

Navigating Islam and Human Rights: Examining Women's Right to Refuse Pregnancy in Indonesia

Erfaniah Zuhriah

State Islamic University Maulana Malik Ibrahim Malang, Indonesia

Email : erfa@syariah.uin-malang.ac.id

Nur Alfy Syahriana

State Islamic University Maulana Malik Ibrahim Malang, Indonesia

Email : nuralfsyahriana@gmail.com

Zezen Zainul Ali

Sunan Kalijaga State Islamic University Yogyakarta, Indonesia

Email : zezen.uje@gmail.com

Abstract

The purpose of this study is to examine whether women have the right to refuse pregnancy. This idea is an Islamic jurisprudence initiated by KH. Husein Muhammad, an Indonesian feminist scholar. This study analyzes the reasons for the emergence of Husein Muhammad's thoughts and provides constructive criticism. The article argues that in Indonesian society, married couples are always required to have children in their marriage. This demand leaves women with no opportunity to bargain over their position as bearers of the reproductive function, and even forces them to become pregnant. In contrast, Islam strongly upholds the interests and justice for women. By using a qualitative approach and literature, as well as data obtained by collecting references and documentation in accordance with the research theme, it was found that Husein Muhammad's concept of women having the right to refuse pregnancy was influenced not only by the meaning of the text but also by the externalization of thoughts that arose as a result of the process of interaction and dialectics with the people around him. The objectivation process is carried out in the process of Husein Muhammad's self-interpretation of the knowledge that has been obtained, shaped by his history of studying women's issues. Husein Muhammad based his thoughts on Islamic principles, namely justice, deliberation, equality, and peace. Therefore, the right to refuse pregnancy can be categorized as a natural right in human rights. However, the right is still bound to other aspects and is not fully applicable.

Keywords: *Women's Rights, Women's Perspectives, Islamic Legal Construction, Discrimination, Husein Muhammad*

I. INTRODUCTION

A woman as a wife has the right to refuse pregnancy in her marriage.¹ This argument arose after the rise of the childfree phenomenon in Indonesia.² Childfree is an option to not have children in a marriage. In the social context of Indonesian society, it certainly sounds strange because married couples are always required to have children in their marriage.³ This demand leaves women with no opportunity to bargain over their position as bearers of the reproductive function. This is due to the assumption that having many children makes life happier and that children are one of the factors of satisfaction in marriage.

These cultural beliefs stand in contrast to Husein Muhammad's opinion, in which a woman (wife) has the right to refuse pregnancy. This opinion follows the provisions of Article 4 of Law No. 39/1999 on Human Rights which states that everyone has the right to freedom of person, thought, and conscience. In addition, it is also following Article 75 paragraph (2) of Law No. 36/2009 on Health which regulates the right to refuse or eliminate pregnancy through abortion, but with several conditions that must be met. This idea aims to guarantee women's reproductive rights. This is due to the high maternal mortality rate (MMR) during pregnancy.⁴ Therefore, Husein Muhammad's thoughts on women's right to refuse pregnancy are interesting to study. Hussein Muhammad is not the only figure who argues that women have the right to refuse pregnancy. Even Jamal Hakim, Managing Director of Marie Stopes Australia, went so far as to say that everyone has the right to autonomy over their bodies, including women's right to refuse pregnancy.⁵ These ideas emerged in response to social inequalities where pregnancy and motherhood were considered women's duties and a major barrier to women's careers.⁶

However, Husein Muhammad's thoughts on the right to refuse pregnancy are more centred on the Islamic aspect, namely *mashlahah*, not only on the perspective of human rights. Women's reproductive rights are related to the controversy of women's reproductive authority in controlling their bodies, sexuality, and reproductive organs

1 Husein Muhamad, *Fiqh Perempuan: Refleksi Kiai atas wacana Agama dan Gender* (Yogyakarta: LKiS Pelangi Aksara, 2001).

2 Uswatul Khasanah & Muhammad Rosyid Ridho, "Childfree Perspektif Hak Reproduksi Perempuan dalam Islam" (2021) 3:2 Al-Syakhshiyah J Law Fam Stud 104-128.

3 Tiara Hanandita, "Konstruksi Masyarakat Tentang Hidup Tanpa Anak Setelah Menikah" (2022) 11:1 J Anal Sociol.

4 Ketut Suarayasa, *Strategi Menurunkan Angka Kematian (AKI) di Indonesia* (Yogyakarta: Deepublish, 2020).

5 Melissa Davey, "Why is it such a scandalous thing?: the women who have to fight for their right to be child-free", (1 August 2021), online: *The Guardian* <<https://www.theguardian.com/society/2021/jan/08/why-is-it-such-a-scandalous-thing-the-women-who-have-to-fight-for-their-right-to-be-child-free>>.

6 Thais França, "'No less of a woman': examining the (invisible) life of childfree women academics during the COVID-19 pandemic" (2022) 31:8 J Gend Stud 956-968.

and functions.⁷ Women's authority and rights are closely related to cultural rules, morals, and religious teachings.⁸

Several studies that have examined women's rights have been conducted. There are groups of studies that examine the rights of women to refuse pregnancy, namely first, research examining the thoughts of Masdar Farid Mas'udi, second examining the thoughts of Hussein Muhammad, and third, comparing thoughts between figures. The first group, Nurkolistiana Hesti⁹ and Seno Aris Sasmito,¹⁰ studied Masdar Farid Mas'udi's thoughts on women's reproductive rights consisting of a woman's right to choose her partner, enjoy sexual relations, the right to determine pregnancy or offspring, care for children, reproductive leave, and finally the right to divorce her partner. Furthermore, the second group, Imam Syaifudin¹¹ and Hikmah Noer Laila,¹² examined the thoughts of Husein Muhammad on women's reproductive rights, particularly his research explaining that women have the right to refuse pregnancy on the grounds of economic, social, and health considerations.

In Indonesia, reproductive issues have been discussed in the theological realm. Women's rights have dimensions in the socio-cultural context that lead to issues of social justice and reproductive health.¹³ Women's sexual and reproductive rights are an important part of human rights. These rights cannot be eliminated and transferred on any basis.¹⁴ From the health aspect, women also have the right to obtain quality health services and care, especially in terms of reproduction.¹⁵ Women's choice in terms of reproduction is a form of justice that requires all people to be treated equally and have equal access to health without coercion.¹⁶

Furthermore, the protection of women's reproductive rights is a form of respect for the right to life, health, and other human rights. Forcing a pregnancy puts women

7 Iqbal Kamalludin et al, "Revitalizing Justice in Fiqh: Revisiting Non-Retroactive Principles to Address Sexual Violence" (2024) 7:2 *Ulul Albab J Studi Dan Penelit Huk Islam* 136.

8 E Nurhayati, *Psikologi Perempuan dalam Berbagai Perspektif* (Yogyakarta: Pustaka Pelajar, 2012).

9 Nurkolistiana Hesti, *Hak-hak reproduksi perempuan perspektif Masdar Farid Mas'udi* (Undergraduate thesis, STAIN Ponorogo, 2015) [unpublished].

10 Seno Aris, "Pemikiran Masdar Farid Mas'udi tentang Hak Reproduksi Wanita" (2020) 5:1 *BUANA Gend J Studi Gend Dan Anak* 55-64.

11 Imam Syaifudin, "Pandangan Perempuan Tentang Hak Menolak Kehamilan Perspektif KH. Husein Muhammad" (20) 4:3 *SAKINA*, online: <<http://urj.uin-malang.ac.id/index.php/jfs/article/view/607>>.

12 Hikmah Noer Lailla, *Hak Reproduksi Perempuan Untuk Menolak Kehamilan (Studi Pendekatan Normatif Pemikiran Husein Muhammad)* (Undergraduate thesis, UIN Sultan Maulana Hasanuddin, 2022) [unpublished].

13 Rosalia Sciortino, Lies Marcoes Natsir & Masdar F Mas'udi, "Learning from Islam: Advocacy of reproductive rights in Indonesian Pesantren" (1996) 4:8 *Reprod Health Matters* 86-96.

14 Gi Serour, "Islamic perspectives in human reproduction" (2008) 17 *Reprod Biomed Online* 34-38.

15 Ihwan Sormin & Zezen Zainul Ali, "The Comparative Study of the Protection of Women's Rights in Article 463 of the New Criminal Code with Law Number 36 of 2009 Concerning Health Perspective of Jaser Auda" (2023) 2:2 *MILRev Metro Islam Law Rev* 187-198.

16 G I Serour, "Ethical issues in human reproduction: Islamic perspectives" (2013) 29:11 *Gynecol Endocrinol* 949-952.

at risk to their health and deprives them of their autonomy in decision-making.¹⁷ Therefore, women's reproductive rights will not be achieved until women have equal rights. Thus, efforts must be made to take a multi-systemic approach from the interpersonal, institutional, and structural levels through state authorities to achieve the 2030 agenda for Sustainable Development.¹⁸

The third group, Syahid Akhmad Faisol and Hawa' Hidayatul Hikmiyah,¹⁹ compares the thoughts of Husein Muhammad and Masdar Farid Mas'udi on women's reproductive rights. Both agree that women's reproductive rights begin with the right to choose a partner, then the right to enjoy sexual relations, the right to refuse pregnancy, the right to abort. Husein Muhammad added the right to *nafkah* and health insurance while Masdar added the right to divorce for women. Jihan Al Hanim in her research examines the thoughts of Husein Muhammad and Asghar Ali Engineer. According to Husein, women's reproductive rights are divided into four, while Engineer explains women's reproductive rights as revolving around the issue of abortion and family planning (*'azl*).²⁰

Furthermore, several studies specifically discuss the right to refuse pregnancy using childfree terminology. Conducted by Erfaniah, et al,²¹ and Wahyu Jafar et al,²² these two studies focus more on examining the community's response to childfree behavior and analyzing it through Islamic law. Of course, this is different from the research conducted by the author of this study.

Although research on the right to refuse pregnancy according to the figures has been conducted by several researchers, this study will only focus on the thoughts of Husein Muhammad. Therefore, this research will discuss Husein Muhammad's thoughts on women's right to refuse pregnancy in depth from the point of view of the emergence of ideas and criticism of his thoughts. Therefore, this study will discuss women's right to pregnancy in fiqh in general, then present Husein Muhammad's

17 Frances Raday, "Womens Autonomy Equality Reproductive Health", (December 2017), online: *OHCHR*

<<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>>.

18 Cathryne L Schmitz & Shirley Gateno Gabel, "Women, Human Rights, and Gender Equality" (2023) 8:4 *J Hum Rights Soc Work* 359-360.

19 Syahid Akhmad Faisol & Hawa' Hidayatul Hikmiyah, "Hak Reproduksi Perempuan Dalam Pemikiran Husein Muhammad Dan Masdar Farid Mas'udi" (2023) 9:2 *Asy-Syariah J Huk Islam*, online: <<https://ejournal.unzah.ac.id/index.php/assyariah/article/view/1129>>.

20 Jihan Al Hanim, *Hak-hak reproduksi perempuan dalam pemikiran Husein Muhammad dan Asghar Ali Engineer* (Undergraduate thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2017) [unpublished].

21 Erfaniah Zuhriah et al, "Childfree, the Digital Era, and Islamic Law: Views of Nahdlatul Ulama, Muhammadiyah, and Gender Activists in Malang, Indonesia" (2023) 7:3 *Samarah J Huk Kel Dan Huk Islam* 1606.

22 Wahyu Abdul Jafar et al, "The Childfree Phenomenon Based on Islamic Law and Its Respond on Muslim Society" (2023) 8:2 *November Al-Istinbath J Huk Islam* 389.

thoughts on women's right to refuse pregnancy from a sociological and human rights perspective, and finally provide constructive criticism of the idea of women's right to refuse pregnancy in general.

This article departs from the argument that the social conditions of Indonesian society demand married couples to have children in their marriage, and one of the purposes of marriage in Islam is to have offspring, certainly, the view that women have the right to refuse pregnancy is contrary to the values of society and Islamic teachings.²³ Thus, this research will provide a theoretical contribution to looking at issues that develop in society, especially women's issues.

The method used in this research is library research with a conceptual and descriptive approach. The conceptual approach in this research is based on Husein Muhammad's thoughts on the right to refuse pregnancy for women and the social construction theory of Peter L. Berger and Thomas Luckman is used as the analytical structure. The results of the research and data analysis are presented descriptively to make it easier to understand. The data collection method of this research is documentation. Researchers collected written references that follow the research theme. These references include the writings of Hussein Muhammad, books on women and gender equality, books of tafsir, and scientific articles. Through the use of research methods as described, the results of this research will be richer.

II. ISLAMIC JURISPRUDENCE OF WOMEN'S RIGHT ON PREGNANCY

In the Qur'an, no provision explicitly mentions the permissibility or prohibition for women to refuse pregnancy. Regarding sexual relations between husband and wife, the Qur'an mentions that husbands are commanded to have sex with their wives in a good way, *wa 'asyirûhumma bil-ma'rûf*.²⁴ The word *ma'rûf* can be interpreted as an attitude or action that does not interfere, does not force, and behaves properly with the wife.²⁵ In the context of pregnancy, a husband should not force his wife to become pregnant, but should pay attention to her will, given that the risks of pregnancy are felt more by the wife than the husband.²⁶ From the perspective of *Mubadalah*, the obligation to treat one's spouse in a good way also applies to the wife to her husband.²⁷ Furthermore, the provision of a woman's right to pregnancy in the hadith is also not fully explained. In one hadith

23 Ahmad Rusyaid Idris, Muhammad Khusaini & Syaiful Anwar Al-Mansyuri, "Contemporary Islamic Law in Indonesia: the Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage" (2024) 3:1 MILRev Metro Islam Law Rev 1.

24 QS. An-nisa':19

25 M Quraish Shihab, *Tafsir al-Misbah (Pesan, Kesan, dan Keserasian al-Qur'an) Volume II* (Jakarta: Lentera Hati, 2002).

26 Husein Muhammad, *Islam Agama Ramah Perempuan* (Yogyakarta: IRCiSoD, 2021).

27 Faqihuddin Abdul Kodir, *Qira'ah Mubadalah (Tafsir Progresif untuk Keadilan Gender dalam Islam)* (Yogyakarta: IRCiSoD, 2019).

narrated by Ibn Majah, Abu Dawud, An-Nasa'i, Ibn Hibban, and Ahmad it is said, "Marry women who are lovers (i.e. who love their husbands) and who can have many children, for indeed I will be proud of you in the presence of the previous nations."²⁸ However, what needs to be underlined is that the wording of the command in the Hadith does not imply an obligation, but only a recommendation. It is not an order for women to bear many children.

In the context of fiqh, the discussion of the right to refuse pregnancy is closely related to the discussion of 'azl, which is the emission of sperm outside the vagina. This is because both aim to prevent fertilization in the woman's womb. Dzhairi scholars believe that preventing pregnancy is forbidden. The evidence used as a reference is the hadith narrated by Judzamah bint Wahab: "People asked the Messenger of Allah about 'azl. He replied that 'azl is burying a hidden child alive."²⁹ The scholars of the Shafi'i school of thought believe that the hadith does not indicate the prohibition of 'azl, but only that it is makrooh. In contrast to the previous two opinions, Imam Ghazali states that the ruling of 'azl is permissible. This is because it is an act of abandoning virtue, not a prohibited act. His opinion is based on the hadith narrated by Jabir, "We practiced 'azl during the time of the Prophet and the Qur'an was still being revealed." Finally, Hanafi scholars think that azl is permissible on condition of the wife's consent, except when one is on a long journey, in a war zone, and the wife is a laborer so that the husband wants to divorce her, and this is done for fear of pregnancy.³⁰ Thus it can be concluded that in Islam women have the right to refuse pregnancy. However, this right must still take into account the husband's opinion. Whether a couple wants to have children or not, they have the right to plan through good sexual relations without the intervention of any party.³¹

In this case, Islamic jurisprudence, especially in protecting women's rights to pregnancy, has been championed by Hussein Muhammad. Hussein Muhammad is a Muslim intellectual from the pesantren who calls for justice and equality for women. He is a very active writer and his writings have made his thoughts known to the wider community and colored many topics of discussion. Some of Hussein Muhammad's works are widely used as references by gender equality activists,³² such as Kiyai's Reflections on Religion and Gender Discourse, and *Kiyai* Hussein's Ijtihad.

28 Abu Abdullah Muhammad, *Sunan Ibnu Majah* (Dar ar-Risalah al-'Alamiyah, 2009).

29 Sayid Sabiq, *Fikih Sunah Juz 2* (Beirut: Dar al-Kitab al-Arabi, 1977).

30 Wahbah Az-Zuhaili, *Fiqh Islam wa Adillatuhu Jilid 9* (Jakarta: Gema Insani, 2011).

31 Muhammad Khatibul Umam & Nano Romadlon Auliya Akbar, "Childfree Pasca Pernikahan: Keadilan Hak-Hak Reproduksi Perempuan Perspektif Masdar Farid Mas'udi dan Al-Ghazali" (2021) 3:2 Al-Manhaj J Indones Islam Fam Law 157-172.

32 Siti Jahroh, "NOT NINE BUT EIGHTEEN: Hussein Muhammad on Aisha's Marriage Age" (2022) 15:1 Al-Ahwal J Huk Kel Islam 61-61.

Fiqh of Sexuality is a breakthrough to safeguard the interests and justice of women because women tend to experience higher risks in reproductive matters.³³ Thus, to address issues of gender, Islam, and sexuality, there needs to be a balanced mechanism between social norms, human rights, and individual actions in the interest of women. Furthermore, Towards New *Fiqh* promotes the concept that every action must prioritize the good.³⁴ The good is not limited to one party but can extend to both individuals and parties. The new *Fiqh* or Islamic jurisprudence places great emphasis on human rights and thus prohibits any intrusion and access without consent.³⁵ Where at the highest level, a Muslim can feel the existence of God anywhere and anytime without seeing the place and time.³⁶ However, the renewal of Islamic jurisprudence itself has certainly experienced challenges. These challenges come from religion and the patriarchal culture that has been embedded in society. However, the most important thing in the case of women's right to refuse pregnancy is the right to bodily integrity (*salâmat al-jîsm*) and not to damage and not to harm (*La darar wa la dirau*), which are the principles of Islamic teachings.³⁷

III. THE RIGHT TO REFUSE PREGNANCY: TEXTUAL AND CONTEXTUALISATION OF ISLAMIC JURISPRUDENCE

Husein Muhammad's thoughts on "The Right to Refuse Pregnancy" are part of his discussion on "Reproductive Health and Women's Reproductive Rights".³⁸ In the discussion, it is said that in a marriage a wife has four rights that must be protected. These rights include the right to enjoy sexual relations, the right to refuse sexual relations, the right to refuse pregnancy, and the right to have an abortion. For the results of this paper to be more in-depth and directed, the author will focus on Husein Muhammad's thoughts on the right to refuse pregnancy.³⁹

There are at least four arguments referenced by Husein Muhammad in strengthening his argument regarding women's reproductive rights, including the right to refuse pregnancy. First, QS. Al-Baqarah: 228, "And they (women) have rights that are equal to their obligations in a ma'ruf manner". According to Imam Ash-Shukani, the meaning of the verse is that there are guaranteed rights in the marriage relationship that

33 Monika Arnez, "Gender, Islam and Sexuality in Contemporary Indonesia: An Overview" in Monika Arnez & Melani Budianta, eds, *Gender Islam Sex Contemp Indones* Engaging Indonesia (Singapore: Springer Nature Singapore, 2024) 1.

34 Sayyed Mohamed Muhsin, "Islamic Jurisprudence on Harm Versus Harm Scenarios in Medical Confidentiality" (2024) 36:2 HEC Forum 291-316.

35 Aspandi Aspandi et al, "Epistemology of Maqasid Taha Abdurrahman; New Paradigm and Classification of Maqasid al-Shari'ah Values" (2024) 35:1 Tribakti J Pemikir Keislam 95-108.

36 Rena Latifa, Komaruddin Hidayat & Akhmad Sodik, "Commentary on Place Spirituality: An Islamic perspective" (2019) 41:1 Arch Psychol Relig 38-42.

37 Quentin Wodon, "Islamic Law, Women's Rights, and State Law: The Cases of Female Genital Cutting and Child Marriage" (2015) 13:3 Rev Faith Int Aff 81-91.

38 Muhammad, *supra* note 1.

39 Muhammad, *supra* note 26.

must be given to the wife by her husband, as the husband also has rights over his wife.⁴⁰ In addition, the husband must treat his wife in a good way, not hurt her, and provide for her according to the husband's ability.⁴¹

Included in the rights of the wife mentioned in the Compilation of Islamic Law (KHI) is the right to refuse *rujuk* proposed by the former husband.⁴² This regulation is one of the reconstructions of Islamic law carried out by Indonesian Muslim scholars, considering that in classical *fiqh* *rujuk* is the absolute right of the husband without considering the wife's willingness. In the view of Husein Muhammad, giving the wife the right to refuse pregnancy and also determine the number of children desired is a form of good treatment of a husband to his wife. If the wife does not want pregnancy, the husband must consider her position. Given that the risks arising from pregnancy are felt more by the wife than the husband, the wife's consideration must also be stronger.⁴³

The second piece of evidence is QS. Al-Baqarah: 187: "They are clothing for you, and you are clothing for them". According to Ibn Abbas, the word "*libas*" there means "blanket". Rabi' ibn Annas interpreted it as "a blanket", something that keeps you warm.⁴⁴ So, it is very clear that the verse shows equality between men and women. In the discussion of family life, husbands and wives both have rights that must be received, as well as obligations that must be carried out.⁴⁵ To strengthen his argument, the verse above is reinforced by the hadith "Women are brothers" which is also used as a reference basis by Hussein Muhammad.⁴⁶

Finally, QS Al-Luqman: 14, "His mother has conceived him in a state of increasing weakness, and weaned him at the age of two years". According to Wahbah al-Zuhaili, the verse shows that the process of conceiving, giving birth, breastfeeding, weaning, and nurturing is not an easy matter for a woman. Therefore, the Qur'an uses the phrase *wahnan 'ala wahnin*, to emphasize that pregnant women are in a weak condition that continues to increase.⁴⁷ In line with the above interpretation, M. Quraish Shihab mentions that the verse does not mention the role of the father at all but emphasizes the role of the mother. This is because the services of men in the process of childbirth are much lighter than women. After the fertilization of the sperm on the egg, the entire

40 Al Imam Muhammad bin Ali bin Muhammad Asy-Syaukani, *Tafsir Fathul Qadir* (Jakarta: Pustaka Azzam, 2013).

41 Al Imam Muhammad bin Ali bin Muhammad Asy-Syaukani & terj Amir Hamzah Fachruddin, *Tafsir Fathul Qadir, Jilid 1* (Jakarta: Pustaka Azzam, 2013) at 1.

42 Arini Rufaida, "Hak Istri Menolak Rujuk Perspektif Islam dan Gender" (2019) 14:2 Yinyang J Studi Islam Gend Dan Anak 245-270.

43 Muhammad, *supra* note 26.

44 Abdullah bin Muhammad bin Abdurahman bin Ishaq Al-Sheikh et al, *Tafsir Ibnu Katsir, Jilid 1* (Bogor: Pustaka Imam Asy-Syafi'i, 2004) at 1.

45 Okti Nur Hidayah, Musyafangah & Ahmad Rezy Meidina, "Analysis of the Rights and Obligations of Husband and Wife in the Compilation of Islamic Law: A Review from the Perspective of Gender Equality" (2023) 6:1 Legitima J Huk Kel Islam 1-15.

46 Muhammad bin Isa At-Tirmidzi, *Sunan Tirmidzi, Juz 1* (Beirut: Dar al-Fikr, 1988) at 1.

47 Wahbah Az-Zuhaili, *Tafsir Al-Munir Aqidah, Syari'ah, Manhaj* (Jakarta: Gema Insani, 2013).

process of pregnancy and childbirth is borne by the mother. Not only does it stop at the birth of the child, but the process continues until the postpartum period, breastfeeding, and even beyond that. Indeed, a father is also responsible and helps his wife to go through the whole process so that the burden is not too heavy. However, the responsibilities imposed on husbands are different from wives because they are not in direct contact with children.⁴⁸

Pregnancy is a difficult and debilitating time for women and the level of debilitation increases with the birth of the child.⁴⁹ In addition, childbirth is also the most critical moment in a woman's life and even risks death.⁵⁰ The results of the 2018 Sampling Registration System (SRS) data show that the proportion of maternal deaths is 24% during pregnancy, 36% during labor, and 40% during the postpartum period.⁵¹ The Minister of Health stated that the maternal mortality rate (MMR) for pregnant women in Indonesia reached 300 deaths per 100,000 live births.⁵² In 2015, the Millennium Development Goals (MDG) target for MMR in Indonesia was 102 deaths per 100,000 live births. Maternal mortality rate (MMR) is one of the important parameters that indicate the quality of population health in a country because maternal mortality rate (MMR) reflects the interaction of various aspects such as the health care system, medical personnel, health insurance, culture, and community education.⁵³

Based on the data above, it is concluded that Husein Muhammad in expressing his opinion uses text and context reference sources. The text in question is in the form of the arguments of the Qur'an and hadith. The context comes from the results of his study of empirical facts and social realities that are difficult to refute. Then the interpretation of text and context is used as a method to analyze his opinion. Through this method, the results of Husein Muhammad's thoughts stating that women have the right to refuse pregnancy become strong and do not seem gratuitous. However, the opinion expressed still has a gap to be criticized more deeply using a different approach because there is not a single verse of the Qur'an or hadith that explicitly states that women have the right to refuse pregnancy.

48 M Quraish Shihab, *Tafsir Al-Misbah Pesan, Kesan, Dan Keserasian Al-Qur'an* (Jakarta: Lentera Hati, 2002).

49 Zainab Akmal & Sheikh Adnan Ahmed Usmani, "Digital Rights and Women's Empowerment in Pakistan: An Analysis of Contemporary Islamic Legal Perspectives in the Age of Social Media" (2024) 3:1 MILRev Metro Islam Law Rev 95.

50 Muhammad, *supra* note 26.

51 Rokom, "Kemenkes Perkuat Upaya Penyelamatan Ibu dan Bayi" (2021) sehatnegeriku.kemkes.go.id, online: <<https://sehatnegeriku.kemkes.go.id/baca/unum/20210914/3738491/kemenkes-perkuat-upaya-penyelamatan-ibu-dan-bayi/>>.

52 Putri Anisa Yuliani, "Angka Kematian Ibu Hamil Masih Tinggi, Ini Upaya Kemenkes RI" (2021) Media Indones, online: <<https://mediaindonesia.com/humaniora/426546/angka-kematian-ibu-hamil-masih-tinggi-ini-upaya-kemenkes-ri>>.

53 Nurhidajat D A Kusumawati, "The Effectiveness of The Action to Accelerate The Reduction of Maternal Mortality Rate in Indonesia" (2018) 2:1 J Anggar Dan Keuang Negara Indones AKURASI.

IV. THE RESULTS OF KH. HUSEIN MUHAMMAD'S THINKING IN TERMS OF SOCIAL CONSTRUCTION THEORY

The social construction theory that will be used as an analytical tool in this research is the sociology of knowledge theory of Peter L. Berger and Thomas Luckman. They explain the theory in a book entitled "The Social Construction of Reality: A Treatise in The Sociology of Knowledge." This theory states that in the social process, there is a dialectic between the individual and society. Through this dialectic, it will eventually be seen whether the individual is a creation of society or society is created by the individual. This dialectical process occurs through three stages; externalization, objectivation, and internalization.⁵⁴

Externalization is the process of self-adjustment of a person/individual to their socio-cultural environment.⁵⁵ In this process, individuals will be influenced by the surrounding community, in the form of knowledge, habits, values, and others.⁵⁶ These influences will eventually become basic role models for individuals. Furthermore, individuals will objectify the knowledge that has been obtained. At this stage, individuals begin to interpret the existing reality as material to behave following the meaning embedded in themselves. This process then ends with internalization, which is the re-absorption of knowledge that has been obtained by individuals and transforms it from the objective world structure into the subjective world structure. Through externalization, society is a product of the individual, through objectification the individual becomes realistic and unique, and through internalization, the individual becomes a product of society.⁵⁷ In their interactions with society, people tend to group based on their natural sense of identity.⁵⁸

Referring to the opinion of Berger and Luckman, there has been a process of externalization, objectivation, and internalization that made Husein Muhammad bring up the idea of the right to refuse pregnancy for women. The two processes are a dialectical unity that cannot be separated. Husein Muhammad's externalization process is influenced by the four results of interactions that have been carried out.

First, the result of community interaction in the pesantren environment, which still applies classical Islamic traditions that practice patriarchal culture and discredit women with religious arguments. The pesantren education that became the basis of Husein Muhammad's thinking succeeded in making him a conservative fundamentalist figure.

54 Peter L Berger & Thomas Luckmann, *The Social Construction of Reality A Treatise in the Sociology of Knowledge* (New York: Doubleday & Company, 1966).

55 *Ibid.*

56 Ferry Adhi Dharma, "The Social Construction of Reality: Peter L. Berger's Thoughts About Social Reality" (2019) 7:1 Kanal J Ilmu Komun.

57 Asmanidar, "Suluk dan Perubahan Perilaku Sosial Salik (Telaah Teori Konstruksi Sosial Peter L Berger dan Thomas Luckman)" (2021) 1:1 Abrahamic Relig J Studi Agama-Agama.

58 Eko Rubiyanto & Munsharif Abdul Chalim, "Counter Terrorism: Case Study On The Radicals Religious Group" (2018) 1:4 J Daulat Huk 869-869.

Before becoming a women's activist, Husein Muhammad admitted that he had an incorrect view of women. This error comes from the teachings of religious texts in pesantren which are considered sacred and immune to criticism.⁵⁹ Second, the results of academic interaction in the formal education environment and interaction with women activists shaped his understanding with implications for the behavior manifested in social and organizational life, especially with regards to defending women's rights.⁶⁰

Husein Muhammad in some of his works admits that he was previously a conservative person and considered the idea of gender equality as contradictory to Islamic values and a movement of rebellion against men, family institutions, and established social systems.⁶¹ This condition is strongly influenced by his family background and years of education.⁶² As a Muslim scholar who comes from the pesantren and is steeped in the classical Islamic tradition, it is common knowledge that awareness of women's equality and justice requires adaptation. This has led to a lot of opposition and even rejection by some religious leaders. According to Husein Muhammad, discussions on gender equality must be able to attract the involvement of religious leaders because they have considerable influence in social and cultural construction.⁶³

Husein Muhammad's involvement in the development of gender discourse was first initiated by the invitation of Masdar Farid Mas'udi, director of P3M (Association for the Development of Pesantren and Society), who invited Husein Muhammad to attend seminars or halaqahs. In 1993, Husein Muhammad was invited to a seminar on religious perspectives on women. Masdar Farid Mas'udi is a gender equality thinker who is no less controversial than Husein Muhammad. His thought dared to strongly criticize the yellow book tradition, which was considered very conservative because it supported the subordination of women. Husein Muhammad acknowledged that Masdar Farid Mas'udi had a major contribution in changing his views on women,⁶⁴ including his views on the right to refuse pregnancy for women. Like Husein Muhammad, Masdar Farid Mas'udi says that in terms of reproduction, women have the right to determine pregnancy.

A woman and her husband have the right to determine the conditions of pregnancy and the number of children they want. Any party outside of them, such as the government and the company where they work, has no right to impose their will for any reason and in any way given that those who will bear the risks, especially physical and mental health risks, are the married couple concerned, especially the wife.⁶⁵ In addition

59 Muhammad, *supra* note 26.

60 Catherine E Connelly et al, "Understanding knowledge hiding in organizations" (2019) 40:7 J Organ Behav 779-782.

61 Jahroh, *supra* note 32.

62 Arina Haque et al, "THE DOMESTIC RIGHTS OF THE WIFE (Viewed from KH. Husein Muhammad's Thoughts)" (2022) 17:1 EGALITA.

63 Husein Muhammad, *Perempuan Ulama Di Atas Panggung Sejarah* (Yogyakarta: IRCiSoD, 2020).

64 Muhammad, *supra* note 26.

65 Masdar Farid Mas'udi, *Islam dan Hak-Hak Reproduksi Perempuan* (Bandung: Mizan, 1997).

to being influenced by Masdar Farid Mas'udi, Husein Muhammad's thoughts were also influenced by Lies Marcoes, Wardah Hafidz, and the late Mansor Fakih. They were female activists who influenced his intellectual acumen. The results of interactions with these four figures succeeded in disrupting the structure of Husein Muhammad's scientific epistemology, which was considered relatively established. In the end, he dared to sharply criticize the conservative tradition of religious thought as being detrimental to women.⁶⁶

Next is objectivation, a social reality that seems to be outside of humans so it becomes an objective reality. So, there are two realities, namely the subjective reality of the self and the objective reality outside of the self. Between the subjective and objective realities, a network of personal interactions is formed through institutionalization.⁶⁷ In the context of Husein Muhammad, inner meaning of the knowledge has been obtained from the interaction process. In the previous discussion, it was explained that there was a shift in behavior within Husein Muhammad. Previously, Husein Muhammad belonged to a conservative group, but this condition changed after Husein Muhammad met Muslim thinkers who were very active on women's issues. At this stage, Husein Muhammad realized that there was something wrong with his understanding. Since then, Husein Muhammad began to realize that the idea of gender equality is not an idea that is contrary to Islamic values. This reflects Kanafi's research that accepted doctrine has the power to change behavior and shape character both individually and in groups.⁶⁸

Last is the internalization process, an internal process that influences ideas reflected in Husein Muhammad's attitude through his behavior. First, since 1993 Husein Muhammad has intensively studied women's issues. The movement carried out by Husein Muhammad in advocating for women's rights to the community, especially the right to refuse pregnancy, is done directly and indirectly. Direct advocacy is performed when Husein Muhammad interacts with others in organizational activities, fills an event, or is interviewed. Second, Husein Muhammad became a Muslim intellectual who was a very active author, covering women and gender equality through books, journal articles, and writings on social media. Husein Muhammad writes literature in the form of books by applying the principles of interpretation with human values (*mabadi' al-tafsir bi al-qiyam al-insaniyyah*) and *maqashid ash-shari'ah* as a theoretical-methodological framework to interpret gender-biased verses that have become polemic in the world of Qur'anic interpretation.

Third, he founded a social organization that aims to provide services to the wider community. Husein Muhammad is part of the Commissioner of the Jakarta National Commission on Violence Against Women, the Founder of the Institute of Islamic

66 Septi Gumindari & Iman Nafi'a, "Husein Muhammad's Progressive Thinking About Female Jurisprudence; A Descriptive Analytical Study" (2019) 4:2 Mahkamah J Kaji Huk Islam.

67 Joel Busher & Tore Bjørgo, "Restraint in Rerrorist Groups and Radical Milieus: Towards a Research Agenda" (2020) 14:6 Perspect Terror, online: <<https://www.jstor.org/stable/26964721>>.

68 Imam Kanafi et al, "The contribution of Ahlussunnah Waljamaah's theology in establishing moderate Islam in Indonesia" (2021) 77:4 HTS Teol Stud Theol Stud.

Studies Fahmina (ISIF) Cirebon, and the founder of Fahmina Institute. In general, Husein Muhammad's defense of women can be categorized into two forms. First, in the form of thoughts that were eventually outlined in books and other scientific works. Second, in the form of movements such as social services, organizations, and education whose benefits are widely felt by the community to this day. Based on Berger and Luckman's social construction theory, it can be concluded that the results of Husein Muhammad's thoughts on the right to refuse pregnancy are part of the internalization process, where the internalization of the right to refuse pregnancy is seen as a social reality and then it is developed into a personal view.⁶⁹

V. THE NOTION OF THE RIGHT TO REFUSE PREGNANCY: HUMAN RIGHTS AND CRITICAL ANALYSIS

Various efforts to realize human rights in real life have been reflected in the struggle of human beings to defend their inherent dignity from the arbitrary actions of tyrant rulers.⁷⁰ Human rights are a gift from God Almighty, but they are also natural rights that cannot be revoked by other human beings. Human rights include such basic values as freedom, equality, autonomy, and security. Moreover, the core value of human rights is human dignity.⁷¹

Women's reproductive rights are juridically guaranteed in international treaties, namely the Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These rights include the right to life of every woman and the right to be free from the risk of death due to pregnancy. It is not without reason that women face gender-based oppression. This oppression is ongoing and increasingly complex. Concerning human rights, women may experience many obstacles because there are still many people who do not acknowledge and understand the rights of women.⁷² Linking women's rights to human rights in theory and practice is important because women's human rights are an inalienable part of universal human rights.⁷³

This is in line with the thoughts of Husein Muhammad in which Islamic teachings, especially the classical scientific tradition, have basic values of justice, equality, and respect for human rights. In addition, Husein Muhammad based his thinking on the principles of Islam, namely justice, deliberation, equality, and peace. This thinking then underlies Husein Muhammad's defense of women. Therefore, the right to refuse

69 Rubiyanto & Abdul Chalim, *supra* note 58.

70 Andrey Sudjatmoko, *Hukum HAM dan Hukum Humaniter* (Jakarta: Grafindo Persada, 2015).

71 Artidjo Alkostar, *Pengadilan HAM, Indonesia, dan Peradabannya* (Yogyakarta: PUSHAM UII, 2004).

72 Julie M Buser, "Women's Reproductive Rights Are Global Human Rights" (2022) 33:5 J Transcult Nurs 565-566.

73 Charlotte Bunch & Niamh Reilly, "Women's Rights as Human Rights: Twenty-Five Years On" in Niamh Reilly, ed, *Int Hum Rights Women* International Human Rights (Singapore: Springer Singapore, 2019) 21.

pregnancy can be categorized as a natural right in human rights. Natural rights are possessed by all those who are human by nature.⁷⁴

This is in line with Mark Fathi Massoud, that the fight for natural rights by women is part of how small activist groups in many countries are fighting for justice by using Sharia as resistance to practices that oppress women.⁷⁵ On the contrary, there is a controversial misconception that Islamic sharia oppresses women. Philosophically, however, Islam gives women the freedom to make life choices in many areas such as education, business, property, and even the right to regulate pregnancy. This freedom certainly has something in common with human rights values and the United Nations Universal Declaration of Human Rights (1948).⁷⁶

Nonetheless, the correlation between human rights and women's rights remains contentious among Muslim scholars including secular modernists, traditionalists, and the new generation of Islamic feminists.⁷⁷ For example, Fatima Mernissi, a Moroccan Islamic feminist, advocates for human rights. Mernissi's efforts towards democratization and women's equality illustrate how human rights can be embraced by Muslim women who are acculturated in traditional culture, especially in Morocco.⁷⁸

The idea of refusing pregnancy is an equal right to life between men and women. Women can implement the value of their natural rights by enjoying the basic rights to life, liberty, and private property, including the right to refuse pregnancy and plan pregnancy.⁷⁹ "All human beings have the same right ... have the same right that every person has, under his natural freedom, not to be subject to the will or authority of another"⁸⁰ Therefore, attacks on reproductive freedom are an attack on democracy and international human rights standards, on individual freedom and privacy rights, and impede progress towards gender equality.⁸¹

Apart from the idea of women's right to refuse pregnancy promoted by Hussein Muhammad, his other ideas about women's issues are always interesting to study more deeply. The controversy that arose among the wider public also managed to open up a

74 Juhana Mikael Salojärvi, *Human Rights Redefining Legal Thought: The History of Human Rights Discourse in Finnish Legal Scholarship*, Studies in the History of Law and Justice (Cham: Springer International Publishing, 2020).

75 Mark Fathi Massoud, "Muslim women are using Sharia to push for gender equality", (18 May 2021), online: *The Conversation* <<https://theconversation.com/muslim-women-are-using-sharia-to-push-for-gender-equality-158371>>.

76 Khalida Tanvir Syed, "Misconceptions About Human Rights and Women's Rights in Islam" (2008) 39:2 *Interchange* 245-257.

77 Yvonne Yazbeck Haddad, "Muslims, Human Rights, and Women's Rights" in Thomas Banchoff & Robert Wuthnow, eds, *Relig Glob Polit Hum Rights* (Oxford University Press, 2011) 71 DOI: 10.1093/acprof:oso/9780195343397.003.0004.

78 Ann Elizabeth Mayer, "Women's Human Rights and the Islamic Tradition" (1997) 17 *Annu Soc Christ Ethics* 311-17.

79 Buser, *supra* note 72.

80 John Locke, *Two Treatise of Government* (Cambridge: Cambridge University Press, 2003).

81 Buser, *supra* note 72.

lot of space for discussion. This is certainly good because it will prevent the stagnation of thought, especially among Muslims. In responding to these thoughts, there is no demand for readers to always agree or reject the premise. Many positions can be taken, of course, which must be accompanied by strong bases and arguments and sincere intentions. Thus, if the reader decides to agree, he can elaborate on the arguments presented without disregarding the opposing group. If he chooses to disagree, he should not have the intention to attack, but rather to complement the shortcomings or identify something that is not quite right in the argument. In this way, the results of dissent can reap benefits for himself and many people.

Three main points concern the author regarding the idea of the right to refuse pregnancy for women articulated by Husein Muhammad. The first point of concern relates to the narrative built by Husein Muhammad. Second, there are health facts that are overlooked by Husein Muhammad in strengthening his argument. Third, Husein Muhammad's lack of explanation regarding the benefits of pregnancy in terms of Islam itself. The three things above will be used as material to analyze the idea of the right to refuse pregnancy of Husein Muhammad as stated in his writing.⁸²

The first point is related to the construction of Husein Muhammad's "Right to Refuse Pregnancy" narrative. As explained in his writing, having children is not only the right of the wife or husband but the right of both together.⁸³ As God's creatures destined to become pregnant, all the risks and impacts arising from pregnancy are certainly felt more by the wife than the husband. Therefore, if the wife chooses not to get pregnant, then the husband must consider this desire and the consideration to affirm the wife's position must be carry more weight.⁸⁴

Husein Muhammad, in arguing that women have the right to refuse pregnancy, does not specify whether the refusal is temporary or permanent, even though the use of this terminology is very important. If the intention of the refusal is temporary, which is generally done through family planning programs, then there is a possibility for the wife not to refuse pregnancy at a different time. So, the purpose of the refusal is to prepare or space the pregnancies. This is not the case with a permanent refusal, either as long as they are both still married, or until the wife dies. If it is temporal through the family planning program, then Husein Muhammad's opinion above can be justified and the author strongly agrees with him. Shihab, as one of the Muslim scholars, also greatly appreciates women who want to engage in family planning with all its hassles and consequences. According to him, the effort also leads to one of the five objectives of sharia, namely *hifdzu al-nasl* (preserving offspring). However, if the refusal of pregnancy is for life, then the discussion between husband and wife should not be one-sided,

82 Husein Muhammad, *Islam Agama Ramah Perempuan Pembelaan Kiai Pesantren* (Yogyakarta: LKiS Yogyakarta, 2007).

83 Muhammad, *supra* note 26.

84 Muhammad, *supra* note 82.

emphasizing one party. Husband and wife must jointly consider and think about each other's wishes.

The second issue is the absence of clear indicators for a woman to have the right to refuse pregnancy. In this regard, the author argues that several conditions must be considered by married couples so that this right can be fulfilled. First, the physical and psychological condition of each husband and wife. The focus on this first point is not only the wife's concern, but also the husband's, because when the wife is pregnant, a husband also has obligations that must be carried out. Moreover, in the long run, the task of caring for, nurturing, and educating the child also becomes the obligation of both. The results of a study show that the participation of fathers (husbands) in the childcare process greatly affects the moral intelligence of children.⁸⁵ Thus, both husband and wife must be physically, psychologically, and even financially prepared when planning a pregnancy.

Secondly, the refusal should be done in a good way, namely through the use of safe family planning that does not cause eternal sterility, and not through abortion which does not follow religious rules. Third, because of the *dharurat*, for example, the husband or wife could have a sexually transmitted disease such as AIDS that can threaten his life and transmit the virus to the baby.⁸⁶

Women in this case not only have the right to refuse pregnancy, but also have the right to refuse sexual intercourse. Fourth, the purpose of public benefit, for example, is to regulate the spacing of pregnancies so that each child is not neglected, or the condition of the country is unsafe due to war, and others. Finally, consideration of the wife's age. From a medical aspect, for example, a woman in her early 20s is in a period of high fertility, so that age is the best time to get pregnant and the risk of giving birth to a disabled baby is lower. Entering the 30s, the fertility rate begins to decline and a drastic decline occurs when the woman is 35 years old. By the age of 40, the ability to conceive naturally declines sharply, and the potential to conceive each month is only about 5%.⁸⁷ In addition, women who become pregnant at the age of less than 20 years and more than 35 years are at risk of premature labor and even infant death. According to the Ministry of Health of the Republic of Indonesia, maternal labor under the age of 20 has an impact on the high mortality rate of newborn babies.⁸⁸

85 Dinda Septiani & Itto Nesyia Nasution, "The Role of Dad's Involvement in Parenting Development of Moral Intelligence of Children" (2017) 13:2 J Psikol.

86 Yeyen Damanik, "Pengetahuan Ibu Hamil Tentang Hiv/Aids dan Penularan Dari Ibu Ke Bayi di Puskesmas Tambun Nabolon Kota Pematangsiantar Tahun 2020" (2020) 5:1 J Health Reprod.

87 Isiah D Harris et al, "Fertility and the aging male" (2011) 13:4 Rev Urol e184-190.

88 Ministry of Health of the Republic of Indonesia, "Inilah Risiko Hamil Usia Remaja", (30 September 2017),
online: [sehatnegeriku.kemkes.go.id](https://sehatnegeriku.kemkes.go.id/baca/umum/20170930/5823163/inilah-risiko-hamil-usia-remaja/)
<<https://sehatnegeriku.kemkes.go.id/baca/umum/20170930/5823163/inilah-risiko-hamil-usia-remaja/>>.

Another issue in terms of health is that women who have never been pregnant in their lives are much more at risk of certain diseases. There is a risk of uterine cancer and tumors. Uterine cancer can affect women regardless of age, but it is more common in women who have never had children in their lives or women who had their first child over the age of 35. As for uterine tumors, the risk is more likely to increase when women are childless (nulliparity).⁸⁹ The results also showed that women who never gave birth, never breastfed, or became pregnant over the age of 30 are at risk of breast cancer.⁹⁰ When women are pregnant and breastfeeding, the risk of developing breast cancer decreases due to hormonal changes during these two phases. In addition, women who do not have children also tend to have poorer health later in life and an increased risk of premature death. In his article, Husein Muhammad mentions that the right to refuse pregnancy for women is also motivated by the high Maternal Mortality Rate (MMR) in Indonesia. However, according to the author, this argument is not strong enough because refusing pregnancy, let alone forever, is not the most appropriate response to the MMR problem in Indonesia because the risk of not having children is much greater. The government through the Ministry of Health has also made various efforts to address this issue through planned programs.⁹¹

The third point is that Husein Muhammad's idea of the right to refuse pregnancy without clear indicators does not seem to be in line with Islamic teachings. Several traditions indicate the command for humans to have many children. The Prophet said, "Marry women who are loving and fertile, for I will be pleased with your large numbers in the hereafter". In another wording, "Marry women who are inclined to bear many children and who are intimate, for I will be proud of your large number in the presence of other nations on the Day of Judgment". It should be underlined that the Prophet's pride in the number of offspring must also be accompanied by the quality of human resources. It will be very useless if the quantity is not accompanied by quality because it will disappoint, not inspire pride.

Pregnancy, childbirth, and breastfeeding are not easy for a woman. However, the hadith above should always be contemplated because the prophet himself was very proud of his people who had many offspring so women continue to be enthusiastic and optimistic. Not only that, Islam also guarantees that the reward of women who become pregnant and give birth will be equal to the reward of those who fast and undertake jihad in the cause of Allah. This is not even to mention the additional rewards of breastfeeding and caring for their children. As long as husbands and wives continue to try, they also don't need to worry about obtaining sustenance because Allah is the one who guarantees

89 Mediaindonesiacom, "Inilah Dampak dan Risiko Biologis Pilihan Childfree" (2021) Media Indones.

90 Nirmala Sari, "Karakteristik Penyebab Kanker Payudara" (2021) 16:1 J Ilm PANNMED Pharm Anal Nurse Nutr Midwivery Environ Dent 177-181.

91 Kementerian Kesehatan, "Turunkan AKI-AKB, Kemenkes Pertajam Transformasi Sistem Kesehatan" (2021) kemkes.go.id, online: <<https://www.kemkes.go.id/article/view/21122400006/turunkan-aki-akb-kemenkes-pertajam-transformasi-sistem-kesehatan.html>>.

the sustenance of every creature.⁹² "And do not kill your children for fear of poverty. It is We who will provide for them and you. Verily killing them is a great sin".⁹³

From an economic approach, the number of offspring, which in turn increases the population, has a positive impact on improving a country's economy.⁹⁴ This view is reinforced by the global fact that the rankings of countries with high economic growth are dominated by countries with large populations, such as China and India. In some developed countries such as Singapore, Russia, and Germany, people are encouraged to marry and have offspring and even given gifts for this purpose. Based on this explanation, it can be concluded that there is an intersection between the text of the hadith and the context that occurs in the modern century.

VI. CONCLUSION

Islamic jurisprudence on women's right to refuse pregnancy is an idea to safeguard the interests and justice of women, as women tend to experience higher risks in terms of reproduction. Islamic jurisprudence places great emphasis on human rights and thus prohibits interference and access without consent. An important pillar of women's right to refuse pregnancy is the right to bodily integrity (*salâmat al-jîsm*) and non-damage and non-harm (*la darar wa la dirar*) which are principles of Islamic teachings.

Husein Muhammad's idea of women's right to refuse pregnancy departs from a deep and critical reading of the texts of the Qur'an and its context in the social conditions of society, besides that it is also influenced by his educational background, association, and depth of thought. During the process of forming the idea of women's right to refuse pregnancy, Husein Muhammad went through several construction processes which include the process of externalization, Husein Muhammad's thoughts developing as a result of the dialectical process between the individual and the people around him, the objectivation process, Husein Muhammad's adoption of the knowledge that has been obtained from the interaction process, and the internalization process which is shown by Husein Muhammad through his attitude and behavior of aggressively studying women's issues.

Husein Muhammad based his thinking on Islamic principles of justice, deliberation, equality, and peace. Therefore, the right to refuse pregnancy can be categorized as a natural right in human rights. Natural rights are rights that are possessed by all those who are human by nature. However, the right to refuse pregnancy is still bound by other

92 Zezen Zainul Ali & Annisa Wulandari, "FAMILY REHARMONIZATION AFTER THE COVID-19 PANDEMIC FROM THE PERSPECTIVE OF MUBÂDALAH" (2023) 22:2 Marwah J Peremp Agama Dan Jender, online: <<https://ejournal.uin-suska.ac.id/index.php/marwah/article/view/1-15>>.

93 Kementrian Agama RI, *Al-Qur'an dan Terjemahnya* (Jakarta Timur: Latnah Pentashihan Mushaf Al-Qur'an, 2019).

94 Warsito Warsito, "Hadist Perintah Memperbanyak Keturunan Tinjauan Textual dan Kontekstual dalam Prespektif Ekonomi" (2018) 4:1 Riwayah J Studi Hadis 147-147.

aspects and does not apply in full. Husein Muhammad's idea seems to cause misunderstanding, namely that the right is permanent or temporal. Therefore, it is important to have considerations as indicators in making choices: 1) the couple is not physically and psychologically ready, 2) the refusal is done in a good way, only temporarily, not absolutely, 3) the refusal takes place due to an emergency, for example, one of the spouses has contracted a sexually transmitted disease, and 4) the refusal has the purpose of benefitting the woman, couple, or larger society.

BIBLIOGRAPHY

- A, Nurhidajat D, Kusumawati, "The Effectiveness of The Action to Accelerate The Reduction of Maternal Mortality Rate in Indonesia" (2018) 2:1 J Anggar Dan Keuang Negara Indones AKURASI.
- Akmal, Zainab & Sheikh Adnan Ahmed Usmani, "Digital Rights and Women's Empowerment in Pakistan: An Analysis of Contemporary Islamic Legal Perspectives in the Age of Social Media" (2024) 3:1 MILRev Metro Islam Law Rev 95.
- Al Hanim, Jihan, Hak-hak reproduksi perempuan dalam pemikiran Husein Muhammad dan Asghar Ali Engineer (Undergraduate thesis, Universitas Islam Negeri Maulana Malik Ibrahim, 2017) [unpublished].
- Ali, Zezen Zainul & Annisa Wulandari, "FAMILY REHARMONIZATION AFTER THE COVID-19 PANDEMIC FROM THE PERSPECTIVE OF MUBÂDALAH" (2023) 22:2 Marwah J Peremp Agama Dan Gender, online: <<https://ejournal.uin-suska.ac.id/index.php/marwah/article/view/1-15>>.
- Alkostar, Artidjo, Pengadilan HAM, Indonesia, dan Peradabannya (Yogyakarta: PUSHAM UII, 2004).
- Al-Sheikh, Abdullah bin Muhammad bin Abdurahman bin Ishaq et al, Tafsir Ibnu Katsir Jilid 1 (Bogor: Pustaka Imam Asy-Syafi'i, 2004).
- Aris, Seno, "Pemikiran Masdar Farid Masudi tentang Hak Reproduksi Wanita" (2020) 5:1 BUANA Gend J Studi Gend Dan Anak 55-64.
- Arnez, Monika, "Gender, Islam and Sexuality in Contemporary Indonesia: An Overview" in Monika Arnez & Melani Budianta, eds, Gend Islam Sex Contemp Indones Engaging Indonesia (Singapore: Springer Nature Singapore, 2024) 1.
- Asmanidar, "Suluk dan Perubahan Perilaku Sosial Salik (Telaah Teori Konstruksi Sosial Peter L Berger dan Thomas Luckman)" (2021) 1:1 Abrahamic Relig J Studi Agama-Agama.
- Aspandi, Aspandi et al, "Epistemology of Maqasid Taha Abdurrahman; New Paradigm and Classification of Maqasid al-Shari'ah Values" (2024) 35:1 Tribakti J Pemikir Keislam 95-108.

- Asy-Syaukani, Al Imam Muhammad bin Ali bin Muhammad & terj Amir Hamzah Fachruddin, *Tafsir Fathul Qadir Jilid 1* (Jakarta: Pustaka Azzam, 2013).
- Asy-Syaukani, Al Imam Muhammad bin Ali bin Muhammad, *Tafsir Fathul Qadir* (Jakarta: Pustaka Azzam, 2013).
- At-Tirmidzi, Muhammad bin Isa, *Sunan Tirmidzi Juz 1* (Beirut: Dar al-Fikr, 1988).
- Az-Zuhaili, Wahbah, *Fiqh Islam wa Adillatuhu Jilid 9* (Jakarta: Gema Insani, 2011).
- , *Tafsir Al-Munir Aqidah, Syari'ah, Manhaj* (Jakarta: Gema Insani, 2013).
- Berger, Peter L & Thomas Luckmann, *The Social Construction of Reality A Treatise in the Sociology of Knowledge* (New York: Doubleday & Company, 1966).
- Bunch, Charlotte & Niamh Reilly, “Women’s Rights as Human Rights: Twenty-Five Years On” in Niamh Reilly, ed, *Int Hum Rights Women International Human Rights* (Singapore: Springer Singapore, 2019) 21.
- Buser, Julie M, “Women’s Reproductive Rights Are Global Human Rights” (2022) 33:5 *J Transcult Nurs* 565–566.
- Busher, Joel & Tore Bjørgo, “Restraint in Terrorist Groups and Radical Milieus: Towards a Research Agenda” (2020) 14:6 *Perspect Terror*, online: <<https://www.jstor.org/stable/26964721>>.
- Connelly, Catherine E et al, “Understanding knowledge hiding in organizations” (2019) 40:7 *J Organ Behav* 779–782.
- Damanik, Yeyen, “Pengetahuan Ibu Hamil Tentang Hiv/Aids dan Penularan Dari Ibu Ke Bayi di Puskesmas Tambun Nabolon Kota Pematangsiantar Tahun 2020” (2020) 5:1 *J Health Reprod*.
- Davey, Melissa, “Why is it such a scandalous thing?': the women who have to fight for their right to be child-free”, (1 August 2021), online: *The Guardian* <<https://www.theguardian.com/society/2021/jan/08/why-is-it-such-a-scandalous-thing-the-women-who-have-to-fight-for-their-right-to-be-child-free>>.
- Dharma, Ferry Adhi, “The Social Construction of Reality: Peter L. Berger’s Thoughts About Social Reality” (2019) 7:1 *Kanal J Ilmu Komun*.
- Faisol, Syahid Akhmad & Hawa’ Hidayatul Hikmiyah, “Hak Reproduksi Perempuan Dalam Pemikiran Husein Muhammad Dan Masdar Farid Mas’udi” (2023) 9:2 *Asy-Syariah J Huk Islam*, online: <<https://ejournal.unzah.ac.id/index.php/assyariah/article/view/1129>>.
- França, Thais, “No less of a woman’: examining the (invisible) life of childfree women academics during the COVID-19 pandemic” (2022) 31:8 *J Gend Stud* 956–968.

- Gumiandari, Septi & Ilman Nafi'a, "Husein Muhammad's Progressive Thinking About Female Jurisprudence; A Descriptive Analytical Study" (2019) 4:2 *Mahkamah J Kaji Huk Islam*.
- Haddad, Yvonne Yazbeck, "Muslims, Human Rights, and Women's Rights" in Thomas Banchoff & Robert Wuthnow, eds, *Relig Glob Polit Hum Rights* (Oxford University Press, 2011) 71.
- Hanandita, Tiara, "Konstruksi Masyarakat Tentang Hidup Tanpa Anak Setelah Menikah" (2022) 11:1 *J Anal Sociol*.
- Haque, Arina et al, "THE DOMESTIC RIGHTS OF THE WIFE (Viewed from KH. Husein Muhammad's Thoughts)" (2022) 17:1 *EGALITA*.
- Harris, Isiah D et al, "Fertility and the aging male" (2011) 13:4 *Rev Urol* e184-190.
- Hesti, Nurkolistiana, *Hak-hak reproduksi perempuan perspektif Masdar Farid Mas'udi* (Undergraduate thesis, STAIN Ponorogo, 2015) [unpublished].
- Idris, Ahmad Rusyaid, Muhammad Khusaini & Syaiful Anwar Al-Mansyuri, "Contemporary Islamic Law in Indonesia: the Fulfillment of Child Custody Rights in Divorce Cases Caused by Early Marriage" (2024) 3:1 *MILRev Metro Islam Law Rev* 1.
- Jafar, Wahyu Abdul et al, "The Childfree Phenomenon Based on Islamic Law and Its Respond on Muslim Society" (2023) 8:2 November *Al-Istinbath J Huk Islam* 389.
- Jahroh, Siti, "NOT NINE BUT EIGHTEEN: Husein Muhammad on Aisha's Marriage Age" (2022) 15:1 *Al-Ahwal J Huk Kel Islam* 61-61.
- Kamalludin, Iqbal et al, "Revitalizing Justice in Fiqh: Revisiting Non-Retroactive Principles to Address Sexual Violence" (2024) 7:2 *Ulul Albab J Studi Dan Penelit Huk Islam* 136.
- Kanafi, Imam et al, "The contribution of Ahlussunnah Waljamaah's theology in establishing moderate Islam in Indonesia" (2021) 77:4 *HTS Teol Stud Theol Stud*.
- Kementerian Kesehatan, "Turunkan AKI-AKB, Kemenkes Pertajam Transformasi Sistem Kesehatan" (2021) kemkes.go.id, online: <<https://www.kemkes.go.id/article/view/21122400006/turunkan-aki-akb-kemenkes-pertajam-transformasi-sistem-kesehatan.html>>.
- Kementrian Agama RI, *Al-Qur'an dan Terjemahnya* (Jakarta Timur: Latnah Pentashihan Mushaf Al-Qur'an, 2019).
- Khasanah, Uswatul & Muhammad Rosyid Ridho, "Childfree Perspektif Hak Reproduksi Perempuan dalam Islam" (2021) 3:2 *Al-Syakhsyiyah J Law Fam Stud* 104-128.
- Kodir, Faqihuddin Abdul, *Qira'ah Mubadalah* (Tafsir Progresif untuk Keadilan Gender dalam Islam) (Yogyakarta: IRCiSoD, 2019).

- Lailla, Hikmah Noer, *Hak Reproduksi Perempuan Untuk Menolak Kehamilan (Studi Pendekatan Normatif Pemikiran Husein Muhammad)* (Undergraduate thesis, UIN Sultan Maulana Hasanuddin, 2022) [unpublished].
- Latifa, Rena, Komaruddin Hidayat & Akhmad Sodik, "Commentary on Place Spirituality: An Islamic perspective" (2019) 41:1 Arch Psychol Relig 38-42.
- Locke, John, *Two Treatise of Government* (Cambridge: Cambridge University Press, 2003).
- Mas'udi, Masdar Farid, *Islam dan Hak-Hak Reproduksi Perempuan* (Bandung: Mizan, 1997).
- Massoud, Mark Fathi, "Muslim women are using Sharia to push for gender equality", (18 May 2021), online: The Conversation <<https://theconversation.com/muslim-women-are-using-sharia-to-push-for-gender-equality-158371>>.
- Mayer, Ann Elizabeth, "Women's Human Rights and the Islamic Tradition" (1997) 17 Annu Soc Christ Ethics 311-17.
- Mediaindonesiacom, "Inilah Dampak dan Risiko Biologis Pilihan Childfree" (2021) Media Indones.
- Ministry of Health of the Republic of Indonesia, "Inilah Risiko Hamil Usia Remaja", (30 September 2017), online: [sehatnegeriku.kemkes.go.id <https://sehatnegeriku.kemkes.go.id/baca/umum/20170930/5823163/inilah-risiko-hamil-usia-remaja/>](https://sehatnegeriku.kemkes.go.id/baca/umum/20170930/5823163/inilah-risiko-hamil-usia-remaja/).
- Muhamad, Husein, *Fiqh Perempuan: Refleksi Kiai atas wacana Agama dan Gender* (Yogyakarta: LKiS Pelangi Aksara, 2001).
- Muhammad Khatibul Umam & Nano Romadlon Auliya Akbar, "Childfree Pasca Pernikahan: Keadilan Hak-Hak Reproduksi Perempuan Perspektif Masdar Farid Mas'udi dan Al-Ghazali" (2021) 3:2 Al-Manhaj J Indones Islam Fam Law 157-172.
- Muhammad, Abu Abdullah, *Sunan Ibnu Majah (Dar ar-Risalah al-'Alamiyah)*, 2009).
- , *Islam Agama Ramah Perempuan Pembelaan Kiai Pesantren* (Yogyakarta: LKiS Yogyakarta, 2007).
- , *Perempuan Ulama Di Atas Panggung Sejarah* (Yogyakarta: IRCiSoD, 2020).
- Muhammad, Husein, *Islam Agama Ramah Perempuan* (Yogyakarta: IRCiSoD, 2021).
- Muhsin, Sayyed Mohamed, "Islamic Jurisprudence on Harm Versus Harm Scenarios in Medical Confidentiality" (2024) 36:2 HEC Forum 291-316.
- Nur Hidayah, Okti, Musyafangah & Ahmad Rezy Meidina, "Analysis of the Rights and Obligations of Husband and Wife in the Compilation of Islamic Law: A Review

- from the Perspective of Gender Equality” (2023) 6:1 Legitima J Huk Kel Islam 1–15.
- Nurhayati, E, *Psikologi Perempuan dalam Berbagai Perspektif* (Yogyakarta: Pustaka Pelajar, 2012).
- Raday, Frances, “Womens Autonomy Equality Reproductive Health”, (December 2017), online: OHCHR <<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WG/WomensAutonomyEqualityReproductiveHealth.pdf>>.
- Rokom, “Kemenkes Perkuat Upaya Penyelamatan Ibu dan Bayi” (2021) sehatnegeriku.kemkes.go.id, online: <<https://sehatnegeriku.kemkes.go.id/baca/umum/20210914/3738491/kemenkes-perkuat-upaya-penyelamatan-ibu-dan-bayi/>>.
- Rubiyanto, Eko & Munsharif Abdul Chalim, “Counter Terrorism: Case Study On The Radicals Religious Group” (2018) 1:4 J Daulat Huk 869–869.
- Rufaida, Arini, “Hak Istri Menolak Rujuk Perspektif Islam dan Gender” (2019) 14:2 Yinyang J Studi Islam Gend Dan Anak 245–270.
- Sabiq, Sayid, *Fikih Sunah Juz 2* (Beirut: Dar al-Kitab al-Arabi, 1977).
- Salojärvi, Juhana Mikael, *Human Rights Redefining Legal Thought: The History of Human Rights Discourse in Finnish Legal Scholarship, Studies in the History of Law and Justice* (Cham: Springer International Publishing, 2020).
- Sari, Nirmala, “Karakteristik Penyebab Kanker Payudara” (2021) 16:1 J Ilm PANNMED Pharm Anal Nurse Nutr Midwivery Environ Dent 177–181.
- Schmitz, Cathryne L & Shirley Gatenio Gabel, “Women, Human Rights, and Gender Equality” (2023) 8:4 J Hum Rights Soc Work 359–360.
- Sciortino, Rosalia, Lies Marcoes Natsir & Masdar F Mas’udi, “Learning from Islam: Advocacy of reproductive rights in Indonesian Pesantren” (1996) 4:8 *Reprod Health Matters* 86–96.
- Septiani, Dinda & Itto Nesyia Nasution, “The Role of Dad’s Involvement in Parenting Development of Moral Intelligence of Children” (2017) 13:2 J Psikol.
- Serour, G I, “Ethical issues in human reproduction: Islamic perspectives” (2013) 29:11 *Gynecol Endocrinol* 949–952.
- Serour, Gi, “Islamic perspectives in human reproduction” (2008) 17 *Reprod Biomed Online* 34–38.
- , *Tafsir al-Misbah (Pesan, Kesan, dan Keserasian al-Qur’an) Volume II* (Jakarta: Lentera Hati, 2002).

- Shihab, M Quraish, *Tafsir Al-Misbah Pesan, Kesan, Dan Keserasian Al-Qur'an* (Jakarta: Lentera Hati, 2002).
- Sormin, Ihwan & Zezen Zainul Ali, "The Comparative Study of the Protection of Women's Rights in Article 463 of the New Criminal Code with Law Number 36 of 2009 Concerning Health Perspective of Jaser Auda" (2023) 2:2 *MILRev Metro Islam Law Rev* 187-198.
- Suarayasa, Ketut, *Strategi Menurunkan Angka Kematian (AKI) di Indonesia* (Yogyakarta: Deepublish, 2020).
- Sudjatmoko, Andrey, *Hukum HAM dan Hukum Humaniter* (Jakarta: Grafindo Persada, 2015).
- Syaifudin, Imam, "Pandangan Perempuan Tentang Hak Menolak Kehamilan Perspektif KH. Husein Muhammad" (20) 4:3 *SAKINA*, online: <<http://urj.uin-malang.ac.id/index.php/jfs/article/view/607>>.
- Syed, Khalida Tanvir, "Misconceptions About Human Rights and Women's Rights in Islam" (2008) 39:2 *Interchange* 245-257.
- Warsito, Warsito, "Hadist Perintah Memperbanyak Keturunan Tinjauan Textual dan Kontekstual dalam Prespektif Ekonomi" (2018) 4:1 *Riwayat J Studi Hadis* 147-147.
- Wodon, Quentin, "Islamic Law, Women's Rights, and State Law: The Cases of Female Genital Cutting and Child Marriage" (2015) 13:3 *Rev Faith Int Aff* 81-91.
- Yuliani, Putri Anisa, "Angka Kematian Ibu Hamil Masih Tinggi, Ini Upaya Kemenkes RI" (2021) *Media Indones*, online: <<https://mediaindonesia.com/humaniora/426546/angka-kematian-ibu-hamil-masih-tinggi-ini-upaya-kemenkes-ri>>.
- Zuhriah, Erfaniah et al, "Childfree, the Digital Era, and Islamic Law: Views of Nahdlatul Ulama, Muhammadiyah, and Gender Activists in Malang, Indonesia" (2023) 7:3 *Samarah J Huk Kel Dan Huk Islam* 1606.

Erfaniah Zuhriah is an academic researcher in Islamic Law, Gender, Religious Courts, and Family Law. She is a lecturer at the Faculty of Sharia, UIN Maulana Malik Ibrahim Malang.

Nur Alfy Syahriana is an academic and writer in Islamic Family Law. She is a lecturer at the Faculty of Sharia, UIN Maulana Malik Ibrahim Malang.

Zezen Zainul Ali is a doctoral student of Islamic Studies with a concentration in Islamic Law and Social Intermediaries at Sunan Kalijaga State Islamic University. Yogyakarta. He is a scholarship recipient of the Education Endowment Fund Management

Institution (LPDP) for Masters and Doctoral levels. He is also the founder of Taskuliah_id and Family Law Clinic.