

The Hermeneutics of Khālid Abū al-Faḍl Approach in Understanding the Ḥadīth about Abortion

Sitti Aisyah M

UIN Sunan Kalijaga Yogyakarta

E-mail: sittiaisyahmustafa@gmail.com

Abstract:

Every living being on earth has the right to life, including animals, plants, and particularly human beings, who play the role of God's khalīfah. In this context, the Qur'an and Ḥadīth emphasize the importance of preserving life, reason, religion, property, and lineage. Abortion, viewed as a grave act that denies the potential for life, remains a controversial issue, especially among women who may resort to it as a means of safeguarding their own lives. Although abortion is widely considered a crime, it continues to be a topic of ongoing discourse. This research aims to explore two key questions: 1) How does Khālid Abū al-Faḍl's hermeneutic approach interpret abortion? 2) What does the Prophet's ḥadīth say about the legality of abortion? This literature-based study employs a hermeneutic approach to analyze the ḥadīth related to abortion. Preliminary findings suggest that abortion, as condemned in the ḥadīth, refers specifically to actions taken after the soul has been breathed into the fetus, a point on which Islamic scholars agree in its prohibition. Those who perform abortion at this stage may be subject to a penalty equivalent to freeing a slave. While the reasons for abortion may vary among women, this decision inevitably carries psychological consequences, as it often presents a profound personal dilemma.

Keywords: hermeneutics, negotiation, ḥadīth, abortion, fines

INTRODUCTION

The debate surrounding abortion has attracted the attention of various groups, especially scholars. It is no longer a secret that our scholars hold differing views on the issue of abortion. When it was declared that abortion is "haram, except to save the mother's life," without further elaboration, especially regarding women's health rights, which include physical, mental, and social well-being, Muslims—particularly women—are faced with a difficult choice: there seems to be no option but to accept and adjust to this fatwa. However, at the end of 2005, the Indonesian Ulema Council (MUI) issued Fatwa No. 4 of 2005, allowing abortion in the case of rape, which is an example that perspectives on the same issue can change. This change in fatwa is a manifestation of the diverse views among scholars on the abortion issue, and further understanding of this matter is still required.

Abortion is a dilemma unique to women, as only women have the reproductive system and functions that enable them to become pregnant. Discussing abortion is essentially discussing issues related to women's lives. This is justified because

women are viewed as the primary actors in abortion, a reality that exists in society. In fact, no less than 2 million Indonesian women each year undergo abortion due to unwanted pregnancies.

A study by the UI Health Center and the Women's Health Foundation in 2003 found that 77% of women who had abortions were housewives with husbands, and only 12% were unmarried teenage girls. It was also found that most of these abortions were unsafe. Furthermore, in ASEAN, Indonesia has the highest maternal mortality rate. On abortion websites, it is stated that every year, 42 million women worldwide undergo abortion, and every 10 minutes a woman dies needlessly due to unsafe abortion. Nevertheless, the involvement of partners, families, and other parties in abortion decisions cannot be denied. The decision to undergo an abortion is sometimes influenced by external factors, such as pregnancy outside of marriage, where the sexual partner does not want to acknowledge the pregnancy. To cover up the shame and avoid personal embarrassment, the woman may choose the shortcut of abortion without considering the long-term impact on her own health.

In relation to this, Islam, as the true religion (ḥanīf) brought by Prophet Muhammad (PBUH), sent by Allah SWT as a mercy to the worlds (raḥmatan li al-'ālamīn), conveys a value of life that every living being has the right to enjoy life, whether animals, plants, or humans, who bear the title of God's khalīfah on earth. Therefore, Islamic teachings emphasize the preservation of five key elements: religion, soul, intellect, offspring, and property. Preserving these five elements is considered part of **al-maṣāliḥ al-ḥaqīqiyyah**.

To protect life and guard it from various threats means to preserve the existence of human life and the overall protection of the Muslim community. To realize this, Islam sets legal rules for those who commit murder. If the life of a Muslim is taken unjustly, the killer is subject to **qiṣās** (retaliation) or **diyyat** (blood money). From this statement, it is clear how valuable human life is in the eyes of Islamic law.

While there is no explicit text that directly forbids abortion, many traditions mention the prohibition of killing humans, including one narrated by al-Bukhārī in his book:

"The blood of a Muslim who bears witness that there is no god but Allah and that I am the messenger of Allah is forbidden to be spilled except for three reasons: retaliation for murder, a married person who commits adultery, and one who leaves the religion and abandons the Muslim community."

This hadith explicitly forbids the spilling of blood except in three circumstances, as mentioned above. Meanwhile, abortion is agreed upon as an act of killing a fetus that should have the right to experience life. Referring to this hadith, the understanding of the human being can be further understood through a hadith discussing the process of human creation:

"Indeed, each of you is created in his mother's womb for forty days, then becomes a clot for another forty days, then a lump of flesh for another forty days. Then, an

angel is sent to blow the spirit into him and is ordered to write four things: his provision, his lifespan, his deeds, and whether he will be wretched or blessed. By Him who has no god but He, one of you will continue to act like the people of Paradise until between him and it is only an arm's length, but the divine decree will precede and he will act like the people of Hell and enter it. And one of you will act like the people of Hell until between him and it is only an arm's length, but the divine decree will precede and he will act like the people of Paradise and enter it."

Referring to the message of the above hadith about human creation, which includes both physical and spiritual elements, the point where Allah SWT creates a new element—the spirit—into the fetus becomes a matter of debate, both in fiqh and science. The news of the soul being breathed into the fetus is based on a narration from the Prophet Muhammad (PBUH) that the soul is blown into the fetus after 120 days, which marks the completion of the fetus's creation. Abortion at this stage, after 120 days of pregnancy, is agreed upon as haram by scholars. However, there are differences of opinion regarding abortion before reaching 120 days. These differences can be classified into three categories: First, those who say it is haram at every stage of human development; second, those who permit it at every stage; and third, those who permit it at some stages but forbid it at others.

With the advancement of time, reinterpretation or reexamination of hadith is necessary to adapt to various situations and conditions. Therefore, debates regarding the supporters and opponents of abortion, both philosophically and normatively, are ideological battles over the interpretation of the human body. The Islamic prohibition of abortion should not be seen merely as a ban without considering the philosophical arguments behind it regarding life and death.

Today, intellectuals have introduced a hermeneutic approach to understanding a text. In line with this, the author chooses the hermeneutics of Khālid Abū al-Faḍl, known as "negotiated hermeneutics." In the author's view, the analytical framework offered by Khālid Abū al-Faḍl can effectively address the issue of abortion using his triadic negotiated hermeneutics, where understanding a text involves a dialectical relationship between the text, the reader, and reality (which includes various disciplines, traditions, civilizations, and so on). While the emphasis in this triadic theory is on the reader, as they continuously experience dynamic changes, these changes are ultimately rooted in the surrounding context.

As far as the author has found, studies on abortion have been plentiful, but they tend to focus more on medical, normative, and legal aspects. Therefore, in this work, the author attempts to present a new direction for research by applying the negotiated hermeneutics theory of Khālid Abū al-Faḍl.

Literature Review

Powell (2013) comments on Khālid Abū al-Faḍl as a scholar who critiques classical fiqh and advocates for the reorganization of Islamic tradition by applying a new hermeneutics, particularly for the Qur'an. According to Powell, Khālid Abū al-Faḍl

has an advanced historical approach in understanding sacred texts. Ijtihad must continue to explore the progressive aspects of Sharia. The Sharia that comes from Allah is without flaw (*mutlaq*), but when understood by humans, Sharia is not perfect and remains relative (*muqayyad*). Jurisprudence scholars must continually explore the ideals of Sharia and articulate their imperfect efforts in understanding Allah's perfection. In Khālid Abū al-Faḍl's view, as long as the arguments presented are normative, they will not achieve the Divine Will. Significantly, any laws applied are always incomplete in their realization. Sharia is not just a collection of *aḥkām* (positive rules) but also a set of principles, methodologies, and discursive processes seeking the Divine ideals. Therefore, Sharia is a (system) of ongoing work that is never finished. Concerning tolerance, Abou El Fadl proposes a theology rooted in an advanced understanding of the Qur'an, Sunnah, *fiqh*, and Islamic history. The core of his argument is that while traditional approaches to questions of equality, religious freedom, and peace may legitimize oppressive methods, today, this does not have to be the case. In fact, to the extent that moral ideals such as compassion and forgiveness are central to Islam, they must be reflected institutionally, even though this has not always historically occurred. Duderija (2015) asserts that in the context of Islamic law, Khālid Abū al-Faḍl has convincingly shown how the authoritarian hermeneutics (distinct from authoritative) of contemporary Saudi male scholars has produced an authoritarian and degrading Islam that oppresses women. In this context, male Saudi scholars have been criticized for failing to recognize the complex and nuanced relationship between the author, text, and reader in "determining meaning" from God's indicators. Thus, this hermeneutics has been flawed because it equates the author's intentions with the reader's, violating the principles inherent in the Qur'anic *Weltanschauung* and its ethical-religious foundations. Duderija (2015) also finds the same issues in the works detected by Khālid Abū al-Faḍl.

Slater (2017) reveals that Khālid Abū al-Faḍl is a scholar who employs an unconventional (queer) approach in Islamic studies. Using the field of Sharia as an example, Slater explains that Khālid Abū al-Faḍl emphasizes the non-finality of procedural aspects and the importance of the contextual nature of legal products. This then opens opportunities for other areas outside of Sharia, such as contemporary norms regarding identity, society, and Muslim performance, where Islamic law is positioned as a significant holder of legal and social authority. Hammer (2015) mentions that Abou El Fadl argues that past works on the Qur'an and Islamic law are products of the time in which they were written. Similar to Fazlur Rahman's view, efforts to recognize the eternal and universally relevant sources of Islamic teachings are necessary for all times and places. The works that emerge are ideas and discourses determined historically and thus limited to certain periods. Abou El Fadl advocates for what he calls a "conscientious pause" in approaching the Qur'an, meaning that there may be a recognition that certain parts of the Qur'an, at least on the surface, may conflict with the values of the reader and thus their conscience, which would require the reader to pause and perhaps follow their conscience, rather than simply following the surface-level message of the text.

METHOD

This article employs a literature review approach to analyze and explore the hermeneutical approach of Khālid Abū al-Faḍl in understanding hadiths related to abortion. The methodology involves referring to a range of works, both written directly by Khālid Abū al-Faḍl and by researchers and scholars who have examined his thoughts and writings. These works encompass those directly related to Islamic law and fiqh, as well as those that address broader hermeneutical theory and its application to Islamic sacred texts.

The analysis begins with the identification and collection of primary writings by Khālid Abū al-Faḍl, including books, articles, and essays that contain his thoughts on hermeneutics and its application to the interpretation of religious texts. Following this, the article examines how Abū al-Faḍl develops a hermeneutical methodology that not only focuses on the text itself but also considers the historical and social context surrounding it. This understanding is deemed important in responding to challenges in Islamic law, particularly in contemporary issues like abortion.

Additionally, while analyzing the influence of Abū al-Faḍl's hermeneutical approach on the understanding of Islamic law, this article also takes into account critical interpretations and perspectives from scholars who have analyzed this approach. Discussions on broader hermeneutical theories, such as the distinction between authoritarian and authoritative hermeneutics critiqued by Duderija (2015), become crucial in evaluating how Abū al-Faḍl's approach offers an alternative in understanding religious texts more inclusively and adaptively to the context of modern times. The article also explores how his views create space for pluralism and tolerance in interpreting Islam, which is highly relevant for addressing social ethical issues like abortion.

Therefore, this literature review aims to delve deeper into the hermeneutical methodology proposed by Khālid Abū al-Faḍl and how his thinking can contribute to the development of a more dynamic and contextual Islamic law, especially in dealing with complex contemporary issues.

RESULTS AND DISCUSSION

Brief Biography of Khālid Abū al-Faḍl

Khālid Midḥat Abū al-Faḍl, commonly known as Khaled Abou el-Fadl, was born in 1963 in Kuwait. His father was Midḥat Abū al-Faḍl, and his mother was 'Afāf al-Nimr. Like most Arab families, Khaled was raised in an Islamic environment where he was introduced early on to Islamic studies, including the Quran, Hadith, Arabic language, Tafsir, and Sufism. As a young boy, he was known for his intelligence. By the age of 12, he had already memorized the Quran. In addition to attending Quran and Sharia classes at a local mosque in his neighborhood, Khaled spent time reading the books of his parents, who were both lawyers.

In his youth, Khaled was initially an activist within the Wahhabi movement, which was the dominant ideology in Kuwait. However, he later decided to move to Egypt after recognizing the contradictions and critical issues within the ideological framework of Wahhabism. He received his B.A. from Yale University in the United States in 1986. He continued his education at the University of Pennsylvania, graduating in 1989. In 1999, he pursued advanced studies at Princeton University specializing in Islamic Studies while simultaneously studying law at the University of California, Los Angeles (UCLA).

At UCLA, he was appointed as a professor of Islamic Law, teaching courses on Islamic law, immigration, human rights, and national and international security law. In addition to his work at UCLA, Khaled also taught Islamic law at the University of Texas and Yale University. Besides his academic endeavors, Khaled was heavily involved in human rights advocacy, defending the rights of immigrants, and leading a human rights organization in the United States. Between 2003 and 2005, he was appointed by President George W. Bush to serve on advisory boards related to human rights and freedom of religion.

Among his numerous published books are *Speaking in God's Name: Islamic Law, Authority and Woman*, *Rebellion and Violence in Islamic Law*, *And God Knows the Soldiers: The Authoritative and Authoritarian in Islamic Discourse*, *The Authoritative and Authoritarian in Islamic Discourses: A Contemporary Case Study*, *Islam and the Challenge of Democracy*, *The Place of Tolerance in Islam*, *Conference of Books: The Search for Beauty in Islam*. These works, many of which have been translated into Indonesian, reflect his critical thinking and progressive stance on Islamic jurisprudence and law.

Despite his busy academic schedule, Abou el-Fadl is frequently invited to speak at seminars, symposiums, workshops, and on television and radio talk shows such as CNN, NBC, and VOA, where he discusses issues related to authority, terrorism, tolerance, and Islamic law. He has also served as the director of Human Rights Watch and as a member of the U.S. Commission on International Religious Freedom.

His intellectual journey has been largely shaped by his concern with the authoritarian nature of fatwa institutions. One of the institutions he critiqued was the *Council for Scientific Research and Legal Opinions* (CRLO) in Saudi Arabia, which he viewed as issuing irrational and biased fatwas, particularly those related to women's rights. This institution, in his view, discriminated against women's public rights, making it one of the primary subjects of his research. Through his scholarship and activism, Abou el-Fadl has sought to challenge such authoritarian structures within Islamic jurisprudence, advocating for a more nuanced and progressive understanding of Islamic law and its applications.

Hadith Hermeneutics of Khaled Abou el-Fadl

Hermeneutics is fundamentally a method or approach for interpreting symbols in the form of texts or anything treated as a text, in order to seek its meaning and significance. The discipline of hermeneutics originated in the West, emerging from

Christian theological roots, which has made it challenging to be fully accepted within Islamic discourse. Contemporary Muslim intellectuals have expressed skepticism towards Western concepts of relativism and anti-establishment views, as well as what they perceive as a methodology that does not honor the sacredness of religious texts.

Despite these concerns, several Muslim scholars have employed hermeneutic methods in Islamic studies, including the interpretation of the Qur'an, the authentication and understanding of hadith, making the term "hermeneutics" no longer solely an outsider concept but one also embraced by Muslim scholars themselves (insiders). This has led to the formulation of specific methodologies, with names such as Fazlur Rahman, Mohammad Arkoun, Nasr Hamid Abu Zayd, Hassan Hanafi, Abdullah Saeed, Aminah Wadud Muhsin, and Khaled M. Abou el-Fadl among those at the forefront of this intellectual shift.

Initially, the hermeneutics advocated by Abou el-Fadl was used to critique the authoritarian hermeneutics of fatwa commissions in the Middle East. According to him, these fatwas undermined God's authority by limiting the roles of God and the text, tightly sealing the texts so that no space for a dialogical interaction could exist between the text, God, and the reader. In contrast, Abou el-Fadl's hermeneutics places these three elements—text, God, and reader—as core components in the interpretive process.

In Abou el-Fadl's view, the Sunnah represents a corpus of unwritten narratives encompassing the actions, history, and sayings (hadith) of the Prophet. This understanding of Sunnah contrasts with the traditional Islamic scholars' definition, which usually includes five aspects: the sayings, actions, approval, traits, and lifestyle of the Prophet. Abou el-Fadl identifies two forms of Sunnah: one as an oral tradition that reflects the living practices of early Muslim societies and the other as a written form where hadiths are recorded, no longer evolving but documented in a structured manner. Therefore, he distinguishes between the term *Sunnah* as a broader collection of the Prophet's behaviors, conditions, and sayings, and *Hadith*, which he views as specifically referring to the recorded sayings of the Prophet.

Abou el-Fadl acknowledges that the concept of authorship in the hadith tradition is more complex compared to that of the Qur'an. Hadith underwent a long historical development, and as a result, the content of hadith reflects the socio-political dynamics of the period following the Prophet's death. Thus, the hadiths are not merely divine instructions but products of historical processes.

One fundamental contribution that Abou el-Fadl offers in the study of hadith is the necessity of engaging with historical realities by critically examining the text (matn) and analyzing its socio-historical context, which allows for its contextualization in contemporary times. Additionally, he emphasizes that reading hadiths is not simply about understanding what the Prophet said, but understanding the role the Prophet played in the narration of a particular hadith. For Abou el-Fadl, the focus should not be merely on the literal words of the hadith

but rather on understanding the circumstances that led the Prophet to speak those words.

Given the complexities involved in compiling hadiths, Abou el-Fadl argues that there must be a reinterpretation of hadith. He proposes the necessity of establishing meanings for the hadith. The process of establishing meaning is not only about interpretation but also about determining the “application” of the authoritative texts. Thus, interpretation is not merely an effort to understand the meaning of a word or expression but also the way to apply that meaning. Abou el-Fadl calls this deeper process “the establishment of meaning” concerning the authoritative texts, in this case, the hadith.

He emphasizes that the establishment of meaning is the result of an interaction between the author (the Prophet), the text (hadith), and the reader. This implies that the meaning should emerge from a balanced and negotiated process among these three elements, without one party dominating the determination of meaning. As he asserts:

“I argue below that meaning should be the product of the interaction of author, text, and reader that there should be a balancing and negotiating process between the three parties, and that one party ought not to dominate the determination of meaning.”

The process of this “negotiative hermeneutics” can be applied through several practical steps. The first step is understanding the text, also known as representation. This means recognizing that the text has its own linguistic rules, does not carry the author’s intention, is autonomous, and is open to interpretation. The second step is testing the authenticity (competency) of the text, especially in the case of hadith, which must be examined for its authenticity. The third step involves establishing the meaning of the text by tracking the author’s original intention, understanding the meaning community surrounding the text, grasping the moral message of the text’s universality, analyzing assumptions within the interpretive community, and examining the overall evidence related to the text. The final step is separating the interpreter’s subjectivity from the text’s meaning.

The diagram of triadic negotiative hermeneutics illustrates the steps involved in the process of interpreting a text, especially the Qur’an and hadith. Based on this, the author concludes that Khaled Abou el-Fadl’s approach to hadith hermeneutics, known as negotiative hermeneutics, involves understanding issues through the dialectical interaction of the text, reader, and reality. While negotiative hermeneutics places more emphasis on the reader, it does not exclude the other two elements—text and reality. The reader takes on a more significant role because the reader is the one who experiences the dynamic changes shaped by the surrounding circumstances. Indirectly, this emphasizes the human limitation and thus Abou el-Fadl sets boundaries to prevent arbitrary interpretations.

This framework of negotiative hermeneutics offers a balanced, context-sensitive, and dynamic approach to understanding the texts, ensuring that interpretations

remain relevant and aligned with contemporary issues while respecting the sacredness of the texts themselves.

Understanding Abortion and Its Types

The word "abortion" comes from the English term *abortion* and the Latin term *abortus*, which etymologically means miscarriage or the termination of pregnancy. In Arabic, abortion is called *ijhād*, which means to drop, discard, throw, or remove. According to the *Kamus Besar Bahasa Indonesia* (Indonesian Dictionary), abortion is defined as: 1) The expulsion of an embryo that cannot survive (before the fourth month of pregnancy); miscarriage or stillbirth. 2) The cessation of normal growth (for living beings). 3) The termination (of a fetus).

Sardikin Ginaputra, as quoted in Idrus (2017), from the Faculty of Medicine at the University of Indonesia, defines abortion as the termination of pregnancy or conception before the fetus can live outside the womb. Meanwhile, Maryono Reksodipura from the Faculty of Law at the University of Indonesia defines abortion as the expulsion of conception from the uterus prematurely (before it can naturally be born).

Islamic law experts use several terms to refer to the act of abortion, such as *isqāt*, *ijhād*, *ilqā*, *taiḥ*, and *inzāl*. These five terms have similar meanings, referring to the expulsion of the fetus from the womb before it reaches its full development.

The term *al-isqāt* refers to the act of a woman expelling her fetus between the fourth and seventh month of pregnancy. The root of this term is *al-wuqū'* (miscarriage or dropping), meaning the expulsion of the fetus before it reaches maturity. *Al-ijhād* means *al-izlāq* (slipping). In Arabic, if it is said *ajḥadat al-nāqat ijhādan*, it means that the female camel expelled its fetus before it reached maturity, referring to the expulsion of a fetus from the womb before it reaches four months of age.

The term *ilqā'* means *al-tarḥ* (throwing or discarding). This term is used more generally and could apply to the act of discarding or expelling a fetus before it reaches maturity, which can be expressed as *ilqā' al-janīn* (throwing the fetus). The term *taiḥ* comes from *tāḥa-yatīḥu*, meaning *halaka* (destroy or perish). In its application, it can mean to destroy or perish, fall, or drop. Lastly, the term *inzāl* comes from *anzala-yunzilu*, with the root word *nazala*, meaning to descend, fall, or drop. Based on these explanations, one of these five terms may be used to refer to abortion.

From the various definitions above, the author concludes that abortion is a deliberate action to terminate a pregnancy that is not yet viable for life, or the expulsion of the fetus from the womb through certain actions before the pregnancy has reached full term, whether the fetus is alive or dead, before it can survive outside the womb.

Types of Abortion

From a Medical Perspective

In medical terms, abortion is distinguished into two types: spontaneous abortion and induced abortion.

1. **Spontaneous Abortion**
Spontaneous abortion is an abortion that occurs without any intentional external intervention, caused purely by natural factors. This type of abortion can occur due to poisoning, accidents, shock, physical impact, or illnesses experienced by the mother, such as smallpox, syphilis, and diabetes. However, the most dominant cause (50-60%) is the defect in the embryo, whether it is the egg or sperm that is imperfect. Therefore, spontaneous abortion happens naturally and is beyond the individual's ability to prevent.
2. **Induced Abortion**
Induced abortion, on the other hand, occurs intentionally and can be further divided into **therapeutic abortion** and **criminal abortion**.
 - **Therapeutic abortion** is an abortion carried out by a doctor based on medical indications. This type of abortion is performed to protect the mother's health, whether physical or mental. For example, when a pregnancy poses a danger to the mother's life due to severe diseases like tuberculosis or kidney disease.
 - **Criminal abortion** refers to an abortion performed without medical grounds. This type is often done by individuals seeking to terminate a pregnancy resulting from an extramarital affair, or to end an unwanted pregnancy due to economic reasons, or other personal issues. While many people oppose criminal abortion based on ethical considerations, in some countries it is allowed and practiced.

Abortion, especially when performed for reasons not related to health or well-being, raises significant ethical and legal concerns, with various countries having different regulations regarding its permissibility.

From the Perspective of Fiqh

1. **Spontaneous Abortion (al-isqāt al-ẓātī)**
This type of abortion occurs naturally, without any external influence, meaning the fetus expels on its own. Most spontaneous abortions are caused by chromosomal abnormalities, although some are due to infections, uterine issues, or hormonal imbalances.
2. **Abortion Due to Emergency or Medical Reasons (al-isqāt al-ḍarūrī)**
This occurs when an abortion is performed due to physical risks to the mother's life. In such cases, it is deemed more acceptable to sacrifice the fetus in order to save the mother's life.
3. **Accidental Abortion**
This type of abortion occurs due to an unforeseen or accidental event. For example, a police officer, in pursuit of a criminal amidst a crowd, might accidentally shoot a pregnant woman, leading to a miscarriage. Another

example from history involves Umar ibn Khattab, who once called upon a pregnant woman to settle a debt issue, and on her way to meet him, she became anxious and miscarried.

4. **Abortion Resembling Intentional Action**
In cases where a pregnant woman is attacked, such as by her husband, which causes a miscarriage, this is seen as "resembling intentional abortion" since the attack was not directed at the fetus but at the mother. In this case, the aggressor is subjected to legal punishment according to fiqh.
5. **Planned and Deliberate Abortion (al-'amd)**
This involves a conscious effort to terminate the pregnancy, such as when a woman takes abortion pills or consults a doctor or practitioner to end the pregnancy. This type of abortion is usually considered more controversial and is scrutinized under Islamic law.

The categorization of abortion types provided by the medical field helps in distinguishing between dangerous and permissible abortions, especially in emergency situations.

Hadith and the Explanation Regarding Abortion

Through research, no specific hadith uses the exact term *abortion*. However, several hadiths are cited to support the prohibition of abortion, emphasizing the sacredness of human life. The key foundation for these prohibitions is the sanctity of life and the preservation of each human being's existence as outlined in Islamic teachings.

1. **Hadith on the Sanctity of Life**
One narration states:

"The blood of a Muslim who bears witness that there is no god but Allah and that Muhammad is the messenger of Allah is not lawful to be spilled, except in one of three cases: life for life, a married adulterer, or someone who leaves the religion and abandons the community."

This hadith forbids the killing of a Muslim who acknowledges the oneness of Allah and the prophethood of Muhammad, except in the above-mentioned cases. Although this hadith does not specifically mention abortion, it implies that life is sacred, and there is no justification for killing except under the mentioned circumstances, which would include abortion as an unlawful act unless under specific conditions.

2. **Qur'anic Verse on the Protection of Life**
The Qur'an also emphasizes the prohibition of killing children, stating in Surah al-Isra (17:31):

"And do not kill your children for fear of poverty. We provide for them and for you. Surely, killing them is a heinous sin."

This verse clearly forbids the killing of children, and abortion is considered a form of killing a child, even if the child is still in the womb. Life is protected, and the soul is believed to be instilled in the fetus after 120 days (approximately 40 days in each stage: *alaqah* (clinging), *mudghah* (chewed lump), followed by the *ruh* or soul being breathed into the fetus by an angel).

3. Hadith Regarding the Stages of Fetal Development

Another hadith describes the stages of human development inside the mother's womb, narrated by Abdullah bin Mas'ud:

"The creation of one of you is gathered in the womb of his mother for forty days, then it becomes a clot for another forty days, then it becomes a lump of flesh for another forty days. After that, the angel is sent to breathe the soul into him and is commanded to write four things: his sustenance, lifespan, actions, and whether he will be blessed or wretched."

This hadith indicates that the fetus is not fully formed or considered a fully living being until after the soul is breathed into it, typically at 120 days. Abortion before this point is a subject of debate, but after this, the fetus is considered to have life and is thus regarded as a living human being.

Based on these teachings, abortion is generally prohibited in Islam, except in specific cases such as when the mother's life is at risk or other extreme situations as outlined in *fiqh*.

Al-'Uthaymīn in his book *Sharḥ Riyāḍ al-Ṣāliḥīn* explains that when a man has sexual relations with his wife and places semen in her womb for 40 days, the semen changes and becomes reddish until the 40th day. When it reaches 40 days, it has turned completely red and becomes a clot of blood, which is called 'alaqah. Then this clot of blood solidifies and hardens over a period of 80 days. After 80 days, the clot of blood is fully formed and is called *mudghah* (a lump of flesh), and it continues to be shaped for 40 more days (from days 81-120). Once this period has passed, Allah sends an angel to blow the spirit into it.

Meanwhile, al-Khūḍayr in his book *Syarḥ al-Muḥarrir fī al-Ḥadīṣ* explains that the meaning of "ثم يرسل إليه الملك" (then the angel is sent to him) refers to the point when these three stages are completed, i.e., the first 40 days, the second 40 days, and the final 40 days, reaching 120 days. At that point, the angel is sent to blow the spirit into the fetus, and when the spirit is blown in, the divine decrees are also established.

Based on this explanation, it can be understood that when the fetus reaches 120 days, Allah sends an angel to blow the spirit into it, signaling that the fetus is alive. Therefore, when someone who has been pregnant for 120 days then performs an abortion, it is considered an act of child murder.

Another hadith discusses the punishment for those who perform an abortion:

“Yahya bin Yahya reported to us, saying: I read before Malik from Ibn Shihab, from Abu Salamah, from Abu Huraira, that two women from the Huzail tribe fought, and one of them struck the other in a way that caused the fetus to miscarry. The Prophet (peace be upon him) then gave a ruling in the matter, ordering the freeing of a slave, male or female, as compensation.” (Narrated by Muslim)

Based on the understanding of scholars of hadith regarding abortion, this act is clearly categorized as a major sin and a criminal act. The perpetrator is required to pay *diyat ghurrah*, which involves freeing a slave (male or female), whose value is equivalent to the *diyat* of ten complete human lives.

Here, it is clear that the welfare of the mother’s life is prioritized over the life of the fetus, because the mother is the source and pillar of the family. With Allah's will, the mother can give birth multiple times, so the fate of the mother takes precedence over that of the fetus.

Indonesian scholars hold the view that abortion is haram except in cases of necessity that must be performed to save the life of the mother. This is because in such situations, Islamic law permits violating the least harmful option. If there is no other solution than to terminate the pregnancy to save the mother’s life, abortion may be permissible.

Wahbah az-Zuhaili states that scholars are in agreement that abortion is haram without a valid excuse after the fourth month, that is, after 120 days of pregnancy.

A Muslim is not allowed to perform an abortion because it constitutes a criminal act against a living being. Therefore, the perpetrator will face *diyat* (compensation) if the fetus is born alive and a different financial penalty if the fetus is born dead.

Thus, based on the explanation from the scholars through the context of hadith mentioned above, it is clear that deliberately performing abortion after the 4th month is haram. However, abortion is permitted if there is a valid reason and it is carried out with medical authorization.

Analysis of Khaled Abou el-Fadl’s Hermeneutical Application

In the final part of this discussion, the author attempts to apply Khaled Abou el-Fadl's theory of *negotiated hermeneutics* to address the issue of abortion. As discussed earlier, the core of the hermeneutic approach offered by Abou el-Fadl is not merely to “find the meaning of the text” as in typical hermeneutics, but also to uncover the interests of the author or reader behind the text and offer strategies for controlling the arbitrary actions of the reader so that they do not fall into authoritarianism.

The first step proposed by Khaled Abou el-Fadl is an open interpretation of the text, in this case, the hadith mentioned earlier regarding the creation of humans. The second step is to examine the authenticity of the text, confirming that the

hadith about abortion is *ṣaḥīḥ* (authentic), and the final step is the determination of meaning, where the negotiation process, as Abou el-Fadl refers to it, occurs.

Based on the hadith about the creation cycle, as narrated by the Prophet Muhammad (peace be upon him), and the hadith about the prohibition of taking a Muslim's life except in three circumstances—murder, adultery (after marriage), and apostasy—it can be concluded that abortion, which is the termination of a fetus, is haram (forbidden) because it is akin to murder, with a very severe penalty. As the Prophet Muhammad (peace be upon him) stated in a narration, "One day, a companion came and reported that two women were quarreling, and one of them, who was pregnant, was struck by the other woman, resulting in the miscarriage of the fetus. The Prophet Muhammad (peace be upon him) then gave the judgment of 'gurrah,' which means the freeing of a slave."

Thus, Islam firmly establishes the prohibition of abortion, including anyone involved in carrying out, assisting, or permitting abortion. However, there are exceptions, such as if abortion is performed before the spirit is breathed into the fetus (*naḥkh al-rūḥ*), and after the spirit has been breathed in, abortion is permissible only under certain circumstances: (1) for medical reasons, such as to save the mother's life, and (2) other reasons permitted by Islamic law. This is the negotiation process that Abou el-Fadl refers to—while the original ruling on abortion is haram, there are exceptions in certain valid cases.

In the author's view, although there is a permissive element, considering the crowded world and its injustices, along with the prevalence of free sex which has become common, the issue of abortion should not only be viewed through the lens of law and normative aspects. It should also involve cultural values and societal norms. In Eastern societies that adhere to Eastern values and structures, humans are seen as interconnected and form a communal society. Before an abortion takes place, it is preceded by an unwanted pregnancy, whether through consensual relations, which contradict normative Eastern standards, or due to an act of violence such as rape.

Therefore, law, in the context of anthropology, is a product of culture—it reflects the values and norms of the society. In this regard, whether abortion is allowed or prohibited depends on the cultural norms of the society. In countries such as the Netherlands and Canada, where cultural norms permit abortion, it may be legalized. In other societies with different cultural norms, abortion may be prohibited.

Looking deeper, the norms that prevail in Eastern cultures essentially align with the Islamic principle that prevention is prioritized. Therefore, it is more important to prohibit abortion, because permitting it would provide an opportunity for adultery and free sex.

CONCLUSION

The prohibition of abortion in Islam is emphasized when the pregnancy reaches 4 (four) months, which is when the spirit is breathed into the fetus. For fetuses under 4 months, scholars differ in their opinions. This is a *khalāfiyah* (disputed) issue. However, based on our understanding, the stronger opinion is that abortion after 40 (forty) days or 42 (forty-two) days of pregnancy, when the formation of the fetus begins, is haram. Whereas abortion before 40 days is allowed (*jā'iz*) and permissible, but it must be accompanied by valid religious reasons and medical authorization.

As a conclusion from the application of Khaled Abou el-Fadl's theory of *negotiated hermeneutics*, the author draws the conclusion from the pro and con arguments regarding abortion—abortion cases in legal frameworks should not be viewed through a narrow perspective. Abortion should also be viewed in terms of the cultural values prevailing in society. It is not just about whether it is allowed or not, but the society that determines whether it aligns with the cultural normative standards prevalent in the community.

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