

CONSIDERATIONS OF *I'TIBAR AL-MA'ALAT* REGARDING REGULATIONS ON ABORTION IN CASES OF RAPE IN INDONESIA

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Abstract

*This study examines the consideration of *I'tibar al-Ma'alat* in regulating abortion in cases of rape as stipulated in Articles 116 and 118 of Government Regulation (GR) No. 28 of 2024. This research employs a qualitative approach using a literature review method. The findings indicate that abortion is generally prohibited, except in cases of medical emergency or pregnancy resulting from rape or sexual violence. However, the regulation has not fully reflected the principles of *I'tibar al-Ma'alat*, particularly in the procedure for proving pregnancy resulting from rape. The requirement of a medical certificate and an investigator's statement lacks clear standards and does not involve comprehensive medical recommendations from psychiatric and obstetric specialists. This condition potentially undermines legal certainty and the objective of mitigating harm, especially psychological risks faced by rape victims. Therefore, strengthening medical and legal coordination is necessary to ensure the regulation aligns with the consideration of legal implications (ma'al).*

Keywords: Abortion; *I'tibar al-Ma'alat*; Rape.

A. INTRODUCTION

Abortion is a complex reproductive health issue that has generated sustained debate across legal, moral, medical, and human rights discourses. Its regulation remains highly contested

due to conflicting perspectives on the protection of life and reproductive autonomy.¹

Abortion has long been a contested issue for women due to its implications for moral, legal, political, and religious domains. The debate largely stems from competing claims between the fetus's right to life and women's reproductive autonomy. This unresolved tension has given rise to polarized positions, commonly characterized as pro-life perspectives emphasizing the sanctity of life and pro-choice perspectives advocating women's authority to make decisions regarding their own bodies, including the option to terminate a pregnancy.²

To curb abortion practices as a form of social control, the Indonesian government enacted Articles 116 and 118 of Government Regulation (GR) No. 28 of 2024, which have since become central to debates on abortion regulation. Article 116 generally prohibits abortion, allowing exceptions only in cases of medical emergencies or pregnancies resulting from rape or sexual violence, while Article 118 regulates the evidentiary requirements for proving such pregnancies. Despite this regulatory framework, the provisions remain controversial, particularly concerning the permissibility of abortion for rape

¹ Mufligha Wijayati, 'ABORSI AKIBAT KEHAMILAN YANG TAK DIINGINKAN (KTD): Kontestasi Antara Pro-Live Dan Pro-Choice', *Analisis: Jurnal Studi Keislaman*, 15.1 (2017), 43–62 <<https://doi.org/10.24042/ajsk.v15i1.712>>.

² Yuke Novia Langie, 'Tinjauan Yuridis Atas Aborsi Di Indonesia (Studi Kasus Di Kota Manado)', *J Lex Et Societatis*, 2.2 (2014), 51–61.

victims, which requires validation through both medical certification and an investigator's statement.

Pregnancies resulting from rape are frequently associated with profound psychological distress for victims, often exacerbating trauma and social stigma. Beyond potential physical health implications, abortion may also involve significant psychological consequences, including feelings of guilt, shame, or emotional distress, which in some cases may persist over time and contribute to long-term mental health challenges.³

It is even more difficult for women who are forced to have an abortion due to unwanted pregnancies, such as those resulting from rape, because their situation is more difficult. Rape victims face even greater challenges because they must deal with the profound psychological, physiological, and social effects of the trauma they have experienced. Their bodies, already violated through rape, are further burdened by the additional pressure of an unwanted pregnancy, forcing women to endure a decision-making process that is inherently agonizing. The strong need to regain control over their lives is the driving force behind the decision made by many women to have an abortion, which is often a last resort rather than a choice. However, due to the stigma associated with rape and abortion in society, they receive little or

³ Ila Ria Alfi and Gunarto, 'Abortion Due to Rape in A Juridical Perspective and Human Rights', *Law Development Journal*, 2.3 (2020), 272–78.

no help, further isolating them at a time when they need support the most.⁴

As a result of societal prejudice and legal restrictions that obscure their experiences, rape victims often experience severe discrimination and injustice. These women are in a particularly vulnerable position due to the psychological impact of rape, in addition to the physical and emotional effects of unwanted pregnancy.⁵

The restrictions on abortion in Article 116 can be seen as an effort to protect the fetus, but on the other hand, it also has the potential to ignore women's rights to protection from health risks that may arise from unwanted pregnancies.

It is understandable that abortion is considered a solution for rape victims. This raises the controversial question of whether rape victims can recover slowly after abortion. It is possible that they will experience psychological disorders, such as depression.

Given that the majority of Indonesia's population is Muslim, examining abortion regulations through the lens of Islamic law as a form of living law is essential, particularly in relation to Articles 116 and 118 of Government Regulation (GR) No. 28 of 2024. Within Islamic legal theory, mujtahids are not

⁴ Triantono and others, 'When the Law Fails the Victim: Deconstructing the Criminalization of Abortion for Rape Survivors in Indonesia', *International Journal for the Semiotics of Law*, 2025 <<https://doi.org/10.1007/s11196-025-10279-8>>.

⁵ Triantono and others.

permitted to determine the permissibility or impermissibility of an act without first considering its legal implications and consequences. As the issue under debate primarily concerns the potential impacts of legal rulings, this study adopts the *I'tibar al-Ma'alat* approach, which emphasizes consideration of the consequences arising from the legal actions of a mukallaf or from legal decisions themselves. Accordingly, this research seeks to analyze abortion regulation in Indonesia through the framework of *I'tibar al-Ma'alat*, with particular attention to fetal protection.

The novelty of this study is identified through a review of previous relevant studies on abortion due to rape. Triantono et al. examine the criminalization of abortion for rape survivors in Indonesia through a systematic analysis of exceptional laws.⁶ Sunny Ummul Firdaus and Yuniar Sabdaningtyas focus on the legality of abortion in cases of rape within the framework of Indonesian law and human rights.⁷ Ila Ria Alfi and Gunarto analyze abortion regulations under Law No. 36 of 2009 on Health and their relationship to human rights.⁸ In a different context, Natnael Atnafu Gebeyehu et al. investigate the global prevalence of post-abortion depression through a systematic review and

⁶ Triantono and others.

⁷ Sunny Ummul Firdaus and Yuniar Sabdaningtyas, ‘Legalization of Abortion for Rape Victims In Law In Indonesia’, in *Proceedings of the International Conference for Democracy and National Resilience (ICDNR 2024)*. (Springer Nature, 2024), p. 176.

⁸ Alfi and Gunarto.

meta-analysis.⁹ While Mufligha Wijayati explores the normative contestation between pro-life and pro-choice perspectives on abortion resulting from unwanted pregnancy.¹⁰ Despite these contributions, none of these studies specifically examine abortion regulation in Indonesia through the framework of *I'tibar al-Ma'lat*, particularly in relation to the consideration of legal implications and harm mitigation.

B. RESULTS AND DISCUSSION

1. Regulation of Abortion Due to Rape in Articles 116 and 118 of Government Regulation (PP) No. 28 of 2024

Article 116 of Government Regulation (GR) No. 28 of 2024 clearly prohibits abortion for all individuals, except in two specific circumstances: first, in cases of medical emergency; second, in situations where abortion is performed on victims of rape or other sexual violence resulting in pregnancy. Through this provision, the government emphasizes that abortion cannot be performed arbitrarily and must be determined based on clear legal and health considerations. This approach reflects efforts to uphold human values and protect women's rights while respecting the developing life. Thus, this article not only regulates legal aspects

⁹ Natnael Atnafu Gebeyehu and others, 'Global Prevalence of Post-Abortion Depression: Systematic Review and Meta-Analysis', *BMC Psychiatry*, 23.1 (2023), 786.

¹⁰ Wijayati.

but also establishes the necessary moral boundaries in handling sensitive cases such as abortion.¹¹

Article 116 of Government Regulation (PP) No. 28 of 2024:

No one shall perform an abortion, except in cases of medical emergency or in relation to victims of rape or other sexual violence resulting in pregnancy, in accordance with the provisions of the criminal code.

The main purpose of the provisions in Article 116 is to reduce the misuse of abortion practices, while protecting women in desperate situations.¹² In medical emergencies, abortion is considered a possible alternative to save the woman's life or avoid serious health risks. Establishing these conditions emphasizes the importance of appropriate medical intervention during crisis situations, while avoiding broad interpretations that could lead to illegal practices. Furthermore, recognition of victims of rape and sexual violence reflects the government's awareness of the psychological and physical impacts faced by women in such situations, and provides space for women to make the best decisions for themselves and their health. This provision is

¹¹ IQLIMA MAULA ARRISYDA, *PIDANA ABORSI ANAK KORBAN PERKOSAAN DALAM PERSPEKTIF YUSUF AL-QARDHAWI (Analisis Putusan Hakim No.5/Pid.Sus.Anak/2018/Pn.Mbn)*, 2019.

¹² Zainal Abidin Bagir and others, 'Membatasi Tanpa Melanggar - Hak KBB', 2019, 144.

therefore expected to provide legal protection and support for women in dealing with deep trauma.¹³

A survey conducted by INFID shows that 71.8% of Indonesians have experienced sexual violence, either against themselves, their families, or people they know. Of this number, 65.1% of respondents admitted to having experienced sexual harassment. In addition, 27.4% of respondents reported having been forced to marry, while 12.3% stated that they had been forced to use contraception. A total of 12.2% of respondents also admitted to having been forced to have an abortion. There were 8.4% of respondents who admitted to engaging in sexual activity because they felt pressured, and the same number reported being forced to have sex due to threats of harm. Meanwhile, 7.1% of respondents engaged in sexual activity because of promises of rewards, 6.3% felt forced due to threats of losing financial support, and 6% did so because of threats of dismissal, divorce, or expulsion from school, among other reasons. This survey was conducted by INFID among 2,210 respondents across Indonesia between May and July 2020, using a multistage cluster sampling method via telephone.¹⁴

¹³ Gina Maulida and Muhamad Romdoni, ‘Perlindungan Hukum Terhadap Korban Pelecehan Seksual Yang Mengalami Viktimisasi Sekunder Di Media Sosial’, *Southeast Asian Journal of Victimology*, 2.1 (2024), 59 <<https://doi.org/10.51825/sajv.v2i1.25445>>.

¹⁴ Dimas Jarot Bayu, ‘71,8% Masyarakat Indonesia Pernah Alami Kekerasan Seksual’, *Databoks*, 2021.

While Article 116 defines the substantive scope of abortion permissibility, Article 118 regulates the procedural mechanism for proving that a pregnancy resulted from rape or sexual violence. Through these evidentiary requirements, Article 118 aims to ensure that the exception provided under Article 116 is applied in a controlled and verifiable manner. However, the regulation does not specify detailed medical or psychological assessment standards, nor does it mandate comprehensive evaluations by psychiatric or obstetric specialists. As a result, the procedural framework under Article 118 raises concerns regarding clarity, consistency, and the adequacy of protection for victims, particularly in cases involving severe psychological trauma.

Article 118 of Government Regulation (PP) No. 28 of 2024:

Pregnancy resulting from rape or other sexual violence resulting in pregnancy as referred to in Article 116 shall be proven by:

- a. a medical certificate stating the gestational age consistent with the occurrence of the rape or other sexual violence that caused the pregnancy; and
- b. a statement from the investigating officer regarding the suspicion of rape and/or other sexual violence that caused the pregnancy.

2. The Concept of *I'tibar al-Ma'alat*

I'tibar al-Ma'alat means considering the impact or impression that will be caused by the legal actions of a mukallaf and/or a legal decision on legal actions or events. According to

this theory, an action by a mukallaf may be permissible under normal circumstances because it may bring about public interest, but in certain circumstances it may be prohibited because it could have adverse effects on an individual or society if carried out. The impact or effect of an action can be detected in various ways, and such impact may be strong or weak. The ongoing intellectual efforts of a scholar to consider the good or bad effects that may arise from an action are referred to as the *I'tibar al-Ma'alat* approach.¹⁵

Al-Syatibi himself did not provide a definitive definition, but merely a basic understanding of *I'tibar al-Ma'alat*:¹⁶

فإن الأعمال-إذا تأملتها-مقدمات لنتائج المصالح، فإنها أسباب مسببات هي مقصودة للشارع والمبنيات هي مآلات الأسباب، فاعتبارها في جريان الأسباب مطلوب، وهو معنى النظر في المآلات¹⁷

Meaning:

Indeed, when examined, these actions are premises that will lead to results that contain benefits. These actions can also serve as causes for the emergence of consequences that are desired or intended by the Shariah. These consequences are, in fact, the effects of the causes. Therefore, considering these consequences in the process of the causes is necessary and obligatory, and this is what is meant by *al-Nazar fi al-Ma'alat*.¹⁸

¹⁵ Amin.

¹⁶ Amin.

¹⁷ Al-Syāṭibī.

¹⁸ Amin.

In this regard, al-Syatibi also said that *I'tibar al-Ma'ala* is one of the shar'i approaches.¹⁹

النظر في مآلات الأفعال معتبر مقصود شرعاً كانت الأفعال موافقة أو مهالفة وذلك أن المجتهد لا يحكم على فعل من الأفعال الصادرة عن المكلفين بالإقدام أو بالإحجام إلا بعد نظره إلى ما يؤول إليه ذلك الفعل.²⁰

Meaning:

Considering the consequences of legal actions is a legal approach in accordance with Islamic law, whether the action is fundamentally permissible or prohibited. This is because a mujtahid is not justified in ruling that a particular action performed by a mukallaf is permissible or impermissible before he knows what consequences that action will have.²¹

| No. | Requirements for <i>Ma'ala</i> | Application |
|-----|---|--|
| 1. | <p><i>Ma'al</i> (legal implications) actually occur. or;</p> <p><i>Ma'al</i> (legal implications) often occur. or;</p> <p><i>Ma'al</i> (legal implications) mostly occur.</p> | <p>Putting poison in food (ensuring that the person who eats it will die) or;</p> <p>Building wells on roads (often causing accidents and even loss of life) or;</p> <p>Driving a car at high speed (mostly dangerous or causing injury)</p> |

¹⁹ Amin.

²⁰ Al-Syāṭibī.

²¹ Amin.

| | | |
|----|---|---|
| 2. | <i>Ma'al</i> (legal implications) does not contradict nas. | Men and women have equal shares in inheritance. ²² |
| 3. | <i>Ma'al</i> (Legal implications) realizes the validity of a solid public interest or is able to mitigate harm in a tangible way. This category is divided into two points of application: first, related to the obligation to carry out religious commands. Such as the obligation to pray five times a day. Second, religious prohibitions and exceptions. Such as the prohibition on eating carrion except in emergencies. ²³ | |

3. Considerations of *I'tibar al-Ma'lat* on Abortion Regulations for Pregnancies Resulting from Rape in Articles 116 and 118 of Government Regulation (PP) No. 28 of 2024

The view of those in favor of legalizing abortion is that women who become pregnant as a result of rape should be allowed to have an abortion because, fundamentally, these

²² مجلة كلية، ”قاعدة“ اعتبار المآلات“ دراسة أصولية تطبيقية،“ Husni Khairi Taha، 69,69 (2023), 47–75 (pp. 64–65).

²³ Taha, pp. 64–65.

women are having an abortion because they are not ready to have children, and in this case there is an element of coercion, as the women were unable to resist the rape that led to the pregnancy. The presence of the child would add to the woman's burden, both physically and psychologically, especially if the woman who was raped is a teenager who is not mentally ready to have a child. And a child born as a result of rape will certainly cause the woman to suffer trauma in the future and will continue to remember the incident psychologically. Those who agree with this view also argue that if the woman gives birth to her child, she may be ostracized by her community, especially if the child has no father. Meanwhile, those who oppose abortion for rape victims believe that a child born from rape is completely innocent and it is unfair to sacrifice them. If the child is born and the mother is psychologically unable to care for it, the child can be taken from the mother, for example, given to an orphanage or to distant relatives who can care for the child. Additionally, society believes that legalization would open the door to other forms of abortion, such as abortion due to pregnancy outside of marriage or incest, which could lead to the legalization of abortion in other cases.²⁴

When mediating this debate through the *I'tibar al-Ma'alat* approach, the consideration of the consequences of legal actions (ma'al) is recognized as a valid legal method within Sharia, regardless of whether an act is initially deemed

²⁴ Firdaus and Sabdaningtyas.

permissible or prohibited. In the context of abortion resulting from rape, the primary consequences under consideration are those that pose a threat to life, particularly severe psychological harm such as depression. Accordingly, assessing the legal permissibility of abortion in such cases requires an evaluation based on the established criteria of *I'tibar al-Ma'alat*.

Based on the description of the requirements of *I'tibar Ma'al*, it can be understood that **First**, *Ma'al* (legal implications) actually occurred. This is proven by several studies showing that abortion among rape victims is common throughout the world. For example, a study conducted by M. M. Holmes et al. using a sample of 4,008 adult women in the United States over a three-year period. Out of 34 cases of pregnancy resulting from rape, the majority occurred among adolescents and were caused by attacks by known perpetrators, often with family ties. 32.4% of victims were unaware of their pregnancy until the second trimester; 32.2% chose to keep the baby, while 50% underwent abortion and 5.9% gave the baby up for adoption; an additional 11.8% experienced spontaneous abortion.²⁵ **Second**, *Ma'al* (legal implications) legalization of abortion due to rape is considered not to contradict the text. Fiqh abortion, when linked to maqasid syariah, relates to hifz an-nasl and hifz an-nafs. At the legal, religious, social, moral, and ethical levels, abortion remains a

²⁵ Melisa M Holmes and others, 'Rape-Related Pregnancy: Estimates and Descriptive Characteristics from a National Sample of Women', *American Journal of Obstetrics and Gynecology*, 175.2 (1996), 320–25.

controversial topic. At certain points, abortion does indeed conflict with moral, religious, social, and cultural norms. However, the fact of unwanted pregnancies among married women and adolescents cannot be denied. Therefore, we should not pit the safety and well-being of the mother against the right to life of the fetus. Both have the right to live and to have their rights guaranteed. Explicitly, religion commands us to mitigate threats to life. For example, in Q.S. an-Nisa verse 29 and Q.S. al-Isra verse 31. **Third, Ma’al** (Legal implications) legalizing abortion in cases of rape without medical examination cannot be categorized as mitigating harm in real terms. Legalizing abortion is once again not a solution without being accompanied by other policies and social engineering. This is because it has been proven that even safe abortions are not without direct and indirect risks for the women who undergo them. Threats to physical safety and psychological threats such as post-abortion syndrome indicate that abortion is not the best solution. Nevertheless, the door to abortion should not be completely closed. There are certain exceptions that need to be considered, such as abortion for medical reasons. However, the medical reasons in question must be accurately determined from a medical perspective.²⁶

In relation to Article 116 of Government Regulation (GR) No. 28 of 2024, abortion is prohibited, except in certain situations such as medical emergencies or as a result of rape and sexual

²⁶ Wijayati.

violence. Additionally, the abortion procedures for pregnancies resulting from rape, as outlined in Article 118 of Government Regulation (GR) No. 28 of 2024, clarify the evidence-gathering mechanisms related to pregnancies resulting from criminal acts of rape. The requirement to provide a medical certificate and a statement from the investigating officer as evidence is an important step to ensure that only victims who genuinely face emergency situations can undergo abortion. However, these regulations need to be strengthened by incorporating medical recommendations based on observations and tests conducted by psychiatrists and obstetricians. This is to prevent unsafe abortions. According to empirical data from UNFPA and WHO, unsafe abortions are the leading cause of maternal mortality, particularly in areas with restrictive abortion laws.²⁷

Because abortion due to rape also has effects, both before and after the abortion is performed. One study in Brazil found that of 58 rape victims who suffered from post-traumatic stress disorder, 96.5% experienced depression.²⁸ For women who are victims of rape, the decision to terminate a pregnancy is often a matter of survival. This is because terminating a pregnancy can serve as a daily reminder of the psychological trauma they have experienced. There is a possibility that the psychological impact

²⁷ Triantoro Safaria, ‘Interpersonal Intelligence: Metode Pengembangan Kecerdasan Interpersonal Anak’, *Yogyakarta: Amara Books*, 2005.

²⁸ Ricardo Zorzetto, ‘The Hidden Damage of Rape : Revista Pesquisa Fapesp’, 2023 <<https://revistapesquisa.fapesp.br/en/the-hidden-damage-of-rape/>> [accessed 16 June 2025].

of a pregnancy resulting from rape can be devastating, leading to long-term mental health issues such as depression, anxiety, and post-traumatic stress disorder (PTSD). In such situations, denying women access to abortion can be interpreted as a continuation of the violence they have experienced, further exacerbating the trauma they have endured.²⁹

However, on the other hand, there are studies showing that the effects of depression can even be prolonged after the abortion has been performed. The prevalence of post-abortion depression varies based on geographical location, screening methodology, income level, and research design. As a result, post-abortion depression is found to occur more frequently in the Eastern Mediterranean and Asia.³⁰

It can therefore be concluded that regulations on abortion in cases of rape do not appear to be fully in line with legal considerations based on the conditions outlined above. The procedure for obtaining a doctor's certificate is unclear, as it does not involve a medical recommendation based on observation and examination by a psychiatrist and gynecologist. To prevent unsafe abortions. As previously explained and supported by research showing that abortions resulting from rape also have effects, both before and after the procedure is performed. Therefore, collaboration between psychiatrists and obstetricians

²⁹ Safaria.

³⁰ Gebeyehu and others.

is needed to minimize the risks of abortion, particularly psychological disorders such as depression. Additionally, to ensure that the pregnancy resulted solely from rape.

The shortcomings or weaknesses in the procedure for proving rape victims with a doctor's statement are considered inconsistent with the first requirement, namely that it is not in accordance with the law, because the law does not allow abortion without consideration of emergency circumstances. Furthermore, the legalization of abortion resulting from rape without a medical examination cannot be categorized as mitigating harm in a tangible manner, as this clearly violates the second requirement in the *I'tibar Ma 'al* (Legal Implications).

C. CONCLUSION

Articles 116 and 118 of Government Regulation No. 28 of 2024 regulate abortion through a general prohibition accompanied by limited exceptions for medical emergencies and pregnancies resulting from rape or sexual violence. While these provisions seek to balance fetal protection and women's rights, they do not fully reflect the principles of *I'tibar al-Ma 'alat*.

The evidentiary requirements stipulated in Article 118 lack clear medical standards, particularly with regard to psychological assessment. As a result, the regulation risks failing to mitigate harm effectively and may expose rape victims to additional psychological risks. Strengthening abortion regulation through mandatory interdisciplinary evaluations involving

psychiatrists and obstetricians is necessary to ensure legal certainty, victim protection, and conformity with the consideration of legal implications (ma’al).

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