining this issue, harmful traditional practices play a significant role in perpetuating sexual violence against women in Indonesia. Unfortunately, the widespread nature of sexual violence is often overlooked, as the problem remains obscured by cultural acceptance and the absence of a strong legal framework to protect victims and hold perpetrators accountable (Nilan et al., 2014). The Central Statistics Agency (BPS) reported a significant increase in rape cases in Indonesia throughout 2022, illustrating the prevalence of sexual violence in the country. In its report *Crime Statistics 2023*, BPS recorded 1,443 cases of rape and immoral crimes—an increase of 23.9% compared to the previous year's 1,164 cases.

This data was collected from the Regional Police (Polda) across Indonesia. of the 34 Regional Police, Aceh Province recorded the highest number of rape cases in 2022, with 135 cases—an increase of 65 cases compared to the previous year (Diahwahyuningtyas & Pratiwi, 2024). Meanwhile, sexual violence data reported by *Indonesia Pos 2023* indicated approximately 4,280 victims (Indoensia, 2023). In addition to direct cases of sexual violence, a report by Komnas Perempuan noted that between May 2022 and December 2023, there were 4,179 cases of sexual violence, with the most frequently reported type being Electronic-Based Sexual Violence (KSBE), which accounted for 2,776 cases. These figures demonstrate that sexual violence, particularly rape, has become an increasingly urgent issue across various regions. The rise in cases reflects deeply concerning social conditions and highlights persistent gaps in legal protection and the fulfillment of victims' rights.

Although not all rape cases in Indonesia result in pregnancy, some victims do become pregnant as a consequence of sexual violence outside of marriage. In such situations, many victims choose to terminate their unwanted pregnancies through abortion. Within the Indonesian context, the debate surrounding abortion requires a nuanced understanding of the diverse motives that drive individuals to make such decisions, including life-threatening medical emergencies (Feby et al., 2024). Pregnancy resulting from rape imposes a heavy burden on victims, who endure not only physical injuries but also profound psychological trauma. Nevertheless, access to safe abortion services remains a significant challenge for victims.

Abortion regulation in Indonesia encompasses a wide range of aspects, including legal, health, and human rights considerations. This issue is complex because it involves multiple factors, such as women's rights over their bodies, medical needs, and religious and cultural values. Legally, abortion is regulated under the Criminal Code (KUHP), where relevant articles classify abortion as a crime against life, with penalties that vary depending on the specific circumstances and the individual performing the procedure. However, the KUHP provides exceptions in certain situations, such as abortions performed to save the mother's life or those resulting from rape. In contrast, Law Number 36 of 2009 concerning Health sets out more detailed provisions regarding abortion (Feby et al., 2024).

The number of abortion cases in Indonesia is estimated to reach 2.3 million per year, with approximately 30% of the perpetrators being adolescent girls. The majority of victims are women who became pregnant before marriage or as a result of sexual violence (Ramadhita et al., 2023). Several abortion cases stem from sexual violence, such as the case of a 12-year-old child assaulted by a 56-year-old man in Jombang in July 2021. Such pregnancies are unwanted by victims, yet applications for abortion are often rejected under existing regulations, as victims are deemed not to have sufficient experience (Sinombor, n.d.). Victims of rape or sexual violence are frequently pressured from multiple directions. In addition to enduring negative social stigma, they are also restricted when seeking to terminate pregnancies resulting from assault. The complexity of the procedures required to obtain permission, combined with strict regulations governing abortion, presents significant obstacles for victims (Norizan et al., 2025Muamar, 2024).

In abortion cases, victims are often subjected to burdensome sanctions. For example, in 2018, a 15-year-old girl who was raped by her siblings and became pregnant was sentenced to prison for attempting to undergo a legal abortion, even though the gestational age had not yet reached 40 days, as stipulated in the Health Law (Surya, 2022). The KUHP states that women who deliberately perform abortions may face a maximum prison sentence of four years. However, this provision does not apply if the woman is a rape victim whose gestational age is less than 12 weeks. Meanwhile, Article 75(2) of the Health Law stipulates that abortion is prohibited. The following paragraph provides two exceptions: first, in cases of medical

emergencies detected early in pregnancy, such as conditions that threaten the life of the mother and/or fetus; second, in cases involving severe genetic disorders and/or congenital abnormalities that cannot be corrected and would make it difficult for the baby to survive outside the womb. As noted above, pregnancies resulting from rape can cause profound psychological trauma for victims (Ardito Ramadhan, 2022).

Regulations permitting safe abortion under limited conditions, such as medical emergencies and pregnancies resulting from rape, existed prior to the normative stipulation in Law No. 1 of 2023 concerning the KUHP, the Health Law, and several related laws and regulations. However, implementation has remained problematic in certain cases. Some government agencies do not support applications for legal abortion. Obstacles in the implementation of safe abortion services in Indonesia include inadequate facilities, particularly those that are legal and official for rape victims (Rahmawati & Budiman, 2023). Abortions may be performed using physical instruments or chemical methods, under proper medical guidance, to ensure that the procedure occurs during the early stages of pregnancy, resulting in fetal death. If a fetus is born alive following an illegal act, this is considered the beginning of an abortion. However, some argue that if the fetus is born alive, the act cannot be classified as abortion; if the fetus dies after birth, it is more appropriately considered murder rather than abortion (Ardestani et al., 2016).

In several Western countries, such as the United States and the Netherlands, abortion has undergone a long and controversial history. For instance, in the Netherlands, abortion regulations are codified in Articles 295 to 298 of the Dutch Criminal Code of 1881. The law has evolved dynamically: at times interpreted permissively, at other times tightened, and eventually legalized as a lawful act. Reflecting this dynamic change, the WHO categorizes Dutch abortion law under “reason No. 7 for allowing abortion,” placing the Netherlands among the 27% of countries worldwide that permit abortion on demand (Soge, 2016). Meanwhile, in the United States, the Supreme Court annulled a ruling from 50 years ago that had allowed women to obtain abortions. Through this decision, the authority to prohibit or permit abortion was vested in individual states. Abortion in the United States was originally legalized in the 1973 Supreme Court ruling widely known as *Roe v. Wade*, a case that began in 1969 when Norma McCorvey, under the pseudonym “Jane Roe”, challenged a Texas law that permitted abortion only when the mother’s life was in danger. The case became known as *Roe v. Wade* because the law was defended by Henry Wade, the Dallas County district attorney (Indonesia, 2022).

Poland is among the countries that prohibit abortion in cases of fetal defects but still provide exceptions under certain conditions, such as rape, incest, or when the pregnancy threatens the mother’s life (Ghaedi, 2024). The Egyptian Criminal Code prohibits abortion in well-established pregnancies. However, post-coital contraception and menstrual regulation in cases where the pregnancy is not yet stable are sometimes permitted. Article 61 states: “A person cannot be punished for a crime committed in the defense of himself or another person from serious harm”. This provision is occasionally applied to justify abortion when a woman’s health or life is at risk. In Iran, abortion was permitted under certain conditions in the early 20th century, and a law allowing abortion on demand was passed in 1977. However, this law was repealed following the Islamic Revolution in 1979. Currently, abortion in Iran is regulated by the Islamic Penal Law of 1991, which follows Shia Islamic principles. Under this framework, abortion is generally prohibited, but the principle of necessity allows it when required to save a woman’s life (Rahbari, 2025).

From the above explanation, internationally, there are two major perspectives on abortion: pro-life (against abortion) and pro-choice (supporting abortion rights). Pro-life groups oppose abortion, believing that human life—including the fetus—has equal value and must be protected. They argue that abortion violates the fundamental right to life, a view often rooted in religious and moral beliefs. Pro-choice groups, on the other hand, advocate for abortion legislation and maintain that the decision to have an abortion should be an individual’s right, free from interference by society or government. They emphasize the importance of safe and legal access to abortion for women who need it and highlight women’s right to make decisions about their own bodies and health (Feby et al., 2024). This position aligns with Article 7 of the 1948 Universal Declaration of Human Rights, which states that all people are equal before the law and entitled to equal legal protection without discrimination (Saleh, 2020).

These two groups hold contrasting views. The first stresses that every human being, including the fetus in the womb, has the right to life and must be protected. Their argument is consistent with Article 9 paragraph (1) of Law No. 39 of 1999 concerning Human Rights (HAM), which stipulates that everyone has the right to live, to preserve life, and to improve their standard of living. This provision underscores that the right to life is a fundamental right inherent in every person as a gift from God (Badri & Muhibbin, 2022). Meanwhile, the second group supports facilitating safe abortion for women, asserting that all women have the freedom to choose and determine their own lives without intervention from any party, including the government.

The Human Soul versus The Reason for the Emergency

Islamic law does not encourage abortion because the fundamental principle of *sharia* is the protection of human life. Life is regarded as a trust that must be preserved, both the life of the individual who has been born and that of the fetus in the womb (Iqbal et al., 2019). Scholars refer to Quranic verses such as Surah Al-Isra', verse 31, which prohibits the killing of children out of fear of poverty, a prohibition understood to be relevant to the context of the fetus (Guirguis, 2017). The practice of abortion is considered a criminal act that contradicts Human Rights (HAM), as intentional abortion is equated with killing a soul. Scholars differ in their opinions regarding the permissibility of abortion. Those who prohibit it entirely include Imam al-Ghazali, Ibn Hajar al-Haitami, and Ibn Qayyim al-Jauziyah, who argue that abortion is equivalent to murder (Yusup, 2015).

Abortion is also viewed as contrary to the objectives of *Maqāṣid asy-Syarī'ah*, which include preserving the continuity of offspring (*Hifz al-Nasl*) and protecting life (*Hifz al-Nafs*). Consequently, Islamic jurisprudence generally prohibits abortion, except in cases of emergency, such as when it is necessary to save the mother's life (Osman, 2022). The decision to permit abortion in such circumstances is based on an evaluation of the greater benefit (*Maslāhah*). When continuation of the pregnancy poses a risk of death or serious harm to the mother's health, abortion may be considered lawful under Islamic law. In these cases, scholars acknowledge a justification for the act, though they differ in their opinions regarding the appropriate timing and method of carrying it out (S. K. Ismail et al., 2023).

In addition to health-related reasons, abortion restrictions are also influenced by religious ideology, fetal protection, eugenic goals, and competition within medical practice (Lavelanet et al., 2018). In 1973, in the United States, the Church Amendment protected federally funded doctors and hospitals from being obligated to perform abortions that conflicted with their religious or moral beliefs (Nelson, 2018). However, they still retained a legal obligation to provide care for patients. Conversely, if refusal of care results in death, it may be considered criminal homicide (Schuklenk & Zolf, 2018).

By 2013, the majority of countries—representing 99% of the world's population—permitted abortion under certain conditions, such as saving a woman's life, protecting physical or mental health, or in cases of rape, social, or economic hardship. Only six countries—Chile, the Dominican Republic, El Salvador, Malta, Nicaragua, and the Vatican—completely banned abortion without exception. International law generally supports broader access to safe abortion (McGinn & Casey, 2016). Antonella's research indicates that most countries allow abortion on life-saving grounds (82%), for health reasons (64%), fetal conditions (51%), rape (46%), or socio-economic reasons (10%). Additionally, some countries permit abortion without requiring justification (32%) (Lavelanet et al., 2018). The United States' laws regarding abortion vary significantly. For example, Oklahoma prohibits abortion from the moment of conception, a point that is difficult to determine with certainty. Other states, such as South Carolina, Ohio, and Texas, ban abortion after six weeks or once a fetal heartbeat is detected. Florida enforces a ban after 15 weeks of pregnancy (Davis, 2022).

Meanwhile, the Colombian Constitutional Court overturned a total ban on abortion, decriminalizing the procedure in cases of rape, incest, fatal fetal anomalies, and threats to women's lives or health (Depiñeres et al., 2017). Legal texts regarding abortion can often be confusing for women and healthcare providers, particularly in determining when abortion is permitted and how to comply with legal requirements. There are three main categories of abortion: first, abortion on demand without justification; second, abortion based on common law and related indications, and third, abortion based on additional indications, which include a variety of reasons. Common legal grounds include abortion to save a woman's life, protect her health, address cases of rape or incest, respond to fetal abnormalities, and consider economic or social

circumstances (Lavelanet et al., 2018). The complexity of abortion law lies in its underlying purpose: the protection of women's health and rights, as well as the protection of prenatal life. The latter goal may be shaped by religious or secular ideology, with prenatal life protected either as an individual right or as a matter of state interest. International human rights law does not oppose this objective; rather, it recognizes that abortion laws can serve moral purposes, including safeguarding the right to life of the unborn or upholding the sanctity of life in the public interest (Erdman, 2017).

According to Muslim scholars, abortion may be permitted in complex situations involving health, morality, and social needs. It is considered lawful if continuing the pregnancy endangers the mother's life, based on the principle of *Maslāhah*, where the mother's life takes precedence. In addition, considerations of women's physical and mental health, as well as circumstances such as rape, are regarded as compelling reasons, given the physical suffering or emotional trauma that women may experience (Mohammed, 2020). The permissibility of abortion in Islam depends on the interpretation of religious texts and the moral values of scholars. For those who allow it, the 120-day limit is significant, based on the concept of ensoulment, which holds that the fetus is not fully "alive" spiritually before this period. The mother's well-being is often prioritized, although the further the pregnancy progresses, the more difficult it becomes to justify abortion, except in emergencies.

On the other hand, Iqbal argued that the time limit for prohibiting abortion is 40 or 42 days, not 120 days. This prohibition is rooted in moral and religious principles that respect life from its earliest formation, during which the embryo begins to show signs of life. The purpose of this ban is to protect human values, maintain social stability, and prevent the misuse of abortion without urgent or ethical justification. Iqbal further explained the differences among scholars regarding the benchmark number of days, which arise from varying interpretations of the hadith:

Translation: The seed of one of you remains in the mother's womb for forty days in the form of Nutfa. Then it stays like Alaqah for forty days, and then for the same number of days as Mudgha.

(Sahih al-Bukhari, 2001, Hadith No. 3208; Sahih Muslim, 1955, Hadith No. 2643)

Based on this hadith, some scholars from the Hanafi and Shafi'i schools of thought, as well as Shia scholars, believe that the spirit enters the fetus around the 120th day. However, other schools, namely the Maliki and Hanbali, hold that this occurs on the 40th day. Iqbal contends that, when compared with the understanding of embryonic development, the three stages mentioned in the hadith—*nutfa*, *alaqah*, and *mudgha*—do not span 120 days but only 40 days (Iqbal et al., 2019).

Views on abortion in Muslim countries differ due to variations in the interpretation of religious texts and socio-political contexts. Although Islam prioritizes the preservation of life, differing opinions have emerged regarding the timing of the onset of life, which in turn influences abortion policies—ranging from prohibition to conditional allowance (Hessini, 2007). Policies in Muslim countries reflect interpretations of *sharia* law shaped by local socio-political contexts. In Saudi Arabia, abortion is permitted only if the mother's life is in danger, while in Tunisia, the rules are more relaxed, allowing abortion in the first trimester without medical justification. Countries such as Iran and Egypt tend to adopt a conservative stance, whereas more secular countries such as Turkey and some parts of North Africa legalize abortion. Factors such as international pressure, national legal systems, and public opinion also play a role in shaping these policies (Ekmekci, 2017).

In Indonesia, rape is the primary cause of abortion. Abortion for rape victims presents a dilemma in medical ethics because it involves a conflict between moral values, medical principles, and individual rights. This dilemma arises from the clash between the principles of beneficence and non-maleficence, and the principle of respect for autonomy. On one hand, rape victims have the right to determine the fate of their bodies, including the decision to terminate unwanted pregnancies caused by severe trauma. On the other hand, abortion is viewed by some as an act that violates the principle of preserving life, thereby creating a moral dilemma that is difficult to resolve (Dewi & Suhandi, 2011).

The KUPI Fatwa on the Legality of Abortion and the Health Law

In addressing the issue of abortion for rape victims, KUPI, through its Second Deliberation held in Jepara, issued a fatwa legalizing abortion for all rape victims without gestational age restrictions. The purpose of this fatwa is to protect the psychological well-being of victims from the trauma of pregnancy resulting from rape. The fatwa highlights three important points (Qodir, 2022).

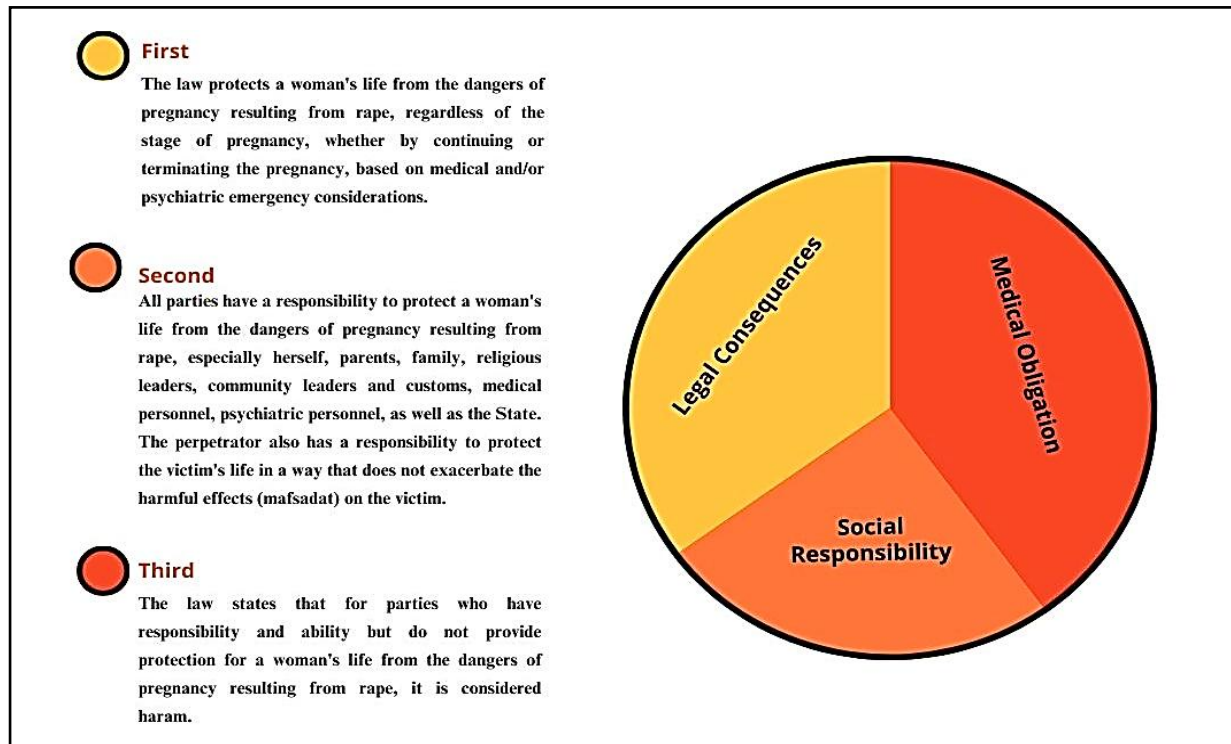


Figure 1. Fatwa of the KUPI

The results of the religious fatwa from the Second KUPI, held in November 2022 in Jepara, reveal that some KUPI policies tend to prioritize the psychological condition of victims rather than focusing solely on the legal aspects of abortion. This approach aligns with the views of individual freedom advocates, who regard abortion as a fundamental right of women. They argue that the fetus in early pregnancy is not yet fully formed, and therefore abortion on medical grounds should be considered a woman's right rather than an act of murder (Atefe Bank, 2020). The fatwa issued by KUPI inevitably sparked debate over its advantages and disadvantages. Although the fatwa does not exclusively address the permissibility of abortion, the author argues that this decision may lead to multiple interpretations. Such ambiguity is feared to encourage actions that could result in greater negative consequences than the intended benefits.

This position contrasts with the findings of Bahtsul Masail Commission A of the Islamic Boarding School Consultative Forum (FMPP) across Java and Madura (XXXVIII), which explicitly rejected the KUPI II fatwa for several reasons. First, concerns about maternal safety during childbirth are still considered speculative (*dhorror mauhum*) and do not meet the threshold for abortion, which is only permitted in cases of clear and present danger (*dhorror muhaqqoq*). Second, psychiatric reasons for abortion, such as mental disorders, are deemed disproportionate when weighed against the act of ending fetal life. Third, the legalization of abortion in rape cases is feared to create opportunities for an increase in adultery. Thus, this debate reflects a profound conflict between efforts to preserve benefits in specific contexts and concerns about broader social and moral implications (Bahtsul Masa'il FMPP XXXVIII, 2023).

Abdul Wahab Khallaf (1985), in his work *Principles of Islamic Law*, explains that when a person is faced with two equally dangerous situations, the choice should fall on the condition with less risk. This principle is consistent with the rules of jurisprudence, which state that "smaller dangers can be chosen to avoid greater dangers" (Yartakibu Akhaff al-Dhararayn li Ittiqa'i Ashaddahuma). Another principle asserts that "if two hazards conflict, choose the smaller one to avoid a greater impact" (*idha ta'aradhat al-mafsadatan ru'iyah a'zamuhuma dhararan*). In addition, other fiqh rules emphasize *Dar' al-Mafasid Muqaddamun*

'ala Jalb al-Masalih, meaning that avoiding harm takes precedence over pursuing benefits (Lestari et al., 2024).

In responding to the two fatwas—both from KUPI and Bahtsul Masail—the author argues that they share the same goal: to seek goodness and benefits for rape victims. However, considering the serious impact victims may experience—particularly if they undergo abortion at a psychologically, biologically, and anatomically immature age—they are highly vulnerable to suffering that could even endanger their lives. Scholars generally agree that after the stage of *ensoulment*, believed to occur at 120 days of gestation, abortion is prohibited except in extreme emergencies, such as when continuing the pregnancy poses a serious threat to the mother's life (Mohammed, 2020).

The debate on abortion in Indonesia can be observed not only in the context of the KUPI fatwa but also in the fatwas issued by the Indonesian Ulema Council (MUI). The MUI has issued two significant fatwas related to abortion, namely Fatwa Number 1/Munas VI/MUI/2000 and Fatwa Number 4 of 2005. The 2005 fatwa stipulates that abortion is essentially prohibited from the implantation of blastocysts but may be permitted under two conditions: when the mother's life is in danger or when the pregnancy causes severe hardship for the pregnant woman (Hanna et al., 2024). This approach reflects efforts to balance the protection of both the mother's and the embryo's right to life, which remains a complex ethical and legal dilemma. From another perspective, international law also emphasizes the importance of the right to life as a fundamental right protected by the International Covenant on Civil and Political Rights (ICCPR) (Hahsemi Nasab Zavareh, 2022). This right applies even in emergencies, thereby exerting moral and legal pressure on policies governing abortion. In this context, the MUI fatwa and the debate surrounding the KUPI fatwa illustrate the dynamics between religious interpretation, national law, and international standards. These issues highlight the complexity of navigating the right to life from both the mother's and the embryo's perspectives, creating a major challenge in formulating equitable and inclusive policies.

Meanwhile, some scholars have granted limited permission for abortion on social and medical grounds, particularly in the context of high population growth rates in Muslim-majority countries, budget constraints in the health sector, and the protection of maternal health (Shapiro, 2014). Health Law No. 47 of 2008 prohibits doctors from advising or performing abortions except to protect the life or health of pregnant women, with "health" encompassing both physical and mental aspects. Since 1993, various fatwas have addressed the legal and ethical dimensions of abortion (Shakhatreh et al., 2022). Law No. 36 of 2009 on health also regulates exceptions to the abortion ban, one of which applies to rape victims. This exception is based on moral, psychological, and medical considerations. From a moral standpoint, pregnancy resulting from rape is regarded as an unwanted condition that causes deep trauma to the victim (Situmeang et al., 2022). It should be emphasized that the health impact extends beyond the victim's psychological state to her physical condition when seeking an abortion. Therefore, careful consideration of all aspects is necessary to ensure that post-abortion victims are not placed at further risk.

Achieving benefits and avoiding harm in community life is a fundamental teaching of *sharia* (Al-shariah, 2024). The principle of the sacredness of human life in Islam forms the main basis for discussions about abortion. This principle carries profound moral and social implications, grounded in Quranic texts that prohibit taking life carelessly. Appreciation for life is reflected in verses such as the "sacredness of life" in Surah Al-An'am [6]:51, the "punishment for murder" in Surah An-Nisa 4:29, and the prohibition of killing offspring in Surah Al-Isra 17:32 (Iqbal et al., 2019). Collectively, these verses demonstrate that Islam places great respect on human life, permitting abortion only in circumstances of genuine emergency. This principle also encourages society to seek more humane solutions to the social and economic challenges that drive abortion decisions.

Regarding the psychological condition of victims who are denied abortion, a study conducted in the United States over approximately five years found that, in the long term, there are no significant differences in levels of depression, anxiety, stress, or suicidal ideation between women who obtained abortions and those who were denied. Abortion is considered to have no lasting adverse effects on women's mental health, while women denied abortions initially experience negative symptoms that tend to improve over time. However, higher psychological risks are observed among individuals with a history of mental disorders, traumatic experiences, or limited social support (Coverdale et al., 2023).

In addition, some scholars have highlighted the importance of compassion and tolerance in interpreting Islamic law, the need to safeguard women's physical and psychological well-being, and the view that abortion in certain situations can be justified if there is a threat to women's health—whether physical or psychological (Messaouda, 2024). In Islamic jurisprudence, abortion is permitted only under limited conditions based on the principle of *darūrah*, which allows the violation of the law to avoid major harm or save lives, particularly when the health or safety of the mother is at risk (Hamdani & Ishaq, 2024). Related principles include the possibility of preventing harm (*daf' al-darar al-muhtamal*) and necessity (*darūrah*) (Shapiro, 2014).

The issue of abortion is complex, involving both theological and medical considerations, with a primary focus on the safety of the mother. *Fiqh* regulates abortion in emergency situations, emphasizing the importance of life-saving actions grounded in Islamic ethical principles (Faisal Hamdani & Ishaq, 2024). The principle of *darūrah*, in this context, provides leniency within Islamic law when no other option exists to avoid greater harm or to save lives. This provision becomes especially relevant when the health or safety of the mother is at stake, making abortion a more acceptable step to protect life.

Conclusion

The fatwa issued by Islamic scholars permitting abortion for rape victims without gestational age restrictions has sparked controversy, particularly because it emphasizes the psychological impact on victims while overlooking other fundamental elements such as fetal development, medical risks, and social consequences. This approach is often grounded in the principle of necessity (*darūrah*), which in Islamic law allows rule violations to prevent greater harm. However, without gestational age limitations, the implementation of this fatwa could pose serious health risks to women—especially in the third trimester of pregnancy—and trigger ethical and social debates. In the context of positive law, Article 75(2) of the Health Law No. 36 of 2009 restricts abortion due to rape to within 40 days of gestation from the last menstrual period. This provision seeks to balance the rights of rape victims with fetal protection while minimizing medical risks for women. From a physical health perspective, late-term abortion can result in severe complications such as excessive bleeding, infections, uterine damage, and future infertility. Moreover, abortion procedures conducted in the third trimester carry a higher maternal mortality rate compared to those performed in the early stages of pregnancy. Therefore, abortion policies must comprehensively address physical health considerations to prevent long-term adverse effects on women. The inconsistency between the legal restrictions imposed by the state and the flexibility of religious fatwas creates challenges in implementation and policy harmonization. It is thus crucial to develop a more integrative approach involving religious scholars, health experts, and policymakers to ensure that decisions are not based solely on necessity but also take into account physical health, ethical considerations, and the protection of women's rights.

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