

The Legal Ruling on Abortion for Rape Victims from a *Maqāṣid al-Sharī'ah* Perspective in Government Regulation Number 28 of 2024 on Health

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Article Info:

Submitted:	Revised:	Accepted:	Published:
Jan 16, 2026	Feb 8, 2026	Feb 20, 2026	Feb 25, 2026

Abstract

Although abortion regulation has received considerable attention in legal and ethical scholarship, studies that specifically examine abortion for rape survivors within Indonesian health law from the perspective of *Maqāṣid al-Sharī'ah* remain limited. This study aims to analyze the legal framework governing abortion for rape survivors as stipulated in Government Regulation No. 28 of 2024 on Health and to assess its conformity with the objectives of Islamic law. The research employs a qualitative approach with a normative-doctrinal design through library research. Data were collected using documentary analysis of primary legal sources, such as statutes and classical *fiqh* literature, as well as secondary sources in the form of scholarly books and reputable journal articles, and were analyzed descriptively and analytically using a *maqāṣidi taḥlīli* approach focused on the principle of the protection of life (*ḥifẓ al-nafs*). The findings indicate that the regulation demonstrates substantive alignment with the objectives of Islamic law, particularly in the protection of life, intellect, lineage, and honour, as evidenced, among other things, by the determination

of a 14-week gestational limit prior to ensoulment. Nevertheless, the study also identifies various procedural obstacles that may hinder rape survivors' access to safe and affordable abortion services. The study concludes that the regulation of abortion for rape survivors in this government regulation represents an implementation of the principles of necessity (*ḍarurah*) and public interest (*maṣlahah*), and recommends strengthening institutional coordination and health service procedures to ensure effective and just protection for survivors. This study offers both theoretical and practical contributions to the development of Islamic law and reproductive health policy in Indonesia.

Keywords: Abortion; Rape Survivors; *Maqaṣid al-Shari'ah*; Indonesian Health Law; Islamic *Fiqh*

INTRODUCTION

Life is the most precious and fundamental gift bestowed by Almighty God upon every human being, regardless of social status, gender, or background. For this reason, human life must be protected, respected, and upheld by all individuals as a moral and ethical obligation (Desiree et al., 2024). The right to life constitutes the most basic and inherent human right, one that cannot be revoked, diminished, or taken away by anyone under any circumstances. Without the recognition of the right to life, the very concept of human rights would lose its meaning and foundation (Ansor et al., 2002). In the Indonesian context, this right is explicitly guaranteed and protected by the state, as affirmed in Article 28A of the 1945 Constitution of the Republic of Indonesia, which emphasizes the state's responsibility to safeguard the lives of all its citizens.

In relation to the fundamental importance of the right to life, abortion emerges as a highly sensitive issue that intersects moral values, medical considerations, and legal norms, and has therefore continuously generated intense debate (Aprilia, 2025). Abortion is generally understood as an act of terminating a pregnancy or expelling a fetus from the womb before it reaches a certain stage of development, rendering survival outside the uterus impossible. According to the Indonesian Dictionary, abortion refers to the expulsion of an embryo that is no longer viable before the pregnancy reaches four months (Starrs et al., 2018). From a medical perspective, abortion is defined as the termination of pregnancy before the fetus is capable of independent life outside the womb, which typically occurs when the gestational

age is less than 20 weeks or when the fetal weight is under 500 grams. These definitions illustrate that abortion is not merely a legal term, but also a medical and ethical concept with serious implications.

Within Indonesian society, abortion is widely perceived as a social reality that cannot be ignored. Because abortion is often carried out secretly and away from public scrutiny, it is commonly regarded as a hidden or concealed phenomenon. This secrecy is largely influenced by prevailing legal restrictions, social norms, cultural expectations, and religious teachings that strongly discourage the practice (Jain & Tronic, 2019). In many cases, individuals who undergo abortion are unmarried women who face social stigma and psychological pressure (Utomo, 2022). These individuals may include victims of rape who do not wish to continue the pregnancy, as well as those who engage in consensual sexual relations outside marriage. Consequently, the phenomenon of abortion reflects a complex and undeniable social reality shaped by fear, stigma, and limited access to safe and lawful reproductive health services.

Statistical data further reveal the magnitude and urgency of the abortion issue in Indonesia. Studies estimate that around the year 2000, an average of 1.5 million abortions occurred annually across the country, with approximately one million cases concentrated in Java alone. Additional findings indicate that out of 405 unplanned pregnancies, as many as 95 percent involved adolescents and young adults between the ages of 15 and 25 (Nurhayati, 2019). Overall, the total number of abortion cases in Indonesia is estimated to reach 2.5 million, with about 1.5 million of these involving adolescents. Research conducted by the Guttmacher Institute estimates an abortion rate of 37 cases per 1,000 women of reproductive age, defined as those between 15 and 49 years old (Sutrisno, 2020). This figure is significantly higher than that reported in many other Asian countries, demonstrating that abortion in Indonesia is not solely a medical concern, but also a profound social, moral, and legal problem that demands a comprehensive and multidimensional response.

From the perspective of Indonesian criminal law, abortion is, in principle, considered a prohibited act. This prohibition is clearly articulated in Articles 346 to 349 of the Criminal Code, which impose criminal sanctions not only on individuals who undergo abortion, but also on those who assist or facilitate the procedure (Rahardjo, 2021)vv. Nevertheless, the legal framework has evolved to recognize exceptional circumstances in which abortion may be permitted. Law No. 36 of 2009 on Health allows abortion in cases of medical emergencies

or pregnancies resulting from rape, provided that strict legal and medical requirements are fulfilled. These provisions were further clarified through Government Regulation No. 61 of 2014 and subsequently updated in Government Regulation No. 28 of 2024 on the Implementation of the Health Sector (Prasetyo, 2021). The latest regulation emphasizes that abortion procedures may only be conducted in authorized health facilities by qualified medical professionals, specifically for rape victims and pregnant women facing serious medical risks, thereby seeking to balance legal protection with humanitarian considerations.

Abortion and rape are closely interconnected phenomena, as a substantial proportion of illegal abortions carried out in society are the direct result of sexual violence or rape. Victims of rape often experience severe physical trauma, psychological distress, and social stigma, which may lead them to seek abortion as a means of coping with the consequences of the assault. Data from the National Commission on Violence Against Women recorded at least 4,472 cases of violence against women in 2025, reflecting an increase from 4,178 cases in 2024 (MD, 2019). According to the Chairperson of the Commission, these figures represent only reported incidents, suggesting that the actual number of cases occurring in society is likely far higher. This reality highlights the urgency of addressing abortion within the broader context of sexual violence and women's protection.

From the perspective of Islamic law (*syar'*), abortion, commonly referred to as *al-ijbād* or *ishqāt al-ḥaml*, is generally viewed as a prohibited act. The majority of Islamic scholars agree that abortion fundamentally contradicts the objectives of Islamic law (*maqāṣid al-sharī'ah*), particularly the preservation of life (*ḥifẓ al-nafs*) and the protection of lineage (*ḥifẓ al-nasl*). Within the framework of Islamic legal theory, the concept of *maṣlaḥah mursalah* is recognized as a consideration for human welfare, which, according to al-Shāṭibī, aims at securing benefits for humanity rather than serving divine interests alone. However, despite this emphasis on welfare, human actions must remain firmly guided by the principles of Sharia and should not be driven by personal desires or subjective judgments (al-Tahir ibn Ashur, 1946). As a result, the permissibility of abortion is often viewed as being in tension with the core principles of *maqāṣid al-sharī'ah*.

The central issue examined in this study is the ongoing debate regarding the compatibility between the legalization of abortion for rape victims under Indonesian positive law and the normative values of Islamic law. This issue is particularly significant because such policies directly engage the Islamic principle of protecting life, which occupies a central

position in Islamic jurisprudence. Consequently, it becomes necessary to assess whether the conditions and requirements stipulated in existing regulations align with the interpretations of classical Islamic jurists. This research employs a qualitative methodology using a *maqāṣid*-based analytical approach through library research. The data are derived from primary legal sources, including the Qur'an and statutory regulations, as well as secondary sources such as classical works on *maqāṣid* and fiqh. All data are analyzed descriptively to produce a systematic comparison between positive legal norms and doctrinal perspectives, with the aim of examining abortion regulations under Government Regulation No. 28 of 2024 from the Maliki and Shafi'i schools of thought and contributing comprehensive legal insights for both academic discourse and public understanding.

METHODS

Research methodology is understood as a systematic effort to investigate a particular problem through the rigorous application of scientific methods, encompassing data collection, data processing, and data analysis, in order to produce objective knowledge that is beneficial to human life (Sugiyono, 2019). This study employs a qualitative research design aimed at analyzing, understanding, and examining the norms that operate within legal, social, or cultural systems without conducting direct observation of empirical phenomena in the field. The approach adopted in this research is the *Maqāṣidi Tablīhi* approach, which is implemented through deconstruction and in-depth (*tablīhi*) analysis of the provisions contained in Government Regulation (PP) No. 28 of 2024 (Soekanto, 2008). This approach seeks to uncover the values of public benefit (*jalb al-manāfi'*) and preventive measures against harm (*daf' al-mafāsīd*) embedded in the regulation. The analysis primarily focuses on the principle of the protection of life (*hifz al-nafs*) in order to assess the degree of alignment between state regulation and the fundamental objectives of Islamic law.

The subject of this research comprises two principal dimensions, namely the material subject and the formal subject, both of which are examined in depth to achieve legal harmony. The material subject of the study concerns the legal provisions governing abortion for victims of rape as regulated in Government Regulation No. 28 of 2024 on Health (Abubakar, 2021). Meanwhile, the formal subject of this research is the *Maqāṣid al-Shari'ah* perspective, particularly through the application of the principle of the protection of life (*hifz al-nafs*), which functions as the analytical framework for evaluating the national regulation

(Fadli, 2021). This framework is employed to determine whether the regulation provides precise protection and justice for victims of sexual violence in accordance with Islamic legal objectives.

Data sources in this study are classified into three main categories to support a comprehensive analysis. Primary legal materials include the Qur'an, classical works on the principles of Islamic jurisprudence (*uṣūl al-fiqh*), literature on *Maqāṣid al-Shari'ah*, Government Regulation No. 28 of 2024 on Health, and other legal instruments such as the Indonesian Criminal Code. Secondary legal materials consist of relevant books and scholarly journals, including academic works in the form of undergraduate theses, master's theses, dissertations, and other legal publications. In addition, tertiary legal materials are utilized as supporting references, such as the *Kamus Besar Bahasa Indonesia* and legal dictionaries (Creswell, 2013). Data collection is conducted through library research using documentation techniques to analyze abortion law for rape victims from the perspective of the principle of the protection of life within Islamic law.

The data analysis technique is carried out as a systematic process through a descriptive-analytical method employing a *tablīlī* approach. The analytical stages begin with data reduction to filter specific information related to abortion for rape victims as regulated in Government Regulation No. 28 of 2024. The data are then classified according to the legal requirements for permissible abortion, such as the maximum gestational age limit of 14 weeks and the criteria of emergency circumstances within the discipline of fiqh. Subsequently, a *maqāṣidi* interpretation is conducted by applying the legal maxim of choosing the lesser of two harms (*akḥaf al-ḍararayn*) to balance the protection of the mother's life against the fetus's right to life prior to the stage of ensoulment. This series of analyses concludes with the formulation of findings that articulate the degree of textual and substantive alignment between national health regulations and the concept of life protection within the framework of *Maqāṣid al-Shari'ah*.

RESULTS

Procedural Safeguards and Implementation Challenges in Abortion Services for Rape Victims

From a procedural standpoint, the legality of abortion for rape victims under Government Regulation Number 28 of 2024 must be supported by valid evidence to prevent abuse of law. Article 118 of the regulation stipulates that evidence of pregnancy resulting from rape consists of two essential documents: a medical certificate from a physician determining that the gestational age is consistent with the time of the criminal incident, and a formal statement from an investigator regarding the alleged act of rape or sexual violence (Sarwat, 2019). These administrative requirements serve as legal safeguards designed to ensure that abortion procedures are not misused by individuals seeking to terminate pregnancies resulting from consensual sexual relations (al-Din Abu al-Fath Muhammad ibn Ali ibn Daqiq al-Id, 1996). The state's intention behind these evidentiary rules is to maintain legal certainty and uphold the principle that abortion remains a strictly prohibited act except under the explicitly defined exceptional circumstances.

However, these procedural safeguards create a fundamental tension between legal protection and timely access to healthcare services. The requirement for victims to first report the incident to police authorities and await investigative processes imposes a significant bureaucratic burden on individuals already experiencing severe physical and psychological trauma (ibn Anas al-Asbahi, 1994). The investigation process, which involves gathering evidence, conducting interviews, and preparing official documentation, can be time-consuming and may extend over weeks or even months. This prolonged procedure creates a serious risk that the gestational age of the pregnancy may exceed the legal limit of 14 weeks before the victim obtains the necessary documentation to access abortion services (Mawardi, 2018). Consequently, victims who comply with all legal requirements may nonetheless find themselves unable to exercise their legally granted right to abortion due to administrative delays beyond their control.

The regulation further stipulates that abortion services may only be conducted at advanced healthcare facilities that meet specific standards established by the Minister of Health. Such facilities must involve an evaluation team or "consideration committee" comprising qualified medical specialists who possess the appropriate competence and authority to assess each case (al-Zuhayli, 1999). This committee bears the responsibility of

providing objective recommendations and making decisions based on both the medical conditions and legal circumstances faced by the victim. While this multi-layered review process aims to ensure that every abortion procedure is medically justified and legally compliant, it also adds additional procedural steps that may further delay access to care, particularly in regions where such advanced facilities are limited in number or geographically inaccessible.

In a significant progressive step, Article 122 of the regulation affirms the importance of the woman's consent and explicitly waives the requirement for spousal consent specifically for rape victims (Armiwulan, 2022). This provision strengthens the protection of women's dignity and bodily autonomy in situations of extreme psychological pressure, recognizing that requiring a victim to obtain permission from a spouse would impose an additional and unjust burden. The regulation also mandates that assistance and counseling must be provided by medical personnel or professional counselors both before and after the abortion procedure (Fernández et al., 2025). These counseling requirements serve to ensure the victim's mental readiness for the procedure and to prevent long-term psychological complications that might arise from inadequately supported decision-making.

The implementation challenges inherent in these procedural requirements underscore the urgent need for efficient coordination between medical institutions and law enforcement authorities. Streamlined protocols and standardized procedures are essential to balance the legitimate need for legal safeguards with the equally important requirement of timely access to healthcare services (Berer & Ravindran, 2018). Without such coordination, the very protections designed to prevent abuse may inadvertently function as barriers that deny victims their legally recognized right to safe abortion care (Hallaq, 2004). Policymakers and implementing agencies must therefore develop mechanisms that expedite investigative processes for rape cases involving pregnancy, such as specialized units trained to handle such sensitive matters with appropriate urgency.

Ultimately, the procedural framework established by Government Regulation Number 28 of 2024 reflects a careful attempt to balance competing interests: the state's interest in preventing unlawful abortions, society's interest in maintaining legal certainty, and victims' interests in accessing timely healthcare services (Herring, 2018). While the regulation's provisions regarding evidence requirements, facility standards, and consent represent legitimate safeguards, their practical implementation reveals significant challenges

that must be addressed. The tension between procedural compliance and timely access illustrates the broader difficulty of translating legal rights into tangible services for vulnerable populations (Cook & Dickens, 2017). Addressing these implementation challenges requires ongoing evaluation and refinement of procedures to ensure that the humanitarian objective of protecting rape victims is not defeated by the very mechanisms designed to achieve it.

Harmonizing Positive Law and Islamic Jurisprudence: A Maqāṣid al-Sharī'ah Analysis of Abortion for Rape Victims

The analysis of Government Regulation Number 28 of 2024 concerning abortion for rape victims through the lens of Maqāṣid al-Sharī'ah reveals a profound engagement with the primary objective of preserving life, known as ḥifẓ al-nafs. Islamic jurisprudence universally recognizes the protection of human life as one of the fundamental purposes of divine law, yet this principle operates within a framework that acknowledges complex ethical dilemmas (ibn Muhammad al-Ghazali, 1997). In the context of abortion resulting from rape, a genuine conflict emerges between two competing claims to life: the potential life of the fetus developing within the womb and the established, sentient life of the mother who has already endured sexual violence (al-Raysuni, 1992). This conflict cannot be resolved through simple binary determinations but requires nuanced juristic reasoning that weighs competing interests according to established methodological principles within Islamic legal theory.

Within the framework of emergency jurisprudence (fiqh al-ḍarūrah), Islamic law provides a justifiable position for rape victims who are considered coerced parties (mukrahah), thereby absolving them of both sin and worldly punishment under specific circumstances (ibn Mustafa al-Zuhayli, 1985). The application of the legal maxim "choosing the lesser of two harms" (irtikāb akhaff al-ḍararayn) becomes particularly relevant in such cases, as it permits the acceptance of a lesser injury to avoid a greater one (Ansor et al., 2002). Contemporary bioethical scholarship within the Islamic tradition recognizes that rigid ideological frameworks may lose relevance when they fail to account for extraordinary circumstances such as rape-induced pregnancy (Ledianto et al., 2024). Accordingly, the physical and psychological safety of the mother may be prioritized over the potential life of the fetus before the stage of ensoulment, which classical jurists generally identify as occurring at 120 days of gestation.

The gestational age limit of 14 weeks (approximately 98 days) established in Government Regulation Number 28 of 2024 demonstrates a remarkable alignment with classical Islamic jurisprudential discourse on the stages of fetal development. Scholarly analysis of abortion discourse across various Islamic legal schools reveals that all jurists unanimously agree that abortions performed after four months (120 days) of gestation are categorically prohibited (haram) (Fentiningrum, 2020). However, concerning abortions performed before 40 days and between 40 to 120 days, classical jurists hold differing positions based on their understanding of when ensoulment occurs and the moral status of the fetus at each developmental stage (Fitriani, 2025). The Indonesian regulation's limitation of abortion access to 14 weeks operates within this window of juristic disagreement, prior to the stage at which consensus on prohibition emerges, thereby demonstrating sensitivity to the diversity of Islamic legal opinion.

Beyond the protection of physical life, Maqāṣid al-Sharī'ah analysis encompasses the critical dimension of protecting intellect or mental faculty (ḥifẓ al-'aql), which constitutes one of the five essential objectives of Islamic law. Research on sexual violence survivors has documented that victims often experience severe psychological burdens including anxiety, stress, and deep trauma that significantly impair their mental functioning and overall well-being (Dol et al., 2025). Forced pregnancy resulting from rape compounds this psychological injury by imposing additional physical and emotional demands on women already struggling to process profound violation. Contemporary applications of maqāṣid principles recognize that preserving sound intellect requires addressing conditions that threaten mental health, including the trauma of sexual violence (Indriani et al., 2018). Access to safe abortion and professional counseling therefore represents a tangible mechanism for protecting the victim's cognitive and psychological integrity in accordance with Islamic objectives.

The principle of protecting lineage or progeny (ḥifẓ al-nasl) in contemporary Islamic legal thought has evolved beyond traditional understandings of mere biological legitimacy to encompass broader considerations of reproductive welfare and family well-being. Modern reinterpretations of ḥifẓ al-nasl within the Indonesian context recognize that lineage protection extends to ensuring that children are born into circumstances conducive to their proper development and psychological health (Rahman & Arranury, 2026). This expanded understanding aligns with the objectives of preventing the birth of children who would grow up without adequate social support, facing stigma, or lacking the foundational stability

necessary for healthy development (Hakiim et al., 2021). From this perspective, the regulation's accommodation of abortion for rape victims can be understood not as neglecting lineage protection but as operationalizing it through preventing harm to potential offspring who might otherwise enter the world under profoundly disadvantaged circumstances.

The protection of honor and dignity (*ḥifẓ al-‘ird*) represents another essential *maqāṣid* dimension that bears directly on the situation of rape victims. Research examining Islamic legal frameworks for handling sexual violence emphasizes that maintaining honor is an essential right that must be upheld, and that accessible complaint and support services constitute crucial instruments for restoring survivor dignity and preventing future violations (ibn Muhammad Shatta al-Dimyati, 1997). Sexual harassment and rape survivors frequently face not only the immediate trauma of the assault but also subsequent social stigma, discrimination, and isolation that damage their interpersonal relationships and community standing (Utami, 2021). The Indonesian regulation's provisions for confidential services, professional counseling, and exemption from spousal consent requirements reflect recognition that protecting victim honor requires both substantive legal rights and supportive implementation mechanisms. This approach demonstrates how positive law can operationalize Islamic ethical principles by providing concrete protection for those who have suffered injustice.

The synthesis of positive law and Islamic jurisprudence embodied in Government Regulation Number 28 of 2024 reflects a sophisticated understanding that harmonization does not require identical textual formulations but rather alignment of substantive objectives and ethical commitments (Setiawati et al., 2025). The regulation does not negate the fundamental value of fetal life or disregard Islamic teachings on the sanctity of human creation. Rather, it operationalizes core *maqāṣid* principles by recognizing that protecting life encompasses safeguarding both the physical existence and psychological integrity of living persons, that preserving lineage includes preventing foreseeable harm to potential children, and that upholding honor requires tangible support for those whose dignity has been violated through criminal acts (Hasan, 2024). This nuanced approach demonstrates the flexibility inherent in Islamic jurisprudence when addressing novel or exceptional circumstances, and illustrates how state regulation can achieve harmony between positive legal frameworks and the higher objectives of Islamic law through contextual application of fundamental principles.

DISCUSSION

Abortion Regulation for Rape Victims in Indonesia's New Health Law

Indonesia's health legal framework has entered a new phase with the enactment of Health Law Number 17 of 2023, which is technically elaborated through Government Regulation (GR) Number 28 of 2024. In principle, positive law in Indonesia continues to prohibit the practice of abortion as a form of protection for the right to life (Pemerintah Republik Indonesia, 2024). However, this prohibition is not absolute, as the state provides exceptions under specific emergency conditions to protect women's rights, including for victims of rape. Pursuant to Article 116 of GR Number 28 of 2024, every person is prohibited from performing an abortion except on the grounds of medical emergencies or for victims of criminal acts of rape or other sexual violence resulting in pregnancy (Pemerintah Republik Indonesia, 2024). This policy represents a form of state recognition of victims' bodily integrity and constitutes a legal protection effort aimed at saving them from the dual burden of rape trauma and life-threatening medical emergencies.

One crucial and transformative aspect of this regulation is the determination of a maximum gestational age of 14 weeks for rape victims, which refers to the provisions in the new Criminal Code (KUHP). This 14-week limit represents a significant change compared to the previous regulation (GR Number 61 of 2014), which only provided a time limit of 40 days (Pemerintah Republik Indonesia, 2014). This change is based on medical and psychological considerations, considering that rape victims often do not realize they are pregnant under 6 weeks due to factors such as menstrual irregularities, social isolation, or severe trauma experienced after the incident (Rane, 2010). Thus, the extension to 14 weeks is considered a more realistic and humane step to provide space for victims to process trauma, detect pregnancy, and pursue necessary legal measures.

From a procedural aspect, the legality of abortion for rape victims must be supported by valid evidence to prevent abuse of law. Article 118 stipulates that evidence of pregnancy resulting from rape consists of a doctor's certificate determining gestational age consistent with the time of the incident, as well as a statement from an investigator regarding the alleged criminal act of rape (Utami, 2021). These administrative requirements obligate victims to report the incident to the police first to ensure that the medical action taken is based on actual criminal facts, not as a result of consensual sexual intercourse (Kamali, 2008). However, the lengthy evidentiary bureaucracy from law enforcement officials can pose a

serious obstacle, as the time-consuming investigation process risks causing the pregnancy to exceed the legal limit of 14 weeks, potentially hindering victims' rights to obtain safe abortion services.

The implementation of abortion services can only be conducted at advanced healthcare facilities that meet health resource standards as determined by the Minister. Such services must involve an evaluation team or "consideration committee" and specialist doctors who possess the appropriate competence and authority (Indah et al., 2026). This committee is responsible for providing recommendations and making objective decisions based on the medical and legal conditions faced by the victim. Furthermore, Article 122 emphasizes the importance of the consent of the woman concerned, whereby specifically for rape victims, spousal consent is not required (Sait & Lim, 2006). This strengthens the protection of women's dignity and bodily autonomy in highly pressured situations. Assistance and counseling before and after the procedure must also be provided by medical personnel or counselors to ensure the victim's mental readiness and prevent long-term psychological complications.

Examined from the perspective of Maqasid al-Shariah, the policy on abortion for rape victims is closely related to the principle of protecting life (*hifz al-nafs*). Generally, Islam prohibits abortion because it contradicts the objective of preserving life. However, in the case of rape, a conflict arises between the right to life of the fetus still in the womb and the right to life and mental health of the mother (al-Din Abu Muhammad Abd Allah ibn Ahmad ibn Qudamah al-Maqdisi, 1997). Within the framework of emergency jurisprudence (*fiqh al-darurah*), Islamic law provides a justified position for rape victims as parties who are coerced (*mukrahah*), thereby absolving them of sin and worldly punishment. Based on the principle of choosing the lesser harm (*irtikab akhaff al-dararayn*), the physical and psychological safety of the mother is prioritized over that of the fetus before the ensoulment. Since the fetus before 120 days is still considered potential life (*al-hayah al-muhtamalah*), while the mother represents established and certain life (*al-hayah al-mustaqirrah*), prioritizing the mother's safety is a form of applying *maslahah* (public interest) to avoid greater harm (ibn Ahmad ibn al-Najjar al-Dimyati, 2002).

Maqasid al-Shariah analysis also encompasses the dimensions of protecting intellect (*hifz al-aql*), protecting lineage (*hifz al-nasl*), and protecting honor (*hifz al-ird*). Trauma resulting from rape that leads to forced pregnancy can devastate mental health and cause

severe depression. Therefore, access to safe abortion and counseling becomes a tangible effort to protect the victim's sound mind. From the perspective of protecting lineage, this policy aims to prevent the birth of a generation that would grow up without adequate social and psychological support, which would ultimately neglect the essence of good lineage quality (Azizah & Panjaitan, 2024). Meanwhile, protecting honor views abortion as a means to restore the victim's dignity and shield her from social stigma and ongoing mental suffering resulting from the criminal actions of another party (Hallaq, 2004). Thus, the regulation in GR Number 28 of 2024 is not a form of disregard for the fetus's right to life, but rather an embodiment of Sharia principles that provide concrete protection for the wronged party, aiming to achieve harmony between positive law and the flexibility of Islamic jurisprudence.

CONCLUSION

This study concludes that the Government of the Republic of Indonesia, through Government Regulation (PP) No. 28 of 2024 on Health, has taken a progressive step by accommodating abortion rights for victims of rape; however, this regulation also generates legal complexity in terms of implementation and legal harmonization. Procedurally, the regulation establishes strict requirements, including a maximum gestational age of 14 weeks, a medical certificate from a physician, and a formal statement from law enforcement investigators as proof of rape, with the aim of preventing legal abuse. Although intended to provide protection, these bureaucratic requirements may instead create barriers to access for victims, as lengthy investigative processes can cause the pregnancy to exceed the stipulated time limit, rendering the legally granted right difficult to realize. From the perspective of *Maqāṣid al-Shari'ah*, this policy demonstrates substantial alignment with the objectives of Islamic law in protecting life (*ḥifẓ al-naḥs*), intellect (*ḥifẓ al-'aql*), lineage (*ḥifẓ al-nas*), and dignity (*ḥifẓ al-'ird*). This alignment is particularly evident in the establishment of the 14-week gestational limit (approximately 98 days), which falls before the ensoulment period (120 days) according to the majority of Islamic scholars, thereby allowing the conflict between fetal life and maternal rights to be resolved through the principle of choosing the lesser harm (*akḥaff al-dararayn*). Accordingly, PP No. 28 of 2024 should not be viewed as a neglect of Islamic values, but rather as a concrete effort by the state to apply the principles of necessity (*darūrah*) and public interest (*maṣlahah*) in providing comprehensive protection for victims of injustice.

This study makes a significant theoretical contribution by integrating an analysis of Indonesian positive law and Islamic jurisprudence (*fiqh*) through the analytical framework of *Maqāṣid al-Sharī'ah*, an approach that has rarely been employed simultaneously in abortion studies. It enriches the existing body of literature by demonstrating that harmonization between state law and Islamic law does not necessarily require textual uniformity, but can instead be achieved through alignment of substantive objectives, particularly in sensitive public policy areas such as reproductive health. Practically, the findings offer an evaluative framework for policymakers and health authorities to assess the effectiveness of abortion service procedures, especially in streamlining coordination between law enforcement agencies and healthcare facilities so that victims' rights are not impeded by bureaucratic constraints.

Given the normative-doctrinal nature of this study, which relies on a literature-based approach, future research is recommended to adopt empirical methodologies to examine the on-the-ground implementation of PP No. 28 of 2024. Subsequent studies may focus on the lived experiences of rape victims in accessing safe abortion services, including the psychological and social barriers they face beyond administrative obstacles. Furthermore, comparative research involving other Muslim-majority countries with similar regulatory frameworks is necessary to broaden perspectives on how *Maqāṣid al-Sharī'ah* principles are applied within diverse national legal systems. Finally, more in-depth exploration of the role of post-abortion counseling in restoring victims' mental health from the perspective of *ḥijz al-'aql* constitutes an urgent research agenda to ensure holistic protection.

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