



## Negotiating Women's Reproductive Rights Within the Framework of Islamic Law

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Article info:	Abstract
<p><b>Keywords:</b> Abortion, Gender justice, Reproductive rights, Sexual relations, Termination of pregnancy</p>	<p>Negotiations over women's reproductive rights become an epistemological and ethical arena that brings together bodily authority, <i>taklif</i> constructions, and interpretative struggles between the protection of human dignity and reproduction as a locus of normative control within the family institution. The purpose of this study is to comprehensively analyse the negotiation of women's reproductive rights within the framework of Islamic law, using an integrative approach that connects normative, institutional, and social-experience dimensions. This study uses a qualitative approach with a socio-legal and critical hermeneutic design, as its focus lies not only on fiqh norms as texts but also on the dynamics of social practices and power relations that shape women's experiences as legal subjects. The results confirm that the negotiation of women's reproductive rights in Islamic law is, in fact, the most tangible test of fiqh's capacity to remain a liberating ethic of life, rather than merely a device for controlling women's bodies. When classical concepts such as <i>qiwāmah</i>, <i>tamkīn</i>, and <i>ḥaqq al-istimtā'</i> continue to be upheld without a critical reading of maqasid, fiqh risks becoming frozen into a legitimisation of patriarchal domination. Conversely, when <i>riḍā</i>, <i>lā ḍarar wa-lā ḍirār</i>, and <i>ḥifz al-nafs</i> are placed at the centre of <i>ijtihād</i>, Islamic law can emerge as a moral system that protects women's dignity and safety without undermining the institution of the family.</p>
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## Introduction

Negotiating women's reproductive rights within the framework of Islamic law is a crucial issue that continues to arise in contemporary academic discourse, especially as debates about the body, authority, and gender justice intensify in various social and institutional spaces.<sup>1</sup> Reproductive rights are not solely related to women's biological aspects, but also encompass complex social, legal, cultural, and theological dimensions.<sup>2</sup> In the context of Muslim societies, reproductive issues are often understood through the normative lens of sharia, which, on the one hand, contains principles of protecting human dignity, but on the other hand is often interpreted within a patriarchal framework that limits women's autonomy. This condition creates a dynamic space for negotiation between women as legal subjects and religious and state authority structures that set normative boundaries on their bodies and reproductive functions.

Global developments in the field of human rights have also influenced perspectives on reproductive rights. Since the International Conference on Population and Development (ICPD) in Cairo in 1994, reproductive rights have been increasingly affirmed as an integral part of human rights, which include the individual's freedom to responsibly determine the number of children, the spacing of births, and access to reproductive health information and services.<sup>3</sup> However, in Muslim societies, acceptance of the concept of reproductive rights often faces tension with religious norms that are considered to have transcendent legitimacy. This tension does not always mean absolute conflict. Still, it often gives rise to practices of negotiation involving the reinterpretation of texts, the adaptation of laws, and strategies used by women in negotiate their autonomy. Therefore, it is important to view Islamic law not as a static system but as a normative tradition that continues to be reinterpreted in light of the social context and needs of the times.

Within the framework of classical Islamic law, reproductive issues are often discussed through themes such as marriage, *ṭalāq*, *'iddah*, *nasab*, and sexual rights in marriage. Fiqh literature places women in legal relationships that are often constructed through the paradigm of obligation and obedience, especially in the context of sexual and reproductive relationships.<sup>4</sup> For example, the concept of a husband's right to sexual relations (*ḥaqq al-istimtā'*) and a wife's obligation to fulfil her husband's requests often form the basis for restrictions on women's autonomy over their bodies. However, fiqh also contains principles of protection, such as the prohibition on harming one's spouse, the obligation to provide financial support, and the purpose of marriage to create *sakīnah* and *rahmah*. It is this ambivalence that opens up space for conceptual negotiation: does Islamic law inherently limit women's reproductive rights, or are these restrictions the result of interpretive constructions influenced by patriarchal culture?

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<sup>1</sup> Duman Saifullin, Samet Okan, and Askar Akimkhanov, "Women Rights from Islamic Perspectives: Navigating Rights, Challenges and Contemporary Perspectives," *Frontiers in Sociology* 10 (2025): 1727894, <https://doi.org/10.3389/fsoc.2025.1727894>.

<sup>2</sup> Brice Gouvernet and Julie Brisson, "Menstrual Health under the Scientific Microscope: Text Mining Analysis," *Women's Health* 20 (2024): 17455057241290896, <https://doi.org/10.1177/17455057241290896>.

<sup>3</sup> Jing Yao, Alan T Murray, and Victor Agadjanian, "A Geographical Perspective on Access to Sexual and Reproductive Health Care for Women in Rural Africa," *Social Science & Medicine* 96 (2013): 60-68, <https://doi.org/10.1016/j.socscimed.2013.07.025>; Nurmu'izzatin Zaharatul Parhi et al., "Tension between Islamic Law and Human Rights in Child Marriage Cases in Indonesia," *Insani: Jurnal Pranata Sosial Hukum Islam* 1, no. 1 (2025): 96-110, <https://doi.org/10.65586/insani.v1i1.3>.

<sup>4</sup> Ahda Fithriani and Faridah Faridah, "Gender Paradigm in Fiqh: A Critical Analysis of Traditional Islamic Legal Understanding," *Indonesian Journal of Islamic Jurisprudence, Economic and Legal Theory* 2, no. 3 (2024): 1605-15, <https://doi.org/10.62976/ijjel.v2i3.696>.

Recent studies on gender and Islamic law show a shift in how normative texts are read. Muslim feminist studies, such as those developed by Amina Wadud, Asma Barlas, and Kecia Ali, emphasise the importance of critical hermeneutics in understanding the Qur'an and ḥadīth, especially regarding issues of the body and sexuality.<sup>5</sup> They argue that the fundamental values of Islam are justice and equality, so interpretations that place women in a subordinate position contradict the ethical spirit of the Qur'an. In the context of reproductive rights, this approach holds that women have the moral and legal right to make reproductive choices within the limits of public interest. Furthermore, studies on contemporary *maqāṣid al-sharī'ah* also emphasise that the protection of life (*ḥifẓ al-naḥs*), offspring (*ḥifẓ al-nasl*), and reason (*ḥifẓ al-'aql*) can serve as normative bases for supporting women's access to reproductive health services and freedom from harmful practices.

On the other hand, socio-legal studies on the practice of Islamic family law in various countries show that the negotiation of women's reproductive rights takes place not only at the textual level, but also at the level of legal institutions and social practices.<sup>6</sup> Studies on family law reform in Tunisia, Morocco, Indonesia, and Malaysia show that Muslim countries are reforming their laws by incorporating the principle of gender equality, while still using sharia legitimacy. In the Indonesian context, for example, the discourse on women's reproductive health has developed in debates surrounding the marriage law, the compilation of Islamic law, and regulations on the protection of women and children.<sup>7</sup> Previous studies have highlighted how positive law and Islamic law interact in shaping reproductive policies, including issues of contraception, marriage age, and women's rights in divorce.<sup>8</sup> However, most of these studies still emphasise normative or institutional aspects, without exploring in depth the dimension of women's negotiation as active agents.

Another relevant study is the study of the authority of religious scholars and fatwas on reproductive issues, such as contraception, abortion, and assisted reproductive technology. Studies on the fatwas of religious institutions show a diversity of views, ranging from conservative approaches that limit women's reproductive choices to moderate approaches that take into account health, psychological, and social conditions.<sup>9</sup> For example, some religious scholars allow contraception in the context of family planning, while the issue of abortion remains a subject of intense debate except in cases of medical emergency. This diversity shows that Islamic law is not monolithic, but pluralistic and open to *ijtihād* (independent reasoning). However, these studies often focus on fatwas as legal texts, with little consideration of how women interpret and negotiate these fatwas in their daily lives.

Anthropological and sociological studies of religion have shown that Muslim women often use negotiation strategies in both domestic and public spaces to defend

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<sup>5</sup> Dwi Fidhayanti et al., "Rethinking Islamic Feminist Thought on Reinterpreting the Qur'an: An Analysis of the Thoughts of Aminah Wadud, Fatima Mernissi, Asma Barlas, and Riffat Hassan," *Tribakti: Jurnal Pemikiran Keislaman* 35, no. 1 (2024): 37–56, <https://doi.org/10.33367/tribakti.v35i1.4956>.

<sup>6</sup> Annelies Moors, "Debating Islamic Family Law: Legal Texts and Social Practices," in *Social History of Women and Gender in the Modern Middle East* (Routledge, 2018), 141–75, <https://doi.org/10.4324/9780429502606-5>.

<sup>7</sup> Alimatul Qibtiyah, Wika Andeska, and Azka Salsabila, "Islamic Jurisprudence on Women Reproductive Health (Indonesian Review)," *Indonesian Journal of Islamic Economic Law* 2, no. 1 (2025): 69–82, <https://doi.org/10.23917/ijel.v2i1.6957>; Suud Sarim Karimullah, "The Urgency of Building Legal Awareness on Care of Children in the Family," *Amsir Law Journal* 3, no. 2 (2022): 76–86, <https://doi.org/10.36746/alj.v3i2.66>.

<sup>8</sup> Jill Vickers, "Regulating Family Law in Federations: The Impact of De/Centralization, Religion, and International Treaties on Abortion and Child Marriage Policies," *Publius: The Journal of Federalism* 53, no. 1 (2023): 1–27, <https://doi.org/10.1093/publius/pjac014>.

<sup>9</sup> Shaheen Whyte, "Are Fatwas Dispensable? Examining the Contemporary Relevance and Authority of Fatwas in Australia," *Oxford Journal of Law and Religion* 11, no. 2–3 (2022): 314–42, <https://doi.org/10.1093/ojlr/rwac015>.

their reproductive rights. Studies on women's experiences in marriage show that decisions regarding the number of children, birth spacing, or the use of contraception are often the result of bargaining between husbands, extended families, and religious norms.<sup>10</sup> In some cases, women use religious legitimacy to strengthen their position, for example, by citing the principles of health and welfare in Islam.<sup>11</sup> In other cases, women face cultural pressures wrapped in religious arguments that limit their choices.<sup>12</sup> However, such studies tend to be descriptive and do not sufficiently integrate Islamic legal analysis as a normative framework to explain the dynamics of these negotiations systematically.

Based on the brief literature review above, a significant research gap can be identified. First, classical and contemporary Islamic legal studies have discussed reproductive rights and obligations within a normative framework, but have not sufficiently positioned women as active subjects who negotiate these norms. Second, Muslim feminist studies have offered progressive theological reinterpretations but remain limited in bridging hermeneutical theory with family law practices in contemporary Muslim societies.<sup>13</sup> Third, socio-legal and anthropological studies have described women's experiences in reproductive negotiations, but often lack a deep connection with methodological analyses of fiqh and *maqāṣid al-sharī'ah* as theoretical tools.

This research gap indicates that there is still a need for comprehensive studies that examine women's reproductive rights negotiations within the framework of Islamic law using an integrative approach. Existing studies have not fully answered how Muslim women negotiate their reproductive rights amid pluralistic Islamic legal structures, patriarchal interpretations, and the dynamics of modern state law. In addition, there have been few studies that conceptually map how these negotiations can be understood as a space for social *ijtihād* that enables the renewal of Islamic law grounded in gender justice.<sup>14</sup>

Theoretically, this study will develop a framework for analysing the negotiation of women's reproductive rights by combining the perspectives of *maqāṣid al-sharī'ah*, Islamic feminist hermeneutics, and a socio-legal approach. Conceptually, this study will introduce the understanding that women's reproductive rights in Islam are not merely a legalistic issue, but rather an arena of power relations and agency that is constantly being negotiated. The objective of this study is to comprehensively analyse the negotiation of women's reproductive rights within the framework of Islamic law, using an integrative approach that connects normative, institutional, and social-experience dimensions. The significance of this study lies in its contribution to strengthening the argumentative basis that the issue of women's reproductive rights is an important part of the contemporary Islamic legal reform agenda.

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<sup>10</sup> Preethy D'Souza et al., "Factors Influencing Contraception Choice and Use Globally: A Synthesis of Systematic Reviews," *The European Journal of Contraception & Reproductive Health Care* 27, no. 5 (2022): 364-72, <https://doi.org/10.1080/13625187.2022.2096215>.

<sup>11</sup> Tamer Koburtay, Tala Abuhussein, and Yusuf M Sidani, "Women Leadership, Culture, and Islam: Female Voices from Jordan," *Journal of Business Ethics* 183, no. 2 (2023): 347-63, <https://doi.org/10.1007/s10551-022-05041-0>.

<sup>12</sup> Nur Aini and Mia Siscawati, "To Become Indonesian Women, You Have to Wear Jilbab," in *Fourth Asia-Pacific Research in Social Sciences and Humanities, Arts and Humanities Stream (AHS-APRISH 2019)* (Atlantis Press, 2023), 499-513, [https://doi.org/10.2991/978-2-38476-058-9\\_39](https://doi.org/10.2991/978-2-38476-058-9_39).

<sup>13</sup> Suud Sarim Karimullah and Siti Rutbatul Aliyah, "Feminist Criticism of Traditional Understanding of Women's Roles in Islam," *An-Nisa': Journal of Gender Studies* 16, no. 2 (2023): 195-214, <https://doi.org/10.35719/annisa.v16i2.177>.

<sup>14</sup> Suud Sarim Karimullah et al., "Rethinking Gender In Islamic Law," *Musāwa Jurnal Studi Gender Dan Islam* 23, no. 1 (2024): 99-113, <https://doi.org/10.14421/musawa.2024.223.99-113>.

## Methods

This study employs a qualitative approach with a socio-legal and critical hermeneutic research design, as its focus lies not only on fiqh norms as texts but also on the dynamics of social practices and power relations that shape women's experiences as legal subjects. The main focus of the study is operationally defined as the bargaining process of Muslim women regarding the normative construction of reproductive rights in Islamic law, covering the dimensions of scholars' interpretations, family law regulations, and women's lived reality experiences in reproductive decision-making. The study population focuses on Muslim women in the context of family and religious-legal institutions, with subjects selected through purposive sampling to include key informants such as women who have directly experienced reproductive negotiations, religious leaders, and family law practitioners. The main instruments are in-depth interview guidelines and document analysis sheets developed through literature review and conceptual readability testing.<sup>15</sup> At the same time, data validity is ensured through source triangulation, method triangulation, and member checking to ensure the credibility of the findings.

The data collection procedure was carried out in stages, beginning with an analysis of normative texts (the Qur'an, ḥadīth, fiqh, fatwas, and family law regulations) to map the construction of reproductive rights, followed by in-depth interviews and limited observation of the social context that reveals women's negotiation practices in real life. The collected data were analysed using thematic-reflective analysis techniques, combined with an interpretive approach to *maqāṣid al-sharī'ah* and feminist hermeneutics, enabling a critical examination of the gap between ideal norms and actual practices. This technique was chosen because it is in line with the study's objective of revealing patterns of negotiation, the factors that influence them, and opportunities for conceptual reconstruction of Islamic law that is more responsive to gender justice and women's reproductive rights in context.

## Result and Discussion

### Women's Reproductive Rights as an Issue of Taklīf and Ownership of the Body in Fiqh

Women's reproductive rights from the perspective of fiqh are one of the most complex and sensitive issues in contemporary Islamic family law discourse, as they lie at the intersection of normative sharia doctrine, patriarchal social structures, and modern ethical demands regarding dignity and bodily autonomy. In the fiqh tradition, discussions of reproduction have never stood as an independent category in modern human rights discourse, but have always been intertwined with the legal construction of marriage, which regulates sexual relations, lineage, and the division of rights and obligations between husband and wife.<sup>16</sup> However, recent developments show a shift in the discourse of family fiqh from an emphasis on women's sexual and reproductive obligations to more fundamental questions: who is the subject of *taklīf* (obligation) regarding reproduction, and to what extent do women have *shar'i* authority over the use of their bodies in marriage? This shift is not merely academic, but touches on the core

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<sup>15</sup> Wasana Bandara et al., "Achieving Rigor in Literature Reviews: Insights from Qualitative Data Analysis and Tool-Support," *Communications of the Association for Information Systems* 37, no. 1 (2015): 8, <https://doi.org/10.17705/1CAIS.03708>.

<sup>16</sup> Edi Susilo, Budi Santoso, and Yessy Eka Ambarwati, "Transformation of Contemporary Fiqh through a Collective Ijtihad Approach in Resolving Lineage Issues Arising from Egg Freezing," *MILRev: Metro Islamic Law Review* 4, no. 2 (2025): 728-60, <https://doi.org/10.32332/milrev.v4i2.10403>.

theological and juridical problems regarding women's bodies as a locus of *taklif*, a locus of rights, and a locus of social control.

In the framework of *usul fiqh*, *taklif* is understood as the imposition of sharia law on a *mukallaf* who meets the requirements of reason and puberty. Thus, the subject of *taklif* is basically an individual, not a collective. However, when it enters the realm of family *fiqh*, individuals are often positioned within the network of marriage relations that give rise to reciprocal rights. This is where a conceptual tension arises: is reproduction a domain that falls entirely within the individual *taklif* of women as owners of their bodies, or is it a relational *taklif* domain limited by the structure of the marriage contract and the social objectives of sharia, such as *hifz al-nasl*? This question is important because reproduction is not only a biological function, but also a process that involves physical, psychological, and social risks that women directly bear. Therefore, questioning who is the subject of *taklif* over reproduction means questioning who has legal authority over reproductive decisions, including pregnancy, birth spacing, contraception, and even refusal of sexual relations that have the potential to be harmful.<sup>17</sup>

This debate becomes even more heated when linked to the concept of ownership of bodily benefits in *fiqh*. In classical literature, the marriage contract is often understood as a contract that gives the husband the right of *istimta'*, namely the right to obtain sexual pleasure from his wife.<sup>18</sup> Although the term ownership in this context is not identical to ownership of objects, *fiqh* language often uses the metaphor *milkiyyah al-manfa'ah*, meaning ownership of benefits rather than of the body itself. However, this conception has long raised ethical problems because it can easily be drawn towards legitimising control over women's bodies. If the benefits of a woman's body are viewed as a right owned by the husband through the marriage contract, then women's autonomy over reproduction can be narrowed, because their bodies are positioned as objects of the rights of another party. Conversely, if women's bodies are understood as a trust that remains under their own authority as *mukallaf*, then the marriage contract cannot be used as a basis for eliminating women's basic rights to consent and safety.

The core issue debated in this context is the status of reproductive rights in the *fiqh* language.<sup>19</sup> In *fiqh* terminology, rights (*haqq*) have a broad spectrum of meanings, ranging from the rights of Allah and humans to shared rights that combine the dimensions of worship and *muamalah*. Reproductive rights, if understood as the rights of individual women, mean that they are attached to her as a moral and legal subject who has authority over her body. However, if reproduction is understood as a shared right bound by a marriage contract, it becomes part of a reciprocal relationship that allows restrictions on a woman's decisions in favour of her husband's rights or to preserve lineage. It is in this context that the debate over whether women can refuse sexual relations, whether they can decide on the use of contraception, or whether they have full rights over pregnancy decisions becomes highly controversial.

The classical *fiqh* approach generally places the marital relationship within an asymmetrical structure of rights and obligations. The concept of *qiwamah*, for example,

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<sup>17</sup> Siti Aminah, Arif Sugitanata, and Suud Sarim Karimullah, "Restorative Justice for the Survivor of Sexual Violence," *Restorative: Journal of Indonesian Probation and Parole System* 2, no. 1 (2024): 15–23, <https://doi.org/10.61682/restorative.v2i1.10>.

<sup>18</sup> Rabea Benhalim, "Contract Customization, Sex, and Islamic Law," *Minn. L. Rev.* 108 (2023): 1861, <https://doi.org/10.24926/265535.4277>.

<sup>19</sup> Gamal I Serour, "Ethical Issues in Human Reproduction: Islamic Perspectives," *Gynecological Endocrinology* 29, no. 11 (2013): 949–52, <https://doi.org/10.3109/09513590.2013.825714>.

is often interpreted as legitimising male leadership over women in the household.<sup>20</sup> In many traditional interpretations, *qiwamah* is associated with the husband's responsibility for financial support and moral authority, which then extends to authority over his wife's body and reproduction. In this context, women are considered obliged to perform *tamkīn*, which is to provide sexual access to their husbands as long as there are no valid reasons not to. If a woman refuses without a valid reason, she may be considered *nusyuz*, which may result in the loss of her right to financial support.

The concepts of *nusyuz* and *tamkīn* became normative instruments often used to justify control over women's bodies, as sexual refusal could be understood as a violation of the husband's rights obtained through the marriage contract. In addition, the right of *istimta'* in classical *fiqh* was often understood as a direct consequence of the marriage contract. Within this framework, sexual relations are not merely a private activity but part of a legal structure that guarantees the regularity of lineage and family stability. Because lineage has broad legal implications, ranging from inheritance to social status, classical *fiqh* emphasises the importance of regularity in reproduction within the institution of marriage.

The contemporary *uṣūl al-fiqh* approach seeks to reinterpret the concept of rights in marriage within the framework of *maqāṣid al-sharī'ah*. In this perspective, the purpose of shariah is not only to maintain social order, but also to protect human dignity and prevent harm. The concept of *riḍā* (consent) is very important in this interpretation, because *riḍā* affirms that sexual relations in Islam should ideally be based on consent, not coercion. In addition, the principle of *lā ḍarar wa-lā ḍirār*, which prohibits all forms of harm and mutual harm, becomes the normative basis for rejecting sexual coercion and reproductive practices that are harmful to women. If pregnancy carries serious health risks, or if sexual relations are conducted without consent, then the principle of preventing harm must be prioritised.

Within the framework of *ḥifẓ al-nafs*, the protection of life and physical safety is the main objective of sharia. Reproduction cannot be separated from the biological risks borne by women, making women the main subjects in reproductive decision-making. Thus, the contemporary approach emphasises that women's reproductive rights cannot be reduced to the husband's rights over the body, but must be understood as part of the basic human right to a healthy, safe and dignified life. However, this approach does not necessarily eliminate the family framework; rather, it seeks to balance the goal of preserving lineage with that of preserving life and dignity.

The controversy between these two camps of argument reflects the epistemological dynamics in *fiqh*. Classical *fiqh* developed in a specific social context in which patriarchal structures were a basic assumption.<sup>21</sup> Therefore, the language of rights and obligations in marriage contracts tended to reflect gender hierarchies.<sup>22</sup> Conversely, the contemporary approach stems from the awareness that the basic values of Islam, such as justice and *rahmah*, must be the main parameters in reinterpreting the text. The fundamental question that arises is whether the marriage contract can be understood as a contract that transfers authority over a woman's body to her husband. If so, then a woman's body becomes the object of the contract. However, if the marriage contract is

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<sup>20</sup> Ahmad Misbakhul Amin and M Afiq Saifuddin, "Qiwamah: A Normative Qur'anic Study on the Relations of Husband, Wife, and Mother," *Martabat: Jurnal Perempuan Dan Anak* 9, no. 1 (2025): 9–23, <https://doi.org/10.21274/martabat.2025.9.1.9-23>.

<sup>21</sup> Fithriani and Faridah, "Gender Paradigm in Fiqh: A Critical Analysis of Traditional Islamic Legal Understanding."

<sup>22</sup> Suud Sarim Karimullah et al., "The Relevance of Feminism in Promoting Gender Reform in the Context of Progressive Islam," *Jurnal Anifa: Studi Gender Dan Anak* 4, no. 2 (2023): 1–15, <https://doi.org/10.32505/anifa.v4i2.7187>.

understood as *mīthāqan ghalīẓan*, a solid agreement aimed at building mutual love and responsibility, then a woman's body cannot be treated as an object of ownership, but rather as a trust that must be respected. In this framework, the benefits of the body are not owned by one party but are negotiated in a mutual relationship based on consent.

The shift in the discourse of family fiqh towards questions about the subject of *taḥlīf* over reproduction has also been influenced by developments in the discourse on gender and human rights.<sup>23</sup> In the modern context, women are increasingly seen as moral agents with the right to determine the fate of their own bodies. Therefore, contemporary fiqh faces the challenge of answering how the principles of sharia can accommodate women's autonomy without undermining the institution of the family. The answer to this challenge lies in the ability of fiqh to develop a more ethical paradigm of rights, in which the husband's rights are not understood as control, but as responsibility in an equal relationship.

### Contraception and Birth Control within the Framework of *Maqāṣid al-sharī'ah* and Fiqh Principles

Contraception and birth control are among the most important themes in the development of contemporary family fiqh because they directly touch upon the relationship between the objectives of sharia, reproductive rights, and modern social dynamics characterised by changes in family life patterns, economic challenges, and developments in medical technology. In classical fiqh tradition, the issue of birth control was not discussed using the terminology of contraception as in modern medical language, but rather appeared in the discourse on *'azl*, which is the practice of ejaculating outside the womb to prevent pregnancy.<sup>24</sup> This practice is an important starting point because it forms the basis of analogy (*qiyas*) for many scholars in formulating modern contraceptive laws. However, in the modern context, contraception is no longer merely an individual act such as *'azl*, but has become a widespread practice involving technology, health institutions, and state policy. This is where the fiqh debate on the permissibility of *tanẓīm al-nasl* (birth control) and the limits of *taḥdīd al-nasl* (birth restriction) continues, especially when religious and state authorities often provide different justifications for the legitimacy of reproductive control.

Within the framework of *maqāṣid al-sharī'ah*, the discussion of contraception cannot be separated from the basic objectives of sharia, particularly *ḥifẓ al-nasl* (preservation of offspring) and *ḥifẓ al-naḥs* (preservation of life). These two maqasid often become a site of argumentative tension: on the one hand, sharia emphasises the importance of generational continuity and lineage regularity, but on the other hand, it also prioritises the protection of life and safety. Contraception, thus, becomes an issue that lies between these two maqasid interests. In the contemporary approach, many scholars and *maqāṣid* thinkers assert that birth control aimed at maintaining the mother's health, ensuring the family's welfare, and preventing harm is not a rejection of offspring, but rather part of an effort to realise a broader *maslahah*. Conversely, some restrictive views see contraception, especially if it is intended to permanently limit offspring, as a form of intervention in the goal of *ḥifẓ al-nasl* and even as an attitude that contradicts the ethos of procreation in Islam.

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<sup>23</sup> Bhakti Wiranti et al., "Political Feminism and Women's Representation in Public Policy in Indonesia," *Jurnal Pelita Raya* 1, no. 1 (2025): 1-16, <https://doi.org/10.65586/jpr.v1i1.11>.

<sup>24</sup> Zaynab El Bernoussi and Baudouin Dupret, "Islamic Bioethics: Birth Control," in *Oxford Research Encyclopedia of Religion*, 2024, <https://doi.org/10.1093/acrefore/9780199340378.013.1157>.

The core issue analysed in the fiqh discourse on contraception is the legal basis for its permissibility or prohibition. The majority of classical scholars accept the permissibility of 'azl under certain conditions, especially if done with the wife's consent. This shows that in classical fiqh, there is already recognition that preventing pregnancy is not always haram.<sup>25</sup> This argument for permissibility was then expanded through the analogy that modern methods of contraception, which are temporary and reversible, can be equated with 'azl. Thus, birth control pills, condoms, IUDs, or hormonal injections are often positioned as forms of *tanzim al-nasl* that are permissible as long as they do not cause significant harm.<sup>26</sup> However, it should be noted that this analogy is not always accepted absolutely, because modern contraception involves more complex medical intervention than 'azl. Therefore, the discussion of the legal basis of contraception developed through the integration of textual arguments, fiqh rules, and maqasid considerations.

One of the most controversial issues is the status of the husband's consent in the use of contraception. In the classical fiqh structure that emphasises the husband's right to *istimta'*, some views consider that the decision to prevent pregnancy must involve the husband's consent, because reproduction is understood as a common goal in the marriage contract.<sup>27</sup> From this perspective, contraception without the husband's permission can be seen as a violation of the husband's right to offspring. However, the contemporary approach, which emphasises women's rights as subjects of *taklif* over their bodies, argues that women have moral and legal authority over their reproductive health, especially if pregnancy poses a risk to their safety.

Apart from the issue of consent, the classification of contraceptive methods based on their temporary or permanent nature is an important aspect in contemporary fiqh. Reversible temporary methods are generally more acceptable to the conditionally permissive camp, as they are considered not to rule out the possibility of offspring completely, but only to regulate the spacing of births as needed. In this framework, *tanzim al-nasl* is understood as an effort to manage the family rationally and in line with *maslahah*. Conversely, permanent methods such as sterilisation or vasectomy are often viewed as problematic because they are considered a form of *taḥdīd al-nasl* that permanently eliminates the potential for offspring.<sup>28</sup> This is where the principle of *sadd al-dhara'i*, which means closing the path to destruction, is used by the restrictive camp to prohibit permanent methods because of concerns that they open the door to a total rejection of offspring and weaken the goal of *ḥifẓ al-nasl*.

Another fiqh rule often used in the contraception debate is the principle of *ḍarūrah* and *ḥājah*. In emergencies, such as a serious threat to the health or life of the mother, contraception can even become obligatory to prevent greater harm. This is in line with the rule of *al-ḍarūrah tubīḥ al-maḥzūrāt*, which holds that emergencies can permit what was originally prohibited. Meanwhile, in conditions of *ḥājah*, i.e. needs that are not urgent but still significant, contraception may be permitted as a form of religious leniency. For example, family economic considerations, parenting abilities, or the

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<sup>25</sup> Sayyed Mohamed Muhsin et al., "Synthetic Human Embryos, Embryo Models and Embryo-like Structures in Islam," *Theology and Science* 22, no. 4 (2024): 790-815, <https://doi.org/10.1080/14746700.2024.2399902>.

<sup>26</sup> Agus Hermanto, Rudi Santoso, and A Kumedi Ja'far, "Family Planning Program and Its Impacts to Women's Health According to the Perspective of Islamic Law," in *1st Raden Intan International Conference on Muslim Societies and Social Sciences (RIICMuSSS 2019)* (Atlantis Press, 2020), 282-88, <https://doi.org/10.2991/assehr.k.201113.053>.

<sup>27</sup> Fatima A Husain, "Reproductive Issues from the Islamic Perspective," *Human Fertility* 3, no. 2 (2000): 124-28, <https://doi.org/10.1080/1464727002000198831>.

<sup>28</sup> Eva Astarina and Andi Muhammad Akmal, "A Sharia-Based Solution to Family Planning: The Use of Temporary and Permanent Contraceptives in Light of the Legal Maxim Al-Ḍararu Yuzāl," *Parewa Saraq: Journal of Islamic Law and Fatwa Review* 3, no. 1 (2024): 25-34, <https://doi.org/10.64016/parewasaraq.v3i1.26>.

mother's mental health are often categorised as *hājah* that can be the basis for permissibility. However, the restrictive camp often emphasises that *hājah* should not be expanded excessively to the point of making contraception a means of limiting offspring without a valid reason.

The main controversy in this discourse arises from the conflict between arguments for permissibility and arguments for restriction. The conditional permissive camp emphasises that contraception can be permitted based on the analogy of *'azl*, considerations of family *maslahah*, and the preservation of the mother's life. In this view, sharia does not impose unlimited procreation, but rather allows families to regulate births for the sake of welfare. They also assert that the purpose of marriage is not only to produce offspring but also to build a harmonious family capable of fulfilling the responsibilities of parenting. Therefore, contraception is seen as an ethical instrument to ensure the quality of family life, not merely the quantity of offspring.

Conversely, the restrictive camp views birth control as a form of intervention against the goal of *ḥifẓ al-nasl*. They emphasise that Islam has a strong ethos of procreation, as reflected in the encouragement to increase the number of believers. In this view, contraception can lead to an attitude of rejecting offspring, which is considered contrary to human nature and the objectives of sharia. This camp also rejects permanent methods because they are considered to alter Allah's creation and completely close off the possibility of offspring. In addition, they place strict conditions on the motives for using contraception, for example, it should only be for clear health reasons, not solely for economic or lifestyle reasons.

This debate becomes even more complex in the modern situation where the state is often involved in population policies and family planning programmes. The state can use the justification of public interest to promote contraception for population control and economic development. However, religious authorities do not always agree with the state's agenda, giving rise to tension between the legitimacy of sharia and political interests. In some cases, contraception is promoted as a national policy. At the same time, some religious groups view it as a form of secularisation of women's bodies. Within the framework of *maqāṣid al-sharī'ah*, the middle ground that is often offered is a balanced approach between *ḥifẓ al-nasl* and *ḥifẓ al-nafs*. Contraception can be permitted as *tanẓīm al-nasl* as long as it does not permanently eliminate offspring and does not cause harm. Reversible methods are more in line with this principle, while permanent methods can only be considered in cases of real emergency. Furthermore, the decision to use contraception should ideally be based on mutual consultation between partners, rather than one-sided domination, so that the principles of consent and gender equality can be realised within family relationships.

### **Abortion, Termination of Pregnancy, and Setting Emergency Limits in Jinayah Fiqh and Thibb Fiqh**

Abortion, termination of pregnancy, and setting emergency limits are among the most controversial issues in contemporary fiqh because they lie at the intersection of the protection of life, women's bodily autonomy, the moral status of the foetus, and the limits of human intervention in the process of life. In the Muslim public sphere, the issue of abortion often provokes fierce controversy because it touches on the fundamental Islamic value of the sanctity of life as well as the complex realities faced by women, such as threats to the mother's life, severe foetal defects, or pregnancy resulting from sexual violence. The core issues in the fiqh discourse on abortion are how to determine the status of the foetus, the stages of pregnancy, and the legal consequences of terminating

a pregnancy. In classical fiqh tradition, the foetus is considered to have moral value and legal protection from the beginning of pregnancy. However, the level of protection evolves as the foetus grows.

Scholars distinguish between the stages of *nutfah*, *'alaqah*, *mudhghah*, and the phase after *nafkh al-ruh*, which is the blowing of the soul, generally understood to occur at 120 days based on *ḥadīth*.<sup>29</sup> The concept of *nafkh al-ruh* is a very significant moral and legal boundary, because after this phase the foetus is often treated as a complete human soul, so that abortion is seen as close to murder. However, before *nafkh al-ruh*, there are differences of opinion among the *madhhabs* regarding the degree of prohibition of abortion. Some scholars continue to prohibit it from the outset because the foetus is considered to have the potential for life.<sup>30</sup> In contrast, others allow limited permissibility for certain reasons before 40 or 120 days. These differences show that classical fiqh already recognised a spectrum of abortion laws, although in general they tended to be restrictive.

Within the framework of criminal jurisprudence, abortion is debated as to whether it falls under the category of murder (*qatl*), a crime against the foetus requiring *diyat*, or under the category of *ta'zir*, the punishment for which is determined by the judge. In much of the literature, the termination of pregnancy after the foetus has taken shape or after *nafkh al-ruh* (the infusion of the soul) can be subject to legal consequences in the form of *ghurrah*, which is *diyat* compensation for the miscarried foetus. This shows that fiqh views the foetus as an entity that has legal protection even before birth. However, the classification of abortion in *jinayah* is not always straightforward, as it involves questions of intent, emergency conditions, and the party performing the act. If abortion is performed without a valid reason, it is considered a serious violation of *ḥifz al-nasl* and the foetus's right to life. However, if it is performed to save the mother's life, then it falls within the debate about the priority of *maqasid* and the principle of choosing the lesser of two evils.

In the context of fiqh *thibb*, the development of modern medical science presents new dimensions that are not fully discussed in classical fiqh. Prenatal diagnostics can now detect severe foetal defects, medical conditions that endanger the mother, or fatal complications that make the continuation of pregnancy almost certain to result in the death of the mother or baby. This situation requires fiqh to formulate more precise limits of emergency. The rule of *al-darūrah tubīh al-maḥzūrāt* is often the basis of the limited permissive camp's argument that in cases of real threat to the mother's life, abortion can be permitted even after *nafkh al-ruh* because *ḥifz al-nafs* is prioritised. Within the framework of *maqāṣid*, the actual life of the mother is often considered stronger than the potential life of the foetus, so saving the mother becomes the choice that is more in line with the principle of preventing harm.

The main controversy centres on differing views about when the protection of the foetus's life is equal to or even takes precedence over the safety of the mother.<sup>31</sup> The restrictive camp views that after *nafkh al-ruh*, the foetus has a full right to life that cannot be sacrificed except in truly extreme circumstances. They emphasise that abortion is a serious violation of *ḥifz al-nasl* and a form of human intervention that exceeds limits. In

<sup>29</sup> Restika Agustina et al., "The Journey of Human Life in Islamic Perspective: Learning from the Spirit to the Hereafter," *Al-Jadwa: Jurnal Studi Islam* 4, no. 2 (2025): 273-90, <https://doi.org/10.38073/aljadwa.v4i2.2570>.

<sup>30</sup> Hamza Yusuf, "When Does a Human Foetus Become Human?," in *Islam and Biomedicine* (Springer, 2022), 113-34, [https://doi.org/10.1007/978-3-030-53801-9\\_6](https://doi.org/10.1007/978-3-030-53801-9_6).

<sup>31</sup> Giuseppe Benagiano et al., "Induced Abortion in the World: 1. Perception of Abortion throughout the Centuries and by Religions," *International Journal of Gynecology & Obstetrics* 171, no. 3 (2025): 1148-55, <https://doi.org/10.1002/ijgo.70318>.

this view, the threat to the mother must be certain, not merely a possibility, and the category of emergency is narrowed so as not to become a loophole for widespread legalisation of abortion. They also reject social reasons such as poverty or stigma as grounds for abortion because they are considered contrary to the ethos of procreation and tawakkal.

In contrast, the limited permissive camp emphasises that Sharia aims to preserve life and eliminate unbearable hardship. They use the principle of *akhaff al-dararayn*, which is to choose the lesser of two evils, arguing that the loss of a foetus, although tragic, is still less severe than the loss of the life of a mother who already has social and family responsibilities. In this view, real medical threats must be the primary consideration, and the authority of medical specialists is crucial in determining whether the condition is truly an emergency.

Cases of severe foetal defects are one of the increasingly complex points of debate. In classical *fiqh*, the reason of foetal defects was not explicitly recognised due to diagnostic limitations. However, in the modern context, conditions such as anencephaly or fatal genetic disorders raise the question of whether continuing a pregnancy that will inevitably end in the death of the baby or extreme suffering can be considered *maslahah*. Several contemporary fatwas in countries such as Saudi Arabia and Kuwait permit abortion before 120 days if the foetus has a severe defect, and a medical team confirms this. However, after *nafkh al-ruh*, this permission is generally withdrawn unless the mother's life is at risk. This shows that the category of *hajah* is expanded to a limited extent for cases of severe defects, but remains restricted by the moral limit of *nafkh al-ruh*.

Pregnancy resulting from sexual violence is a particularly sensitive issue because it involves psychological trauma, social stigma, and questions of justice for the victim. In many Muslim societies, rape victims often face a double burden: suffering from the violence and social pressure to maintain the pregnancy. The restrictive camp tends to reject abortion even in these cases, arguing that the foetus does not bear the sin of the perpetrator and still has the right to life. However, some contemporary scholars allow for abortion before *nafkh al-ruh* on the grounds of *hajah* (necessity) approaching *darurah* (emergency), given the severe psychological and social impact on the victim. For example, some post-war policies in Bosnia and fatwas in certain countries show flexibility in *fiqh* in the context of mass sexual violence. This debate shows that *fiqh* faces the challenge of integrating the dimensions of trauma and social justice into the categories of emergency and necessity.

Another important question is who has the authority to determine an emergency. In the *fiqh* tradition, emergencies are often determined by *mukallaf* individuals based on available knowledge, but in complex medical cases, individual decisions are insufficient. Therefore, there is a camp of arguments calling for strengthening collective procedures, such as decisions made by medical teams and the consideration of scholars. This model is seen in regulations in several Muslim countries. In Iran, for example, therapeutic abortion is permitted before 120 days if there is a serious threat to the mother or severe foetal defects, subject to the approval of a specialist doctor and legal authorities. In Tunisia, the law is more permissive with access to abortion within certain limits, while in Pakistan or Egypt, the approach is more restrictive despite emergency exceptions. This variation shows that the state plays a major role in translating *fiqh* into policy, making emergency authorities an forum for interaction among scholars, doctors, and legal institutions.

Within the framework of criminal fiqh, the legal consequences of abortion also depend on the perpetrator and the context. If a third party performs the abortion without the mother's consent, it can be considered a serious criminal act that violates the rights of both the woman and the fetus. If the mother herself performs it under duress, then the elements of coercion and emergency can change its legal status.<sup>32</sup> In this context, ta'zir often allows judges to consider social and psychological factors. However, this flexibility also creates the risk of legal uncertainty if there are no clear maqasid guidelines.

The controversy over *nafkh al-ruh* as a moral boundary also demonstrates the epistemological dynamics in fiqh. Some scholars assert that the blowing of the soul is an absolute point that cannot be negotiated. In contrast, others see that protecting life must be understood gradually from the beginning of pregnancy. In contemporary Islamic bioethics, the idea has emerged that the foetus has a gradual moral value, so that the decision to abort must take into account the age of the pregnancy, the condition of the mother, and the level of harm. This approach seeks to avoid the black-and-white dichotomy that often dominates public debate. Thus, abortion in the perspective of fiqh jinayah and fiqh *thibb* is an issue that demands conceptual and procedural precision. The restrictive camp emphasises the importance of preserving *hifz al-nasl* and the right to life of the foetus. In contrast, the limited permissive camp emphasises the priority of *hifz al-nafs* and the prevention of harm. Between the two, there is a need for collective ijtihād involving scholars, doctors, and the state to set accountable emergency limits. Medical team-based procedures and scholarly considerations can be a middle ground to ensure that the permissibility of abortion is not abused, but also does not deny access to women who are truly facing real threats.

## Conclusion

Reproductive issues cannot be reduced to biological matters or domestic obligations alone, but rather constitute an arena of taklīf, bodily authority, and power relations that are constantly negotiated within the structure of family fiqh. Controversies surrounding bodily autonomy, contraception, and termination of pregnancy reveal epistemological tensions between the classical fiqh paradigm, which emphasises lineage and the structure of marital rights and obligations, and the contemporary maqasid approach, which affirms consent, prevention of harm, and protection of life as key principles. This synthesis implicitly presents a novelty in the form of an integrative framework that combines normative-usuli analysis, gender justice perspectives, and modern socio-medical realities, so that women's reproductive rights are understood as a space for ethical ijtihād that demands a more precise and humane reinterpretation of the concepts of qiwāmah, tamkīn, and emergency limits.

The theoretical implications of this study lie in the development of family fiqh that is more responsive to *maqāṣid al-sharī'ah*. In contrast, the practical and policy implications demand the strengthening of collective procedures based on medical teams and scholars on the issues of contraception and abortion so that reproductive decisions do not fall under unilateral domination or criminalisation of victims. However, this study has limitations because it emphasises conceptual construction and normative arguments, thus requiring further empirical research across countries on women's experiences in family law practice. Therefore, further studies are recommended to expand the scope to

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<sup>32</sup> Ellen R Gutowski et al., "Vocational and Financial Losses as Mediators between Legal Abuse and Mental Health for Family Court-Involved Survivor-Mothers," *Journal of Family Violence*, 2024, 1-13, <https://doi.org/10.1007/s10896-024-00798-6>.

include concrete case studies, legislative mechanisms, and social negotiations at the community level, so that the reformulation of reproductive fiqh does not stop at academic discourse but can encourage ethical transformation that is fair, critical, and oriented towards protecting the dignity of women in real life.

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The authors hereby attest that no competing interests, whether financial or otherwise, exist that could reasonably be perceived to influence the submission, review, or publication of this manuscript.

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