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The act of abortion due to rape in the view of ath-tabari in kitab jami' al-bayan fi ta'wil Al-qur'an

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ABSTRACT

The aim of this research is to provide insight to readers regarding what is meant by abortion as discussed in Ath-tabari's view in the book Jami-al-Bayan fi Ta'wil. Abortus provocatus medicinalis is an abortion carried out based on medical reasons/considerations. Meanwhile, abortion provocatus criminalis is an abortion carried out intentionally in violation of applicable legal provisions. Medically defines abortion as a pregnancy that terminates before the gestational age reaches 20 weeks and then results in the death of the fetus. When the fetus is alive or born safely after 20 weeks and before 38 weeks, it is called premature birth because the minimum period of pregnancy is 6 months and 20 weeks means not yet 6 months. The research method in this research is to use a type of library research method, namely by searching for data from various literature related to sexual violence and its prevention. Using content analysis methods, this research describes interpreters' interpretations of how the Koran prohibits sexual violence and provides ways to prevent it. The conclusion of this research is that the view of Islamic Sharia generally prohibits the practice of abortion. This is not permitted for several reasons, namely Islamic Sharia came in order to maintain Adhdharuriyyaat al-khams, abortion is completely contrary to the main purpose of marriage and the act of abortion is a negative attitude towards Allah SWT. The act of abortion is a negative attitude towards God. One will find many people who have abortions because they are driven by fear of being unable to carry the burden of life, educational costs and all matters related to counseling and child care. These are all negative attitudes towards Allah.



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Introduction

Humans are given the ability by God to think biologically, particularly regarding biological needs, namely the husband-wife relationship that begins with a bond that is legitimate both religiously and legally. Sexual relations are an invaluable way to produce offspring. This is unavoidable because it is the beginning of the process of uniting two people, namely a man and a woman. However, this becomes fatal when sexual relations occur before the bond of marriage, as it can lead to unwanted pregnancies. Free relationships are a significant factor contributing to the occurrence of out-of-wedlock pregnancies. In this case, parents forget that the freedom experienced by their children leads to the continuation of the human race. These two genders need each other, as God created in men: spermatozoa, and in women: eggs. (ovum). These two substances must meet; for this, God created the force of attraction. here is a strong force that draws men towards women, driven by their instincts and nature. Similarly, women, with their natural inclinations, feel happiness when approached by men.

There is an instinct in the soul that urges one to seek a partner. That instinct becomes a powerful drive once a person reaches adulthood. It gives rise to turmoil, even unrest, when unmet (Wahbah Az-zuhaili, 2016).

This has a significant impact on the development and formation of their spirit and personality. One example of the social interactions among today's youth is that there tends to be increasing freedom in how they interact. That shift in behavior often gives rise to new problems in the surrounding community. This shows that the level of promiscuity is increasing year by year, in line with the advancement of increasingly sophisticated technology, which makes it easier for society to obtain everything they desire (Shalih bin Ghonim As-Sadlan, 2004).

In reality, there are still many children who freely watch pornography, with a lack of attention from parents leading to broken homes, the influence of their environment, and the impact of illegal drugs, which causes children to engage in actions that violate moral and religious norms. This influence is directly related to technological, environmental, social, and economic aspects. For other sectors, efforts are also directed towards preventing the emergence of free relationships among young men and women, each with their respective functions and areas of focus. (pendidikan, disiplin, sosial, kerohanian, kesehatan, kasing sayang dan bimbingan orang tua dan sebagainya). Wisdom and the cultivation of anti-promiscuity are manifestations of the social responsibility of the community, whether through positive organizations or other activities that nurture good character in young men and women.

In terms of promiscuity among young people, even minors can engage in actions that can now have fatal consequences. For example, they often imitate the pornographic scenes they watch either on television or through other social media. This will result in pregnancies outside of marriage. Sexual violence is an issue that arises within the social interactions of society. Thus, Islam has provided rules for social interactions, including guidelines for dressing, and has set boundaries for how individuals interact or socialize with the opposite gender. In this regard, sexual harassment is considered an act of low morality, as it reflects poor behavior in a person's interactions with others. Therefore, a high moral standard in society is established when such actions are not seen as violations of the rules and customs that govern social life, specifically regarding what is deemed inappropriate and what is acceptable behavior. From time to time, women often become targets of sexual violence. In society, they are known as powerless beings, weak creatures, lacking ability and strength, and are often looked down upon (Nor sholeh, 2015).

This is what often leads to women receiving inappropriate treatment. Violence against women also occurred in pre-Islamic Arab society, known as the Age of Ignorance, during which it was permissible to kill female infants. When a woman is married, then a woman in her age becomes a full husband and also a family. When a husband has passed away, women in that era were treated like objects that could be inherited. Violence against women did not end in the era of ignorance; in fact, issues related to the Body, Sexuality, and Women's Sovereignty still see a high prevalence of violence against women today, such as sexual harassment, rape, human trafficking, and domestic violence (DV) that continue to run rampant. Here, the mental burden for women is becoming heavier. She will be embarrassed if the man does not take responsibility (Prayitno Kuat Puji, 2012).

Finally, the idea arose that it was not good to eliminate that sense of shame through abortion. (pengguguran kandungan). On the other hand, it could be that the initiative to terminate the pregnancy comes from the male side of the family, as it is seen as a family disgrace. Once again, the women are the ones being cornered and defeated. In addition, abortion can lead to health complications for women and can also result in fatal outcomes.

The discussion of abortion is a phenomenon that has emerged recently, but history shows that the term abortion has been known for hundreds of years, with the emergence of groups in society that advocate for its prohibition and those that support it. For example, it is narrated that around 2700 BC, Chinese society freely used medicines for abortion, while around 1500 BC, Assyrian laws condemned abortion with the following statement: "Any woman who causes the fall of something held by her womb must be examined, punished, and impaled, and she shall not be buried." (Wijayati, 2017).

Abortion is viewed as an action that does not align with the norms and ethics of Eastern culture, as Eastern cultures still strongly adhere to their religions. Abortion is no longer just an individual issue but truly a social problem, as it not only concerns women's health but also has serious implications for the demographic situation across the country and for the psychological atmosphere in society in general and within families in particular. This research discusses "Abortion actions resulting from rape in the view of Ath-Tabari in the book Jami' al-Bayan fi Ta'wil al-Qur'an.

Method

The type of research method that the author uses in writing this article is library research, which is a research conducted by searching and discussing literature, journal books and documents related to research using a

descriptive qualitative approach. Literature studies can also study various reference books and the results of similar previous studies which are useful for obtaining a theoretical basis for the problem to be studied. Literature study also means data collection techniques by reviewing books, literature, notes, and various reports related to the problem to be solved. Meanwhile, according to other experts, literature study is a theoretical study, references and other scientific literature related to culture, values and norms that develop in the social situation under study. (Aris Dwi Cahyono 2021) This research is a type of library research. In this research, the author applies the library research method because there are at least several reasons underlying it. First, data sources cannot always be obtained from the field. Sometimes data sources can only be obtained from libraries or other documents in written form, whether from journals, books or other literature. Second, literature study is needed as a way to understand new symptoms that occur that cannot be understood, then with this literature study, these symptoms will be understood. So that in overcoming a symptom that occurs, the author can formulate a concept to solve a problem that arises. The third reason is that library data remains reliable to answer the researcher's problems. However, information or empirical data that has been collected by others, whether in the form of books, scientific reports or research reports can still be used by literature researchers. Even in certain cases, field data is still insignificant to answer the research questions to be carried out. (A. Hamid 2005).

Results dan Discussion

Ath-Tabari's View on Abortion

To discuss abortion in the general context according to Ath-Tabari in classical Islamic law, we need to understand some key things related to his views and how classical Islamic law regulates this issue. Here is an explanation of the topic:

Abortion in General Context: Ath-Tabari's Understanding

Ath-Tabari, a renowned commentator in the Islamic tradition, provides explanations on various aspects of Islamic law in his commentary, *Jami' al-Bayan fi Ta'wil al-Qur'an*. Although his main focus is on the interpretation of the Qur'an, his views on the issue of abortion can be understood from his interpretation of the relevant verses.

Quranic Verses on Abortion

In classical Islamic law, abortion is not explicitly mentioned in the Quran. However, its interpretation is often based on several verses that discuss life, human rights, and humanity. Some verses that are often associated with this issue include: Surah Al-Isra (17:31): "And do not kill your children for fear of poverty. We provide sustenance for them and for you. Verily, killing them is a great sin." Surah Al-An'am (6:151): "And do not kill the soul which Allah has forbidden except for a just cause". These verses are often understood as emphasizing the value of life and the prohibition of killing the soul, which can be interpreted in the context of abortion as an unwanted act.

Tafsir Ath-Thabari and the Concept of Abortion

According to Ath-Thabari, human life begins at the moment of conception, and therefore, abortion is a very sensitive issue in Islamic law. In his tafsir, Ath-Thabari emphasizes the importance of protecting human life. In this regard, abortion is considered an act that must be considered very carefully, especially considering its legal consequences.

Classical Islamic Law on Abortion

In classical Islamic law, views on abortion are often based on general principles of sharia law and interpretations of religious texts. Here are some key points to consider. Life and Humanity: In the classical view, human life is considered sacred and must be protected. Abortion, as an act that terminates a pregnancy, is considered a violation of this principle. Conditions and Reasons: Classical Islamic law generally distinguishes between abortions performed for medical reasons or because of rape, and abortions performed without a legitimate reason. In cases of rape or a threat to the mother's health, views may be more flexible, but still require careful legal consideration.

The Context of Rape: Ath-Thabari's Explanation

Ath-Tabari's Views on Rape and Abortion. In *Jami' al-Bayan fi Ta'wil al-Qur'an*, Ath-Tabari usually emphasizes accurate interpretations that are in accordance with the social and legal context of the time. Here are some important points that can be gleaned from Ath-Tabari's commentary on rape and abortion:

Life and Rights of Women: Ath-Tabari emphasizes that human life is something very valuable. Although abortion is not an explicit topic discussed in his commentary, the general principles of the right to life and protection of women can be applied in cases of rape.

Rape and Its Consequences: Ath-Tabari does not provide an explicit commentary on rape, but in the context of his commentary, the act of rape is usually considered a serious violation of individual rights and Islamic law. Although the law for rape is not regulated in detail in his commentary, the principles of protection and justice in Islamic law can be translated into actions that should be taken in situations of rape. **Abortion as a Result of Rape:** In classical Islamic law, abortion is considered a highly sensitive act and requires careful legal consideration. In the case of rape, it is possible that the legal view may be more flexible, taking into account the trauma and health of the woman. However, this is still an issue that requires careful decision-making and often depends on the social and legal context at the time.

Legal and Social Implications

Ath-Tabari's views on rape and abortion in his commentary do not directly provide solutions for specific cases, but the principles applied in his commentary provide general guidance regarding the protection of the right to life and justice. In the case of rape, these principles indicate that the protection of the woman and consideration of her health and trauma are essential.

Definition of Abortion



Figure 1 <Abortion Process>

Abortion in Latin is (*abortus*) which means miscarriage of the womb. Indonesian language abortion is a deliberate abortion of the womb. While in Arabic abortion is *Isqat Al-Haml* or *Jihad*, which means aborting the fetus in the womb. *Lafal ijtihad* has synonyms *Isqat* (dropping), *Ilqa* (throwing), *Tarah* (throwing) and *Imlas* (getting rid of).

The term Abortion is also known as *Abortus Provocatus*. *Abortus provocatus* is a deliberate miscarriage of the womb, occurs because of human actions that try to abort the unwanted pregnancy, including *abortus provocatus medicinalis* and *abortus provocatus criminalis*. *Abortus provocatus medicinalis* is an abortion that is carried out based on medical reasons / considerations. Meanwhile, *abortus provocatus criminalis* is an abortion that is carried out intentionally by violating applicable legal provisions. (Azizah and Khoiriyah 2021)

Medicine defines abortion as a pregnancy that terminates before 20 weeks of gestation and results in the death of the fetus. When the fetus is alive or born safely after 20 weeks and before 38 weeks, it is called premature birth because the minimum period of pregnancy is 6 months and 20 weeks means not yet 6 months. It can be understood that abortion is an attempt to terminate a pregnancy by removing the fetus prematurely, either naturally / spontaneously or by using simple tools or technology.



Figure 2 <Appeal on Abortion>

In Fiqh literature reviewed by Maria Ulfah Anshor shows that abortion in fiqh perspective can be classified in 5 categories, namely: a. Spontaneous abortion natural abortion that occurs without any cause / influence from outside or otherwise fall by itself. B. Abortion due to *dharurat* / treatment, this type of abortion is an

abortion performed because there is physical evidence that threatens the safety of the mother if the pregnancy is continued. C. Abortion by mistake, this abortion occurs without intent, without the intention of aborting the pregnancy but it occurs. D. Abortion that is similar to an intentional abortion. E. Deliberate/planned abortion, abortion performed with the intention to terminate the pregnancy by consuming food/drinks or by performing certain actions that result in miscarriage. If examined more deeply, the categorization of abortion scholars tend to use a physical approach, with measures that can be seen and measured. While the psychic is not discussed adequately by the scholars. (Wijayati 2017)

One of the reasons for the occurrence of an abortion is because the victim was sexually assaulted. Sexual violence is a term that refers to sexual behavior or relationships that deviate, harm the victim and destroy peace. The existence of sexual violence that occurs, then the suffering for the victim has become a serious result experienced needs attention. Therefore, adults and children are also vulnerable to sexual violence. The issue of sexual violence against is based on the high rate of violence against women in Indonesia that has been documented by Komnas perempuan from the results of reports from several services and judicial institutions that work with Komnas perempuan. (Purwanti and Zaliani 2018)



Figure 3 <The Need for Sexual Education>

Victims of sexual violence are things that must be considered, therefore at the end of 2005 a MUI fatwa was issued which reads that abortion as a result of rape is allowed on condition that there are indications from an expert doctor and the pregnancy does not exceed the age of forty days after the cessation of menstruation. In MUI fatwa No. 4 of 2005 on abortion, it is explained that the action (إجّاض or إجّاض) ! abortion, the illat (basis) is two things, among others: a. Emergency is a situation where someone if he does not do something forbidden then he will die or almost die b. Hajat is a situation where someone if he does not do something forbidden then he will experience severe difficulties The emergencies related to the permissibility of abortion are: a. The pregnant woman suffers from severe physical illnesses such as advanced cancer, tuberculosis with caverna and other severe physical illnesses determined by a team of doctors b. In a situation where the pregnancy threatens the life of the mother The circumstances of desire related to the permissibility of abortion are: a. The fetus is detected to suffer from genetic defects when born later difficult to cure b. Pregnancy due to rape determined by an authorized team in which there are families of victims, doctors, and scholars c. The permissibility of abortion referred to above must be done before the fetus is 40 days old. (Duhriah and Yati 2019)

Victims of violence in the Health Act although in principle prohibit but still provide space for the exception of abortion in providing exceptions to 2 (two) conditions, namely if there is a medical emergency in the mother and or baby and pregnancy due to rape. But in the Law on abortion, there is a contradiction where the Criminal Code that closes the gap and opportunity by anyone and in any form to perform abortion. Abortion due to emergency Abortion is done when there is an excuse that is really impossible to avoid, which in fiqhi terms called "emergency", such as if the fetus is allowed to grow in the womb will result in the death of the mother. Scholars agree that abortion in this case is permissible. This permissibility is to save the life of the mother. This opinion is based on a hadith narrated by Imam Ahmad bin Hanbal and Ibn Majah, that the Messenger of Allah (SAW), recommended that people should not do anything that harms themselves or others. The rule of fiqhi also says that if there are two things that are detrimental, while it is impossible to avoid both, then the choice must be made to the lesser harm. (Fatmawati 2016)

Conflict of norms will also result in the enforcement of penalties against abortionists in Indonesia. Harmonization of abortion regulation should be done on how the view of the Criminal Code and how the view of the Health Act in viewing this abortion. Legal theory is used to answer the existing problems, used legal theory Lex Specialis Derogat Legi Generalis. The legal theory of Lex Specialis Derogat Legi Generalis. (Bayu Anggara 2021)

In the discussion of abortion contrary to the Conflict of Norms, Fiqh scholars argue that aborting a pregnancy that has received the spirit is forbidden. The scholars also agree on the legal sanction for women who have an abortion after the spirit has been blown, which is to pay gurarrah (male or female slaves). At the same time, Islamic law is prescribed to avoid grave harm. Some of the reasons of the scholars are: First, scholars who forbid abortion at the stage of fetal growth before the spirit is blown (al nutfah, al-'alaqat, and al-mudghah). This opinion is expressed by a number of Hanafiah, Malikiyah, and Imam Gazali. They use the Prophet's hadith to support their opinion: "Verily, when Allah swt. wants to create a human being (al-'abd), he brings together a man and a woman who will then emit sperm into every vessel and member. When it reaches the seventh day, Allah swt gathers it and brings it to each vessel, except for the creation of Adam." (HR. At-Tabrani). (Rahmawati et al. 2022)

The same applies if the abortionist is someone else, even if it is his own husband. In addition to paying the gurarrah, some fiqhi scholars, including the Zahiri school of thought, that the perpetrator of abortion is also subject to the legal sanction of expiation, namely freeing a slave and if unable to do so, must fast two consecutive months, and if still unable to do so, must feed 60 poor people.

Legal provisions on rape abortion in Indonesian law



Figure 4 <RKUP on Women Victims>

Based on the provisions of Article 75 paragraph (3) of Law No. 36 of 2009 concerning Health, abortion can be performed after going through pre-action counseling and / or advisory and ending with post-action counseling conducted by competent and authorized counselors.

In the provisions of Article 76 of Law Number 36 Year 2009 on Health abortion can only be done if: a. Before the pregnancy is 6 (six) weeks calculated from the first of the last menstruation, except in the event of a medical emergency. b. By health workers who have the skills and authority that has a certificate, which is determined by the minister. By health personnel who have the skills and authority that has a certificate, which is determined by the minister. c. With the consent of the pregnant woman concerned d. With the permission of the husband, except victims of rape. With the permission of the husband, except for victims of rape and e. Health service providers who meet the requirements set by the minister. (Sylvana et al. 2021)

The implementation of abortion regulated in Law No. 36 of 2009 concerning Health is further emphasized in Government Regulation No. 61 of 2014 concerning Reproductive Health in Article 35, namely: 1) Abortion based on indications of medical emergencies and pregnancy due to rape must be done safely, with quality and responsibly. 2) Safe, quality and responsible abortion practices as referred to in paragraph (1) include: a. Performed by a doctor according to standards, b. Performed in health care facilities that meet the requirements set by the minister, c. At the request or consent of the pregnant woman concerned, d. With the permission of the husband, except for victims of rape. With the permission of the husband, except for victims of rape, e. Non-discriminatory, and f. Not prioritizing material rewards. 3) In the event that the pregnant woman as referred to in paragraph (2) letter c is unable to give consent, abortion approval can be given by the family concerned. 4) In the event that the husband cannot be contacted, permission as referred to in paragraph (2) letter d is given by the family concerned.

With the enactment of Law No. 17 of 2023 on Health which replaced the previous Health Law, Law No. 36 of 2009 on Health, the issue of abortion gained legitimacy and affirmation. Explicitly, in this law there are articles that regulate abortion, although in medical practice it contains various reactions and causes controversy in various layers of society. Although, the law prohibits the practice of abortion, but in certain circumstances there are permissible. The provisions regulating abortion in the Health Law are as follows: Article 60 (1) Every person is prohibited from performing abortion, except with the criteria allowed in accordance with the provisions in the criminal code. (2) The implementation of abortion with the criteria allowed as referred to in paragraph (1) can only be done: a. by Medical Personnel and assisted by Health Personnel who have the competence and

authority; b. at Health Care Facilities that meet the requirements set by the Minister; and c. with the consent of the pregnant woman concerned and with the consent of the husband, except victims of rape. Article 61 The Central Government, Local Government, and the community are responsible for protecting and preventing women from unsafe abortion and contrary to the provisions of laws and regulations.

Article 62 Further provisions regarding abortion referred to in Article 60 and Article 61 of the Government Regulation. as regulated by government regulations. Then examine the norms that live in the community such as religious norms, norms of decency, norms of decency then should be the act of abortion is prohibited because it is contrary to the principles of humanity. Pregnancy is the will of God that cannot be requested by humans. If God does not want a woman to become pregnant, despite all efforts, the woman still cannot become pregnant. Abortion is one of the consequences of premarital free sex. The act of abortion is an act that takes the life of an innocent human being, the freedom to choose is not an absolute right of man, even more so the freedom to kill. Human believers are always in bondage to God. (Sasmita 2016)

Biography of Al-Tabari

Al-Tabari was an outstanding scholar who reached the highest rank in various disciplines, including Jurisprudence (Islamic law) so that his collected opinions were called al-Shafi'iyah, Imam al-Hanafi with al-Hanafiyah and others. His name is Abu Ja'far Muhammad ibn jarir ibn yajid ibn katsir ibn galib at-tabarir. Born in the year 224. Hijriyah and died in 31010 H . He is a scholar who is rarely compared, in terms of knowledge, in terms of charity and in terms of the depth of his knowledge of the Qur'an and the path of history, both saih and dhaif the state of the companions and tabiin. In addition to being an exegete, Atthobari was also an expert in the fields of Hadith, Fiqh, and Tarikh, which he was well known for. He had the nickname abu ja'far as a form of respect for him, and this has become an Arab tradition when they use a lot of the nicknames of their leaders. He didn't have any children, which is the usual way to refer to someone, and he never even had a wife during his lifetime. This world-caliber mufasssir was born in the city of ømul, a city in the tabrastan, the largest area in the Sahlah region.

Al-Tabari lived, grew and developed in a family environment that gave enough attention to educational issues, especially in the religious field, along with the situation of Islam which was experiencing glory and progress in the field of thought. Such social conditions psychologically contribute to shaping al-Tabari's personality in fostering his love of knowledge. Such a conducive climate has scientifically encouraged him to love knowledge since childhood. His educational career began in his hometown of Amul, a place that was quite conducive to building the fundamental structure of al-Tabari's early education. He was fostered by his own father, then sent to Rayy, Basrah, Kufa, Egypt, Syria in the framework of al-rihlah fi thalab al-ilm at a very young age. In Rayy he studied with ibn Humayd, Abu Abdullah Muhammad Bin Humayd al-Razi. Then he headed to Bagdad to study with Ibn Hambal, it turned out that when he arrived in Bagdad Ibn Hambal had died and al-Tabari turned his direction to the two major cities south of Bagdad namely Basrah and Kufa, while stopping by the wasit because of one travel route in the context of study and research. In Basrah he studied with Muhammad ibn Abdul Ala al-San Ani' (d 245 AH/859 AD), Muhammad ibn Musa al-Harasi (d 248 AH/862 AD) and Abu As'as Ahmad ibn al-Miqdam (d 253 AH/867 AD). In the field of fiqh, especially the al-Shafi'i school, he studied with al-Hasan Ibn Muhammad al-Za'farany.

Abortion in the View of Islamic Law

Human nature in the concept of Islam is the same before Allah swt. the only difference is their piety. In other words, no one has the right to humiliate and kill one who is more noble than the other. The most heinous reason for aborting a fetus is economic. This reason cannot be justified by Islam, because Allah has emphasized that the sustenance of every living creature in the world has been guaranteed, including its parents. The Quran is the main source on which the application of Islamic law is based. Islamic law must be obeyed by humans regardless of changes that occur from various aspects. This is in accordance with the view of Islamic law that humans like to do things. (Rahmawati et al. 2022)

Dr. Wahbah az-Zuhaili explains this by stating that the scholars are unanimous in forbidding abortion without an excuse after four months, which is 120 days after the beginning of pregnancy. They are also unanimous that this is a crime for which diyat is required, because of the loss of life and murder. I myself am of the view that abortion is prohibited from the beginning of pregnancy, because of the presence of life and the beginning of the formation of the fetus, except in cases of emergency, such as a serious illness such as paralysis or cancer. Shaykh Ahmad Sahnun, a Moroccan scholar, said: "Abortion is a despicable act and a major crime that is prohibited in Islam. It is also denied to the souls of humanity and noble souls. It is the killing of the soul, which Allah has forbidden, changing the creation of Allah and defying the will of Allah." Islam has forbidden the killing of souls as in the words of Allah SWT:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ
مَنْصُورًا ۖ سُلْطَانًا فَلَا يَسْرِفُ فِي الْقَتْلِ إِنَّهُ كَانَ

Meaning: *You shall not kill anyone whom Allah has forbidden, except with a just cause. And whoever is killed wrongfully, We have given power to his guardian. But let him not exceed the limit in killing. Verily, he is one who has help.*

The meaning of this verse is, your Lord also stipulates "And you shall not kill, O mankind the soul which Allah has forbidden, but rather with a just cause": To kill it *بِالْحَقِّ*, but not with a just cause, but with a righteous and just cause. If the soul is a disbeliever and the disbelief was not preceded by Islam, then there is no injunction or security against killing it, as explained in the following narrations:

Bisyar narrated to us, he said: Yazid narrated to us, Sa'id narrated to him from Qatadah, about the words of Allah *سُلْطَانًا* "And whoever is unjustly killed, We have indeed given power to his heirs," he said, "That is the qishash prescribed by Allah. The most correct interpretation is that the phrase *سُلْطَانًا* mentioned by Allah in this place means what Ibn Abbas said, namely that the heirs of the victim have the right to avenge him, or take diyat, or forgive, based on a saheeh report from the Prophet Muhammad, that he said in the event of 'Fathu Makkah.

Muhammad bin Sa'd narrated to me, he said: My father narrated to me, he said: My uncle narrated to me, he said: My father narrated to me from his verse from, Ibn Abbas, about the words:

وَلَا تَقْتُلُوا النَّفْسَ الَّتِي حَرَّمَ اللَّهُ إِلَّا بِالْحَقِّ وَمَنْ قُتِلَ مَظْلُومًا فَقَدْ جَعَلْنَا لَوْلِيهِ سُلْطَانًا

Meaning: "And you shall not kill a soul which Allah has forbidden, except with a just cause. And whoever is killed unjustly, We have indeed given his heirs a measure of justice," he said, "It means the information that Allah has ordained. The heirs of the victim need this information with regard to diyat and qishash. That is the meaning of the phrase *سُلْطَانًا*

Dr. Ibrahim Haqiqi said: "Abortion is haraam because it is the killing of an innocent soul and exposes another soul, namely the mother, to a great deal of danger and death. This is forbidden." This is the view that Umar ibn Ibrahim Ghanim, the author of *Ahkam al-Janin*, reiterated in his statement: "It is certain that the view of those who prohibit abortion from the moment of conception is closer to the truth and in accordance with the spirit of Islam. The spirit of Islam is to protect and preserve the offspring, and to prevent those who follow their desires and lusts from taking the opportunity to realize their aims and desires to weaken the offspring of the Muslims." Thus, the fatwa on this prohibition is saddu adz- Dzariat, which is in line with the noble spirit of Islamic shari'ah. (Nining 2018)

Abortion After the Blowing of the Spirit in the Fetus (After Four Months) After the blowing of the spirit, the jurists agree that the fetus that has become a human being and has a life that has honor and glory, as explained in the word of Allah SWT:

وَلَقَدْ كَرَّمْنَا بَنِي آدَمَ وَحَمَلْنَاهُمْ فِي الْبَرِّ وَالْبَحْرِ وَرَزَقْنَاهُمْ مِنَ الطَّيِّبَاتِ وَفَضَّلْنَاهُمْ عَلَى
كَثِيرٍ مِمَّنْ خَلَقْنَا تَفْضِيلًا

Meaning: *And indeed We have honored the sons of Adam, We transported them on the land and on the sea, We gave them sustenance from the good and We favored them with a perfect surplus over most of the creatures We have created.* (al-isra' verse 70)

وَحَمَلْنَاهُمْ And indeed We have honored the children of Adam," on the backs of riding animals, *وَرَزَقْنَاهُمْ* "We took them on land," in vehicles, *وَالْبَحْرِ* "And on the seas," in ships in which We sailed for them. *وَفَضَّلْنَاهُمْ* We gave them sustenance from good things, "from good food and drink, i.e., halal and delicious. *وَفَضَّلْنَاهُمْ* And We surpassed them in excellence over most of the creatures We have created."

It is narrated that the meaning is their ability to work with their hands to bring food and drink to their mouths, which no other creature is able to do. As the following narrations show:

Al Qasim narrated to us, he said: Al Husayn narrated to us, he said: Hajjaj narrated to me from Ibn Juraij, regarding the words of Allah, *وَلَقَدْ كَرَّمْنَا* "And indeed We have honored the sons of Adam" he said, *وَفَضَّلْنَاهُمْ* "And We have favored them", meaning with their hands, to eat and work, while creatures other than humans eat without using their hands.

Conclusion

Abortion law is discussed in Law No. 17 of 2023 on Health which replaces the previous Health Law, Law No. 36 of 2009 on Health, then the issue of abortion gained legitimacy and affirmation. Explicitly, in this law there are articles that regulate abortion, although in medical practice it contains various reactions and causes controversy in various layers of society. Although, the law prohibits the practice of abortion, but in certain circumstances there are permissible. The implementation of abortion regulated in Law No. 36/2009 on Health is further emphasized in Government Regulation No. 61/2014 on Reproductive Health in Article 35, namely: 1) Abortion based on indications of medical emergencies and pregnancy due to rape must be done safely, with quality and responsibly. 2) Safe, quality and responsible abortion practices as referred to in paragraph (1) include: a. Performed by a doctor according to standards, b. Performed in health care facilities that meet the requirements set by the minister, c. At the request or consent of the pregnant woman concerned, d. With the permission of the husband, except for victims of rape. With the permission of the husband, except for victims of rape, e. Non-discriminatory, and f. Not prioritizing material rewards. Yusuf al-Qaradhawi in his book *Contemporary Fatwas* explains the issue of pregnant women due to rape in the context of Muslim women in Bosnia who were raped by Serbian soldiers. He argues that the sisters and daughters of these women do not bear the sin as long as they have resisted and fought against it then they are forced under the point of a gun and under the pressure of great force. As for aborting the pregnancy, al-Qaradhawi believes that it is forbidden to do so since the meeting of male sperm cells with female eggs which will later appear new creatures and settle in the womb. So the new creature must be respected even though the result of haram relationships such as adultery. At the end of 2005, a MUI fatwa was issued that reads abortion as a result of rape is allowed on condition that there is an indication from an expert doctor and the pregnancy does not exceed the age of forty days after the cessation of menstruation. In MUI fatwa No. 4 of 2005 on abortion, it is explained that the act of (اضاعه ج) or ! abortion, the illat (basis) is two things, among others: a. Emergency is a situation where someone if he does not do something forbidden then he will die or almost die b. Hajat is a situation where someone if he does not do something forbidden then he will experience severe difficulties emergency situation.

In Tabari's view, abortion is a highly controversial act and must be handled with care. Although there is no very explicit view in his commentary on abortion due to rape, the general principles of protecting human life and individual rights can provide guidance in understanding his stance on the issue. Tabari's view on abortion reflects the general understanding in classical Islamic law that life must be protected, but there is room for consideration in special cases involving health risks or exceptional situations such as rape.

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