

Abortion in Islamic Legal Reasoning: Reconstructing Maslahah and Necessity in Contemporary Reproductive Ethics

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ABSTRACT

This study analyzes the concept of maslahah in relation to abortion practices under Islamic law using a Law and Economics approach and examines its relevance to the National Health Insurance (Jaminan Kesehatan Nasional/JKN) policy and the fiscal burden borne by the state. Abortion is not merely a matter of morality and religious law but also has economic implications for healthcare financing, maternal and child protection, and the efficiency of public resource allocation. This study employs a normative legal research method using conceptual, statutory, and comparative approaches. Data were obtained through library research encompassing fiqh literature, maqasid al-shari'ah, Law and Economics theory, and regulations governing reproductive health and JKN administration in Indonesia. The findings indicate that the concept of maslahah in Islamic law places the protection of life (hifz al-nafs) as a primary objective. Accordingly, abortion is generally prohibited, except under emergency conditions that meet the requirements of shari'ah, such as when it is necessary to save the mother's life or address specific medical indications. From a Law and Economics perspective, policies that provide access to safe and legally permitted reproductive health services under legally justified conditions can minimize social costs, reduce complications arising from unsafe abortion, and improve the efficiency of JKN financing. Conversely, restrictions that are not accompanied by adequate access to healthcare services may increase the financial burden on the state due to the high costs of treating medical complications and their long-term social consequences. Therefore, integrating the principle of maslahah with legal-economic analysis can provide a basis for formulating health policies that are not only consistent with shari'ah values but also support the fiscal sustainability of JKN and the protection of the public interest.

Keywords: Maslahah, Abortion, Islamic Law, Law and Economics, National Health Insurance (JKN).

I. Introduction

Abortion is among the most complex issues in the study of law, ethics, healthcare, and religion. The debate surrounding abortion concerns not only the right to life of the fetus and women's reproductive rights but also extends to the protection of maternal health, the interests of society, and the state's responsibility to provide healthcare services (Klick, 2003). In Indonesia, abortion is prohibited in principle, although the law provides exceptions under certain conditions, such as medical emergencies or pregnancies resulting from criminal acts of sexual violence, in accordance with applicable statutory provisions (Putra, 2024). This

regulatory framework demonstrates that the law seeks to balance the protection of life with the need to safeguard women's safety and health (Notoatmodjo, 2010). From the perspective of Islamic law, human life occupies a position of the highest sanctity and dignity. One of the principal objectives of *maqasid al-shari'ah* is *hifz al-nafs* (the protection of life), and abortion is therefore prohibited in principle because it is regarded as the termination of potential human life (Rofiq et al., 2023). Nevertheless, Muslim jurists recognize exceptions based on the principles of *maslahah* (public interest) and *darurah* (necessity), particularly when a pregnancy threatens the mother's life or when a specific medical condition makes continuation of the pregnancy medically untenable. Islamic law therefore does not treat abortion in absolute terms but instead weighs the protection of the fetus against the preservation of the mother's life in light of the objectives of the *shari'ah* (Al-Zuhayli, 1989). The Law and Economics approach, for its part, regards law as an instrument for achieving social efficiency through rules capable of minimizing costs while maximizing benefits for society. In the context of abortion, this approach evaluates not only the legality of abortion but also the economic consequences of a given policy. Restricting access to safe abortion services may increase the incidence of unsafe abortion, which may, in turn, contribute to higher maternal mortality, increased health complications, and greater healthcare costs that ultimately place a financial burden on the National Health Insurance (*Jaminan Kesehatan Nasional/JKN*) system. Conversely, regulations that provide access to reproductive healthcare services in accordance with the law may reduce social costs and improve the efficiency of healthcare financing (Posner, 2007).

As Indonesia's national health insurance system, JKN plays a vital role in ensuring public access to quality healthcare services. Although abortion services are generally not covered as a healthcare benefit, the treatment of complications arising from unsafe abortion, as well as services permitted on the basis of medical indications, may nonetheless have financial implications for the state. Abortion policy, therefore, cannot be separated from health economics, as every legal decision affects the allocation of public resources, the fiscal sustainability of JKN, and the overall effectiveness of public health protection (Posner, 2007). This concern is particularly significant because existing scholarship on abortion has tended to develop along two separate tracks. *Fiqh* scholarship has primarily focused on determining the *shari'* legality of abortion, with comparatively limited attention to its implications for healthcare financing, whereas health economics scholarship has focused on cost efficiency without sufficiently considering the value framework embodied in *maqasid al-shari'ah*, which remains an important moral reference for Muslim communities (Restu, 2025). Nevertheless, these two frameworks converge on a common objective, namely minimizing harm and maximizing benefits for individuals and society as a whole. The absence of an analytical framework that explicitly integrates *maslahah* with Law and Economics may result in policies that are imbalanced, either in terms of their conformity with *shari'ah* principles or their implications for the fiscal sustainability of the national health insurance system. In light of these considerations, this study is significant because it integrates the concept of *maslahah* in Islamic law with the Law and Economics approach to analyze abortion policy in Indonesia. This integrated approach is intended to provide a more comprehensive perspective by evaluating not only the conformity of abortion policy with *shari'ah* values but also its economic implications for JKN financing and the financial burden borne by the state. This study is expected to contribute academically to the development of scholarship in Islamic law and Law and Economics while also providing recommendations for the formulation of health policies that uphold the protection of life, legal certainty, justice, and the sustainability of the national health insurance system (Atho' Mudzhar, 2002). On this basis, the research questions addressed in this study are formulated as follows:

- a. How does the concept of *maslahah* in Islamic law view the practice of abortion, particularly under conditions justified by the *shari'ah*?
- b. How does a Law and Economics analysis assess abortion policy in relation to the efficiency of JKN financing and the fiscal burden borne by the state?

- c. How can the integration of the concept of *maslahah* with the Law and Economics approach serve as a basis for formulating abortion policy that protects life, ensures legal certainty, and supports the sustainability of Indonesia's JKN system?

II. Literature Review and Hypothesis Development

2.1. *Maslahah*, Necessity, and Abortion in Islamic Law

Both classical and contemporary *fiqh* scholarship consistently positions *hifz al-nafs* (the protection of life) as one of the five principal objectives of *maqasid al-shari'ah*. Accordingly, the default legal ruling on abortion is prohibition (*haram*), as affirmed by al-Zuhayli through the legal maxim *al-aslu fi al-dima' al-hurmah*. Through his theory of *maqasid* set forth in *al-Muwafaqat*, al-Shatibi maintains that this prohibition is not absolute because the objectives of the *shari'ah* are fundamentally oriented toward the realization of benefits and the prevention of harm (*jalb al-masalih wa dar'u al-mafasid*), thereby allowing exceptions under conditions of necessity (Al-Shatibi, 2003). Khallaf and al-Suyuti, respectively, articulate *usul al-fiqh* maxims that provide a legal-theoretical basis for such exceptions, namely *al-darurat tubih al-mahzurat* (necessity renders permissible that which is otherwise prohibited) and the principle of choosing the lesser of two harms when two harms conflict (Hallaq, 1992). This body of literature demonstrates that Islamic law provides a clear normative framework for permitting abortion under specific conditions of medical necessity. However, existing *fiqh* literature has not explicitly connected this framework of necessity with its implications for public health policy and healthcare financing. This limitation represents a gap in the existing scholarship that the present study seeks to address. Based on this review, the present study advances the proposition that the *shari'* threshold of necessity functions as a principal determinant of the legal legitimacy of abortion. Accordingly, the following hypothesis is proposed:

H1 : The greater the threat to the mother's life or the stronger the medical indication of an emergency pregnancy, the greater the *shari'* legitimacy for permitting abortion under the principle of *al-darurat tubih al-mahzurat*.

2.2. Law and Economics and Reproductive Health Policy

Within the Law and Economics tradition, Posner argues that a sound legal rule is one that generates social benefits greater than the costs it imposes, making efficiency a principal criterion for evaluating public policy (Posner, 2007). Cooter and Ulen further develop this argument by demonstrating that legal restrictions that are not accompanied by safe alternative services may encourage individuals to seek alternative or unauthorized options, thereby increasing overall social costs (Commons, 2024). This perspective is further supported by technical guidance from the World Health Organization, which indicates that restrictions on access to safe abortion services are associated with a higher incidence of unsafe abortion and related maternal health complications across different jurisdictions. Nevertheless, much of the existing Law and Economics literature is cross-jurisdictional and has not been extensively examined within the specific context of a *shari'ah*-informed national health insurance system such as Indonesia's. Therefore, this study examines the following proposition in the context of national abortion policy:

H2 : Restricting access to lawful abortion services without providing adequate reproductive health services is positively associated with the incidence of unsafe abortion and maternal health complications.

2.3. The Financing Burden of the National Health Insurance (JKN)

Scholarship on JKN, as discussed by Thabrany, indicates that the fiscal sustainability of the national health insurance system depends heavily on controlling the costs of cases that could potentially be prevented through appropriately designed preventive policies (Thabrany, 2015). Notoatmodjo likewise emphasizes that treating medical complications arising from unsafe health practices, including unsafe abortion, generally requires substantially higher healthcare expenditures than preventive services (Notoatmodjo, 2010). Law No. 17 of 2023 on Health also explicitly provides a legal basis for abortion services in cases involving medical emergencies and pregnancies resulting from criminal acts of sexual violence. This provision reflects regulatory recognition of the need to balance legal restrictions with access to appropriate healthcare services. However, existing health policy literature has not explicitly modeled the quantitative relationship between an increase in unsafe abortion cases and the corresponding magnitude of the fiscal burden on JKN. Accordingly, the following proposition is advanced as a conceptual bridge:

H3 : An increase in unsafe abortion cases is positively associated with an increase in the financing burden of the National Health Insurance (JKN), owing to the high costs of treating the resulting medical complications.

Drawing together these three bodies of literature, this study argues that abortion policies that explicitly integrate the principle of *maslahah* in Islamic law with the efficiency principle of Law and Economics are likely to produce more optimal policy outcomes than policies based on either principle alone. The principle of *maslahah* provides *shar'i* and ethical justification for access to emergency healthcare services (H1), while the Law and Economics approach provides an efficiency-based rationale for ensuring such access (H2 and H3). This integration is therefore conceptualized as a moderating factor that may weaken the relationship between restricted access to abortion services and the fiscal burden borne by the state:

H4 : The integration of the *maslahah* principle of Islamic law with the Law and Economics approach in abortion policy formulation moderates the relationship between restricted access to abortion services and the fiscal burden on JKN, such that policies integrating both principles are associated with a lower fiscal burden than policies relying solely on legal restrictions.

As this study employs a normative legal research design based on library research, Hypotheses H1–H4 are presented as theoretical propositions synthesized from the literature on *fiqh*, *maqasid al-shari'ah*, and Law and Economics. These propositions are intended to guide the analysis presented in the Discussion section and to provide a conceptual framework for empirical testing in future research.

III. Research Method

This study employs a normative (doctrinal) legal research method that focuses on analyzing the principles and norms of Islamic law and Indonesian positive law concerning abortion through the lens of the Law and Economics approach. A normative research design was selected because the object of inquiry comprises legal principles, concepts, doctrines, and statutory provisions governing the legality of abortion and its implications for National Health Insurance (Jaminan Kesehatan Nasional/JKN) policy and the financial burden borne by the state. The approaches employed in this study consist of three components: (1) a statutory approach, which is used to examine the provisions of Law No. 17 of 2023 on Health and its implementing regulations governing abortion services based on medical indications and for victims of criminal acts of sexual violence; (2) a conceptual approach, which is used to analyze the concepts of *maslahah*, *maqasid al-shari'ah*, and Law and Economics theory, particularly the concepts of efficiency, social costs, and cost-benefit analysis; and (3) a comparative approach, which is used to compare the views of *fiqh* scholars with Indonesian positive

legal policy in determining the circumstances under which abortion may be legally permitted. The legal materials used in this study consist of primary, secondary, and tertiary legal materials. Primary legal materials include the Qur'an, Hadith, statutory provisions concerning health and JKN, and relevant judicial decisions and policy documents. Secondary legal materials comprise books, scholarly journal articles, research findings, and the opinions of Islamic legal scholars, as well as literature on Law and Economics. Tertiary legal materials include legal dictionaries, encyclopedias, and other reference sources that support the interpretation and understanding of the terms and concepts employed in this study. Data collection was conducted through library research, involving a systematic review of legal documents, scholarly literature, and other relevant sources.

The identification and classification of legal materials were conducted thematically in accordance with the three principal issues addressed in this study: the concepts of *maslahah* and necessity in Islamic law, the Law and Economics analysis of reproductive health policy, and the fiscal implications of abortion policy for the administration of JKN. The legal materials obtained were analyzed qualitatively using descriptive-analytical and prescriptive methods. The descriptive-analytical method was employed to describe and analyze the legal provisions governing abortion and to assess their conformity with the principle of *maslahah* in Islamic law. The prescriptive method was then used to formulate recommendations concerning abortion policy based on the findings of the normative analysis and the Law and Economics perspective. In particular, the analysis evaluates the implications of abortion policy for the efficiency of JKN financing and the financial burden borne by the state. Through this analytical process, the study seeks to formulate policy recommendations that accommodate *shari'ah* values while simultaneously supporting the effectiveness and sustainability of the national health insurance system. The validity and reliability of the legal materials were maintained through source triangulation by comparing and cross-checking primary, secondary, and tertiary legal materials obtained from various sources. These sources include classical *fiqh* literature, theories of *maqasid al-shari'ah*, statutory provisions, and Law and Economics literature relevant to each of the study's principal themes. Where divergent views were identified among the sources, such differences were retained and explicitly presented in the Discussion section to maintain analytical transparency and strengthen the objectivity of the study.

IV. Result and Discussion

4.1. The Concept of *Maslahah* and *Usul al-Fiqh* Maxims Applied to Abortion

Under Islamic law, abortion is, in principle, prohibited because it conflicts with the objectives of the *shari'ah* (*maqasid al-shari'ah*), particularly *hifz al-nafs* (the protection of life) (Fentiningrum, 2021). The life of the fetus is regarded as a trust that must be protected. This principle is reflected in the following *usul al-fiqh* maxim:

الأصل في الذمائم الحُرْمَةُ

"The default ruling concerning human life is that it is prohibited to violate it."

This prohibition is not, however, absolute. Under conditions of necessity, such as when a pregnancy threatens the mother's life or when a specific medical condition makes continuation of the pregnancy medically untenable, some jurists permit abortion on the basis of the principle *al-darurat tubih al-mahzurat* (necessity renders permissible that which is otherwise prohibited), as expressed in the following maxim:

الضَّرُورَاتُ تُبَيِّحُ الْمَحْظُورَاتِ

"Necessity renders permissible that which is otherwise prohibited."

Furthermore, when two unavoidable harms conflict, the lesser of the two harms (akhaff al-dararayn) should be chosen, as reflected in the following maxim:

إِذَا تَعَارَضَتْ مُفْسِدَتَانِ رُوِيَ أَعْظَمُهُمَا ضَرَرًا بِأَرْثَرَا بَارِئَا بَارِئَا

"When two harms conflict, the greater harm is avoided by accepting the lesser harm."

In this context, preserving the mother's life takes priority when the pregnancy poses a genuine and substantial threat to her life. The concept of *maslahah* in Islamic law is therefore oriented not solely toward protecting the fetus but also toward safeguarding the mother's life and health as part of the objectives of the *shari'ah* (Al-Shatibi, 2003). This orientation is consistent with the following *usul al-fiqh* maxim:

دَرْءُ الْمَفَاسِدِ مُقَدَّمٌ عَلَى جَلْبِ الْمَصَالِحِ

"Preventing harm takes precedence over securing benefit."

This principle implies that state policy should prioritize preventing greater harm, such as maternal death and complications resulting from unsafe abortion, while continuing to protect fetal life within the limits established by the *shari'ah*. These findings provide conceptual support for H1, as the threshold of medical necessity functions as a substantive legal and normative condition for determining the *shari'ah* legitimacy of abortion rather than as an exception that may be applied without clear criteria.

4.2. Law and Economics Analysis of Abortion Policy

The Law and Economics approach holds that legal policies should generate social benefits that outweigh the costs they impose. In the context of abortion, restrictions that are not accompanied by adequate access to reproductive healthcare services may increase the incidence of unsafe abortion (Levine, 2004). Such circumstances may lead to health complications, increase maternal mortality, and raise healthcare costs that may ultimately be borne by the state through the National Health Insurance (Jaminan Kesehatan Nasional/JKN) system. Conversely, regulations that provide lawful access to abortion services based on valid medical indications may reduce social costs and improve the efficiency of healthcare expenditure (Cooter et al., 1988). From this perspective, the economic consequences of abortion policy extend beyond the immediate costs of abortion services to include the potential costs associated with treating complications resulting from unsafe abortion. These findings are consistent with the proposition formulated in H2, namely that restricting access to lawful abortion services without providing adequate reproductive healthcare services is positively associated with an increase in unsafe abortion and maternal health complications. However, within the context of this normative legal study, support for H2 remains conceptual rather than empirically established. The proposition is supported by the consistency between Law and Economics theory and relevant international health guidance, including WHO guidance, but it has not been directly verified through quantitative empirical data in the Indonesian context.

4.3. Implications for JKN Policy and the Burden on the State

JKN policy is intended to provide equitable health protection while maintaining the sustainability of national health financing. In practice, the treatment of complications arising from unsafe abortion may require medical care that increases the financing burden on JKN. Policies that prioritize safe reproductive healthcare services, prevent unintended pregnancies, and implement legal provisions governing abortion based on valid medical indications may therefore help contain the fiscal burden on the state. From the perspective of *maslahah*, such policies are also consistent with the objectives of the *shari'ah*, particularly the protection of life, the safeguarding of public health, and the realization of the common good (Arham et al., 2022). The

exercise of governmental authority in pursuit of the public interest is, in this respect, consistent with the following *usul al-fiqh* maxim:

تَصَرُّفُ الْإِمَامِ عَلَى الرِّعْيَةِ مُنَوِّطٌ بِالْمَصْلَحَةِ

"The ruler's exercise of authority over the people must be grounded in the public interest."

Accordingly, the government has a responsibility to formulate health policies that not only comply with positive legal provisions but also promote the public interest, protect human life, and maintain the sustainability of JKN financing. This maxim provides normative support for H3, namely that an increase in unsafe abortion cases is associated with an increase in the JKN financing burden. At the same time, it reinforces the state's responsibility to manage this fiscal risk through preventive policies grounded in *maslahah*.

4.4. Synthesizing *Maslahah* and Law and Economics

The concept of *maslahah* and the Law and Economics approach converge in their shared pursuit of social benefit. *Maslahah* emphasizes the protection and realization of the objectives of the *shari'ah*, whereas Law and Economics emphasizes efficiency and the reduction of social costs (Muhibbussabry et al., 2026). The two approaches differ primarily in their analytical foundations: *maslahah* is grounded in *shari'ah* values and the objectives of Islamic law (*maqasid al-shari'ah*), whereas Law and Economics is grounded in economic efficiency and social welfare. The integration of these two approaches suggests that abortion policy should be formulated in a proportionate manner, one that continues to safeguard religious values and the protection of life while also giving due consideration to economic impacts, public health, and the sustainability of the JKN system (Prasetya et al., 2023). Policies oriented simultaneously toward the protection of life and the efficient allocation of public resources are therefore better positioned to promote justice and the common good.

4.5. Synthesis of Findings in Relation to the Hypotheses (H1–H4)

The discussion presented in Sections 1 through 4 can be evaluated in relation to the theoretical propositions advanced in Section II. With respect to H1, which proposes that the threshold of medical necessity determines the *shar'i* legitimacy of abortion, the examination of the *usul al-fiqh* maxims *al-darurat tubih al-mahzurat* and *akha'f al-dararayn*, together with al-Shatibi's theory of *maqasid*, provides strong and consistent textual and conceptual support. H1 is therefore supported by the normative analysis. With respect to H2, which proposes that restricting access to lawful abortion services without adequate accompanying healthcare services increases the incidence of unsafe abortion, the Law and Economics analysis and relevant WHO guidance provide consistent theoretical support. However, because this study employs qualitative normative research based on library research rather than direct epidemiological data from Indonesia, support for H2 remains conceptual and has not yet been empirically verified in the Indonesian context. With respect to H3, which proposes that an increase in unsafe abortion cases increases the fiscal burden on JKN, the analysis of JKN policy, together with the maxim *tasarruf al-imam 'ala al-ra'iyyah manut bi al-maslahah*, demonstrates a clear normative alignment between the state's fiscal responsibility and the principle of *maslahah*. H3 is therefore supported at the normative and conceptual levels, although the precise quantitative magnitude of the resulting fiscal burden was not measured in this study.

With respect to H4, which proposes that the integration of *maslahah* and Law and Economics moderates the relationship between restricted access to abortion services and the fiscal burden on JKN, the synthesis presented in Section 4 demonstrates strong conceptual coherence between the two frameworks. However, none of the literature reviewed in this study directly measures this moderating effect empirically. Support for H4 is therefore conceptual only and represents an important direction for future empirical research. Taken as a whole, the discussion indicates that the normative and qualitative evidence examined in

this study provides the strongest support for H1 and H3, offers plausible but as yet unverified support for H2, and provides only conceptual grounding for H4. This pattern of findings is consistent with the exploratory and theory-building character of the research design described in Section III and underscores the need for further empirical or mixed-methods research capable of testing H2 and H4 more rigorously.

V. Conclusion

Based on the findings of this study, it can be concluded that the concept of *maslahah* in Islamic law positions the protection of life (*hifz al-nafs*) as a primary objective of the *shari'ah*. Accordingly, abortion is, in principle, prohibited, except under conditions of necessity recognized by both the *shari'ah* and positive law, particularly on the basis of the legal maxims *al-darurat tubih al-mahzurat* (necessity renders permissible that which is otherwise prohibited) and *dar'u al-mafasid muqaddam 'ala jalbi al-masalih* (preventing harm takes precedence over securing benefit). From the perspective of Law and Economics, abortion policies that provide lawful access to appropriate healthcare services may reduce the incidence of unsafe abortion, contain social costs, and improve the efficiency of National Health Insurance (*Jaminan Kesehatan Nasional/JKN*) financing. The integration of the principle of *maslahah* with the Law and Economics approach therefore provides a relevant foundation for formulating abortion policies that uphold *shari'ah* values, protect the lives and health of both mothers and fetuses within the limits established by law, and support the sustainability of healthcare financing and the effective management of public resources. As synthesized in Section IV.5, the findings of this study provide strong normative and conceptual support for H1 and H3, conceptual support for H2, and identify H4 as a theoretical proposition that requires further empirical testing. These conclusions have both theoretical and practical implications, as outlined below.

This study contributes to the literature by integrating *maqasid al-shari'ah* and Law and Economics into a unified analytical framework for understanding abortion policy. The framework explains how the *shari'i* threshold of necessity determines the conditions under which abortion may be considered legally permissible, how restrictions on access to lawful services may contribute to unsafe abortion, and how the resulting medical complications may increase the financing burden on National Health Insurance (*JKN*). Within this framework, *maslahah* and legal-economic efficiency function as complementary principles for evaluating abortion policy. The study also demonstrates that classical *usul al-fiqh* maxims can be analytically connected with Law and Economics principles in pursuing social welfare, minimizing harm, and promoting the efficient allocation of public resources. Methodologically, the study illustrates how normative legal research can generate explicit theoretical propositions that may serve as a conceptual foundation for subsequent empirical research. The findings suggest that policymakers and religious authorities should establish clear and transparent standards for determining emergency medical indications under which abortion may be legally permitted under both Islamic law and Indonesian positive law. The Ministry of Health and BPJS Kesehatan should also strengthen preventive reproductive healthcare services, including measures aimed at reducing unintended pregnancies and unsafe abortion, in order to minimize avoidable health complications and potential long-term expenditures borne by *JKN*. In addition, fatwa institutions and legal educators can draw upon the integration of *maslahah* and Law and Economics to develop ethical and policy guidance that balances legal legitimacy, protection of life, public welfare, and the sustainability of the national health insurance system. Future research should empirically examine the relationships proposed in this study using epidemiological data, *JKN* claims data, and other relevant healthcare financing data to assess the actual health and fiscal consequences of abortion policy in Indonesia.

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