



## Abortion from the Islamic viewpoint

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**ABSTRACT** *Of the 46 million abortions all over the world, Indonesia contributes around two millions annually. Millions of women die in vain since the country has strict regulation in save abortion. Although government regulation of the Law No.23 year 1992 allows abortion "in case of emergency" and doctors could provide service with : "certain medical measures" but up till today the Government fails to issue regulation of the exact description of the two phrases. Meanwhile the religious authority such as the famous schools in Islam : Shafiite, Hambaliite, Hanafiite and Zaidiite basically allow abortion during 120 days of conception or before the spirit or ruh is blown in. It is admitted that the view of those schools vary here and there in the span of time allowed during that particular 120 days of conception. Some Islamic countries such as Kuwait, Sudan and Iraq allows abortion for specific reason such as life threatening, physical and mental health impairment, rape and fetal impairment. It is suggested that the Government and the Indonesian Council of Ulama take prompt action in order to save millions of life of women with unwanted pregnancy who up till now seek help from illegal unskilled personnel.*

Abortion nowadays has becoming an attribute of modern life. It is like a plaque that spread out all over the world. Of 210 millions pregnancies the world over annually, 15% or 31 million of them will end with spontaneous miscarry or stillbirth and 22 % or 46 million will end with abortion (The Alan Guttmacher Institute, 1999). Indonesia contributes around 2 million abortions every year and like in other developing countries, most of them were carried out in illegal places and served by unskilled personnel (Uddin, 2001). It could be imagined that millions of women risk their life with bleeding, infection and other various complications and to most of them death is not avoidable.

### UNWANTED PREGNANCY : ISSUE OF THE CENTURY

There are many reasons why women ask for abortion. To married couple, it may be due to failed contraception and their life will be at risk if they keep the pregnancy since they already had many children or afflicted with TB or cancer or other maladies. To unmarried couple, most of the reasons are more prone to psychological, mental and social aspects. In

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most developing countries, where traditional norms and values are still highly appreciated, being pregnant without having a legal husband will be branded by the community as a disgrace, not only to the pregnant women but also to their whole family. And to save the face, this mishap can only be overcome by induced abortion. When the service of save abortion is beyond their reach, this in turn move them to ask help from unskilled personnel where the risk is unimaginable.

There will be no question that from religion point of view, having sex by unmarried women is a big sin. They deserve punishment relevant to the sin committed, if not in this world but it surely will come in the life of the hereafter. To those who are in the medical and health profession now emerges one solid question that need to be answered: if save abortion is not available, whatever is the reason, either it is civic or religious law, are the doctors intentionally committed also a big sin by letting those pregnant women to be treated by unskilled personnel and as a risk, to die in vain? This question will automatically create a chain of other questions such as: Is sickness inseparable from sin? Should the doctors ought to ask their patients any sin committed before diagnosing and treating their patient? Let say for instance, if a doctor is facing a possible HIV/AIDS does not automatically related to sexual activities before he/she decided to see the doctor? Every body knows that being afflicted to HIV/AIDS does not automatically related to sexual activities. What about those who contracted the disease after having transfusion of tainted blood? Or a HIV/AIDS baby helplessly got the disease from his/her own mother during pregnancy? Or a doctor unintentionally scratched by a tainted needle in the lab?

There will be no doubt that all doctors have to obey word by word of his/her physician's oath : that he/she should serve his/her patients regardless of their religion, race, ethnic, social group, sexual status and citizenship. Even to an enemy, the doctors are

obliged to serve them. Neglecting them will be regarded as breaking their own oath. Since the doctors ought to ignore the religion adhered by their patients, it can be interpreted that doctors should also ignored any kind of sins committed by their patient whatever is their illnesses. The main task of doctors is to serve their patient to their best. We can derive a conclusion that basically in health service, sickness is totally separable from whatever sin committed by the patient. Moreover, except the Prophets and Messengers, who in this world never committed to any sin in their life?

Unwanted pregnancy can fall into either sin (unmarried women or married women engaged in extramarital relation) or sinless (married women) related deed. In the paradigm of duty of a doctor, he/she should serve to his/her best until the patient free from any related disease or at least, they will try to their utmost to make use their knowledge and profession to prevent the health condition of their patient getting worst, needless to say to let them die in vain. Being aware of this paradigm, there will be no question that basically all doctors should serve all kinds of unwanted pregnancy regardless the patient is married or unmarried whatever the sin committed by them.

Up to this point, everything looks clear. But when doctors remember the Law No.23 year 1992 that imposed severe penalty if they committed to provide services of any kind of induced abortion, they instantly lost their zest. It is true that there is a small hole in that law particularly article 15 that said : "in case of emergency, certain medical measures may be taken". But what is the definition of "in case of emergency" and "certain medical measures" nobody know exactly, since the GOVERNMENT REGULATION that should give further guidance to the implementation of that law up till now is still under consideration by policy makers. When the regulation will be issued nobody knows, while in the meantime, million of women with unwanted pregnancy

are entrapped in a dead alley with the Angel of Death is hovering above them.

### CONTEMPORARY ISLAMIC LAW ON ABORTION

In the Indonesia context, one of keywords to solve the solution is defining clearly what are the meaning of "in case of emergency" and "certain medical measures". But those two phrases could only be defined properly, if we have a clear Islamic law on abortion. This is true since 88% of the Indonesian people are Muslim. And any law that touch the life and death of the majority, could break into an extremely sensitive issue. If strong objection rises, its repercussion could be felt in all aspects of life, be it social, political and security and order. A wise and matured administration should always put this into consideration when a political decision will be made. In relation to efforts in setting up Government Regulation of the Law No.23 year 1992, the view of Islam on abortion should be put into prime priority.

In answering to question : what is the Islamic law on abortion, it will never come out with one solid answer. We have to be aware that there are so many schools in Islam. Among the mainstream, there are at least five schools : Shafiite, Malikiite, Hambaliite, Hanafiite, and Shiite. Needless to say the minority and fragmentation of the mainstream. Although a consensus could be available but in many cases, variation of laws are more common even in one or two cases, there will be a total contradictory between one school to the others. The wide variety of view is also true from country to country in the Islamic world. Differences are common from Saudi Arabia to Iran, Morocco to Turkey, Sudan to Kuwait, etc. The followings are some summary of the Islamic law on abortion from school to school and from country to country.

In regard to spontaneous abortion or *al Isqath al afwu*, there is no different opinion of all schools that there will be no sin

whatsoever. It goes also to medical therapeutic abortion or *al Isqath al dharury*, where the sole reason is the life of the pregnant women is threaten if she keeps on the pregnancy. In other words, the aim of this type of abortion is to save the life of the mother.

Toward other type of abortion that usually called the criminal induced abortion or *abortus provocatus criminalis* or *al Isqath al Ikhtiary*, a wide variety of opinion scattered from school to school and from country to country. Before we go on with the law itself it is worthy to know the view of Islam on intra-uterine embryo development.

The intra-uterine life of an embryo is divided into 2 main phases as mentioned in QS. *Al Mu'minuun* (23) : 12, 13 and 14. The first phase is 20 days after conception that is ended by the blown in of ruh or spirit. The second phase is post 120 days of conception. The first phase is also divided into 3 sub-phases : the first 40 days or *nuthfah* (=a drop of sperm) phase, the second 40 days or *alaghah* (= a clot of blood) phase and the third 40 days or *mudghah* (=lump) phase. The three sub-phases is also said in QS *al Hajj* (22) : 5 and reconfirm in Hadith narrated by Bukhari and Muslim. Regarding the law on criminal induced abortion in the first phase (120 days after conception or before the ruh is blown in), the Islamic jurists from various schools yield a wide variety of opinion (Yanggo, 1999).

Schools that allow criminal induced abortion in the first phase or 120 days after conception or before the ruh (spirit) is blown in:

#### > HANAFIITE SCHOOL:

This school allows abortion during the first 120 days of conception and based their opinion on two cases: First, a woman unable to breastfed her baby since her breast dried up, while her husband was jobless and unable to buy any kind of alternative milk/food. Second, a pregnant woman has a serious bad health condition or it is estimated by her doctor that the preg-

nancy will threaten her life. Qaedah or norm used, bigger risk should be avoided than smaller one. In regard to a pregnancy, the life of the mother should be sustained compared to that of the unborn baby.

➤ **HAMBLIITE SCHOOL :**

The school allows abortion during 40 days of conception or in the nuthfah phase. After this time on is unlawful.

➤ **ZAIDIITE (SHIAH) SCHOOL :**

The school allows abortion during 120 days of conception or before the spirit or ruh is blown in. They based their opinion on the law of azl (interrupted coitus).

➤ **SHAFIITE SCHOOL :**

Fall into two opinions : First group, totally unlawful as depicted by the opinion of al Ghazali and Ibn al Imad. Second group, lawful up till the 80<sup>th</sup> days of conception and some of this group even allows abortion before the ruh or spirit is blown in.

Schools that against criminal induced abortion :

- ◆ **SHIITE IMAMIITE SCHOOL :** unlawful at any time of pregnancy
- ◆ **ZHAHIRIITE SCHOOL :** unlawful before the 120<sup>th</sup> days of conception and after that time on, it is regarded as a murder and deserve to be punished as an act of killing.
- ◆ **IBADIITE SCHOOL :** unlawful at any time of pregnancy and the pregnant women are not allowed to do any kind of attempt whatsoever.
- ◆ **THE OPINION OF DR. AL BUTTI, DEAN OF SHARIAH LAW, DAM-SHIK (1976) :** Depended on the status of pregnancy. To a lawful pregnancy (of a husband and wife married couple), induced abortion is allowed before the 40<sup>th</sup> days of pregnancy, but to an unlawful pregnancy (of unmarried women), it is unlawful to

abort the baby at any time of pregnancy.

Some Islamic countries that allow induced abortion for specific reason :

- **Kuwait :** life threatening, physical health and fetal impairment
- **Sudan :** life threatening and rape
- **Iraq :** life threatening, mental and physical health impairment

### UNWANTED PREGNANCY AND THE RIGHT TO HAVE SAFE ABORTION

Unwanted pregnancy is not automatically related to any bad sexual behaviour of the women. A poor married women with 5 children afflicted with TB or cancer, and having a failed IUD as advised by her doctor is clearly facing high risk of many kinds of complication that will cost her own life. A girl beyond her will, was brutally raped by a crook and get pregnant and this is something never imagined by the poor girl and her whole family. Does the girl deserve to a continuous nightmare in the rest of her life? A father was blindly attracted to the beauty of her own daughter and suddenly beyond the will of the daughter and under the threat of a dagger, the father savagely raped her own daughter and later get pregnant. What kind of life should she faced in the future?

As has been mentioned earlier, in delivering health service, any doctor wherever and whenever they are, should focus their service to the medical/health aspect of their patients regardless whatever sin has been made by the patients. Letting million of pregnant women dying in the service of illegal and unskilled personnel is actually a big sin. And this kind of sin has to be borned by all doctors that close his/her eyes that nothing had occurred and does business as usual. The responsibility to save life, including the pregnant women are beyond doubt are totally in the hand of doctors. In this regard doctors

have to provide save abortion service to those who desperately need it.

To launch this service there will be two obstacles ahead. First, despite Law No.23 year 1992 allows doctors to provide save abortion service, but up till now the Government fails to issue regulation in defining what is the meaning of "in case of emergency" and "certain medical measures". Second, there is no fatwa up till today from Indonesian religious authority such as the Indonesian Council of Ulama (Majlis Ulama Indonesia) on issue of allowed or not allowed to provide save abortion to specific reason in line to the opinion of some famous schools in Islam. As has been quoted earlier, although they are vary here and there, but basically all famous schools such as Shafiite, Hanafiite, Hambaliite, Zaidiite allows abortion before the spirit or ruh is blown in or during 120<sup>th</sup> days after conception and the same schools are in the same opinion that abortion after 120<sup>th</sup> days of conception is totally unlawful.

The time now has come that the two obstacles should be lifted off. May I have the honour to appeal to the Government and the Indonesian Council of Ulama to take any kind of prompt action in lifting the two obstacles afore-mentioned. Every second of delay will automatically mean letting thousands of the life of women with unwanted pregnancy will die in vain.

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