

Pregnancy Termination Model for Fetal Anomaly According to Maqasid Shariah

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Abstract

The procedure of termination of pregnancy in the case of fetal abnormalities has instigated much debate on the aspects of medical and ethical needs as well as *shariah* (Islamic law). The discussion has led to confusion in deciding whether to perform a TOP. This article aims to analyze those aspects by considering the level of fetus abnormalities to propose a pregnancy termination model to harmonize the emerging conflicts in the aspects mentioned. A qualitative approach was adopted, employing document analysis and semi-structured interviews with medical practitioners in obstetrics and gynaecology. The findings have shown that the ruling for termination of pregnancy due to the fetal anomaly is decided based on the types of abnormalities, fetal lifespan, and threats to maternal life. The model for termination of pregnancy management due to fetal abnormalities indicates that a threat to maternal life becomes the core element determining the decision to terminate a pregnancy or vice versa. Forms of abnormalities and fetal lifespan are also considered, demonstrating harmony between medical, ethical, and legal aspects.

Keywords: Termination of Pregnancy, Fetal Anomaly, Maqasid Shariah, Objectives of Islamic Law

Introduction

Fetal abnormalities or fetal anomaly in medical terms is defined as fetal disabilities in terms of the shape of a fetus or the abnormality in its developmental aspect (Kamus Jururawat, 2001). This abnormality, known as congenital anomalies, can be detected in the womb or after birth. WHO (2016) defines the defect as follows

Congenital anomalies are also congenital disabilities, congenital disorders or congenital malformations. In addition, congenital anomalies can be defined as

structural or functional anomalies (e.g., metabolic disorders) that occur during intrauterine life and can be identified prenatally, at birth or later in life.

A congenital anomaly is a major cause of death, chronic illness, and disability among children in most countries. The defect factors identified by WHO are genetic factors, infections, maternal nutritional condition, and environmental factors. Approximately 276 000 babies die within four weeks of birth due to congenital anomalies worldwide. Hence, in 2010, the World Health Assembly adopted a resolution on birth abnormalities to promote the prevention of congenital anomalies and improve children's health (WHO, 2022).

The effects of fetus abnormality on the mother and fetus itself necessitate discussion on the termination of pregnancy (TOP) procedure due to fetal abnormalities, particularly the extent to which a pregnancy can be continued and the aspect of the threat to maternal life safety. The conflicts between protecting a mother's life and maintaining the lifestyle of an abnormal child require each situation to be analyzed from the aspects of *maslahah* (benefit) and *mafsadah* (harm) and their standards according to different circumstances. This measure ensures that a decision is made within the paradigm of *maqasid shariah* (the objectives of Islamic law). Therefore, the decision to perform a TOP procedure due to an abnormal fetus must be based on a guided model that relates directly to the fetal and maternal lives. Analysis of the aspects of *maslahah* and *mafsadah* in every decision becomes a benchmark for its consistency with *maqasid shariah*. Hence, the aspects of *maslahah* and *mafsadah* in a TOP procedure will be analyzed regarding abnormalities, fetal lifespan, and its threat to maternal life.

Termination of Pregnancy Due to Abnormalities

Ethical and value aspects are assessed when discussing abortion due to fetal defects. (Nucetelli, 2017). Kaczor (2015) gives good arguments to show that individual personal life begins at conception. Thus, a debate began regarding the moral issue of aborting fetuses with disabilities. Health professionals face a moral dilemma when deciding to terminate a pregnancy due to this fetal abnormality (Fay, 2016). Termination of pregnancy due to fetal abnormality is also increasing due to increasingly sophisticated fetal defect scanning technology, such as using Artificial Intelligence (AI) methods (Meshaka *et al.*, 2022).

In the medical aspect, there are two forms of fetal defect :(i) physical or structural, or (ii) genetic or family. Physical or structural defects occur when there is an abnormality in the external structure of the body or loss of certain parts, such as harelip, heart, or foot (clubfoot). This defect can also lead to premature rupture of membranes (PRM) (Turlina *et al.*, 2020). Physical defects also include neural tube deformities, spinal bifida, anencephaly, and limb disorders following epilepsy in children. Neural tube deformity is a congenital anomaly that includes defects on the spine or the skull, often caused by the failure of the neural tubes to close. This abnormality occurs when a curved bone on the spinal bifida fails to close. In worse cases, the dislocation of the bones involves neural tissue herniation and consequently causes mental and physical illnesses. Spina bifida is a defect in the development of a newborn baby whose part of the spinal cord and its coat is exposed through the slit of the spine. Symptoms include foot paralysis, incontinence, hydrocephalus, and mental disorders due to brain defects. Anencephaly is a partial or complete absence of bones on the back of the skull and cerebral hemispheres of the brain. Such a defect occurs because of developmental deformity, and the affected newborn cannot survive for more than a few hours (Jururawat, 2001).

Genetic or family defects refer to inherited defects. The varietal numbers of chromosomes cause it due to errors, loss, the addition of the chromosomes or a combination of several factors (Noor, 2016). An example of this genetic defect is Edwards syndrome or trisomy 18 (T 18) and trisomy E. It is a genetic disorder that occurs due to the existence of all or part of the 18th chromosome with more copies. The fetus developing this syndrome is likelier to die at the fetal stage. If born, it will experience severe disabilities involving the brain, liver, craniofacial structure, kidney, and abdomen and can only survive for a short period (Weiss, 2018).

Regarding the fetal abnormalities mentioned above, three conditions determine the decision on the procedure of TOP: (i) the abnormalities that cause the lethal fetal anomaly, (ii) the threat to the maternal life, and (iii) none of the mentioned. In the case of a life-threatening maternal defect, TOP is a priority based on the concept of rejecting the heavier *mafsadah* (maternal death), which is *qat'i* (absolute), rather than preserving the lighter *maslahah* (preserving the fetal life, which is harmful to the mother's life). In the event of *qat'iyyah* and *zanniyyah* (probable) conflict, *qat'iyyah* is prioritized. Thus, the form of disability, whether a physical or genetic defect, is not a significant consideration when there is a threat to the mother's life.

Table 1

Three forms of fetal abnormalities as determinant factors for TOP procedure

The forms of abnormalities (physical and genetic)	Description
Lethal Anomaly	The procedure of TOP will be allowed when there is a risk factor for the mother's life as <i>mafsadah</i> continues to be <i>qat'i</i> based on medical science. Continuing pregnancy for non-maternal life-threatening abnormalities by not doing TOP is in line with the approach of gathering between two <i>maslahah</i> even though the fetal life span is short.
Threatening the maternal life	<i>Maslahah</i> of doing TOP to preserve the mother's life is <i>qat'iyyah</i> compared to <i>maslahah</i> of maintaining a fetus threatening the mother as it will bring <i>mafsadah</i> .
Absence of both effects	It is illegal to do TOP because there is no ' <i>illah</i> of emergency.

Maternal mortality is also a key factor for a lethal anomaly defect because it is *qat'i* ahead of the fetal *maslahah*. However, without a life-threatening threat, the *maslahah* of fetal life can be practised even if its lifespan is short. This is because the approach to gathering between all *maslahah* is used when there is no conflict between the *maslahah* of the mother's and child's lives. This approach must be taken first before selecting the more dominant approach between the two *maslahah*. In this regard, performing TOP in the event of a third defect, which is neither a life-threatening nor lethal anomaly, is illegal because

there is no *'illah* (adequate cause) to do so, which in this case, is emergency or *mashaqqah* (hardship).

Based on the above analysis, the elements that justify a TOP procedure are (i) the form of defect, (ii) the effects of fetal defect, and (iii) the impact of the defect on the mother.

Fetal Abnormalities Related to its Lifespan

Both fetal abnormalities and permission to perform a TOP are subject to the form of the defect and the fetal lifespan. This connection serves to ensure that steps are taken to preserve the rights of both parties; the right of the fetus is to survive in the womb and be born, and the right of the mother is to ensure that her life will not be harmed by a threat caused by an abnormal fetal pregnancy. Hence, the permission for TOP refers to the aspects of *maslahah* and *mafsadah* in continuing the pregnancy of a fetus with a specific lifespan based on medical science.

Fetal abnormalities and relationships with their lifespan are categorized into three situations. The first situation is an abnormality that causes fetal death in the womb or afterbirth (can only survive for a short period). The complicated or unpredictable fetal abnormalities in this postnatal life is similar to anencephaly's (Abu Bakar, 2018). This category of abnormality is known as a lethal anomaly. The second situation is an abnormality that allows the child to survive relatively more prolonged than the lethal anomaly case for a certain period. Deformity in this category can cause long-term death, such as spina bifida and Edward's syndrome (trisomy 18). The third situation is an abnormality that does not affect the fetal lifespan, such as a physical defect that does not involve other body systems (e.g., harelip, being born without an earlobe or legs, or short arms) (Abu Bakar, 2018).

In the case of lethal anomalous abnormalities, TOP cannot be done simply because of the fetus's short life expectancy, which has no hope of living based on current medical knowledge. This notion brings *mafsadah* to the fetus by denying the fetus's right to survive and disrespecting the "life" despite a short time. This principle demonstrates that *maslahah* respects a life for a fetus to be prioritized instead of performing a TOP, even in the case of lethal anomaly, which is not the case of *maslahah* if the pregnancy continues. However, in the event of a significant *mafsadah* due to a particular abnormality (such as severe mental disorders of the mother or conditions that can threaten her life), TOP can be performed. Abdulrahman al-Matary and Jaafar Ali (2014) argue that performing a TOP for a short fetal life expectancy is desirable to avoid greater *mafsadah* to mothers and family members.

In the case of long-term morbidity abnormalities, the same approach is applied but with greater emphasis on the prohibition of TOP compared to lethal anomaly cases. This matter is because the abnormalities are not incompatible with life but can survive for a more extended period. Therefore, continuing pregnancy with abnormalities of this category is a sign of patience and subsides with the provision of Allah SWT. While performing a TOP for such a case is prohibited, as stated principally in the fiqh method, "whoever gets something quickly before the time, then it is illegal for him" (Al-Suyuti, 1990). Hence, the child's *maslahah* must be maintained until a mother's *mafsadah* is affected by the abnormality in her body or mental health.

Based on the three abnormalities of the fetus as discussed above, the factors of genetic disorders that cause abnormalities are unacceptable as the factor justifying a TOP. However, in the event the abnormality threatens the life of the mother, it is not considered the legal status to maintain an absolute *maslahah* (*qat'i*) by doing TOP by the rules of الضرر يدفع بقدر الإمكان (the harm should be removed as best as possible) (Mustafa Ahmad al-Zarqa, 1989).

This principle becomes the standard of a decision in performing aTOP when the medical aspect of this procedure will be carried out when the mother's life is at risk. Therefore, the fetal lifespan and survival ability are not determinants of a TOP.

The above decision parallels the resolution of the 26th Muzakarah Jawatankuasa Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam Malaysia held on the 7th to 8th of March 1990 and on the 52nd of 1 July 2002. This resolution prescribed abortion should the defects and illness of a fetus can threaten the mother's life, even though the fetus aged more than 120 days (JAKIM's Fatwa Management Division, 2015). The former law is illegal and even considered a crime because the fetus has been alive at this stage compared to the first stage of the embryo (*nutfah*) and the second stage of a fetus (*mudghah*). The latter case is considered *makruh* (abominable) (approaching illegal in a condition without any threat). Therefore, allowing the illegal action (fetus abortion aged more than 120 days and above) manifests the importance of preserving the mother's life over the prohibition.

Fetal Abnormalities Threaten Maternal Mortality

The threats to maternal mortality are crucial in justifying a TOP procedure. From medical and legal perspectives, the threat to maternal mortality is a general guide for TOP. This priority is based on justifications stronger than other factors, such as fetal malformation, illness, and mental disorders. A TOP cannot simply be done because a fetus has a typical defect or illness, particularly if it does not threaten the mother's life. The threat of maternal mortality is an important benchmark in TOP, even when the pregnancy is already in the third trimester and when the fetus is alive and has formed complete organs. Although the abnormalities of a fetus can affect the mother, TOP is not permissible if there are no psychological and life threats to the mother (Malini, 2019).

Termination of Pregnancy Model for Fetal Abnormalities

Based on the literature review and interviews with experts and guideline makers of pregnancy termination in Malaysia, a pregnancy termination case handling model has been produced. A model to manage the termination of pregnancy for fetal abnormalities is illustrated in Figure 1.

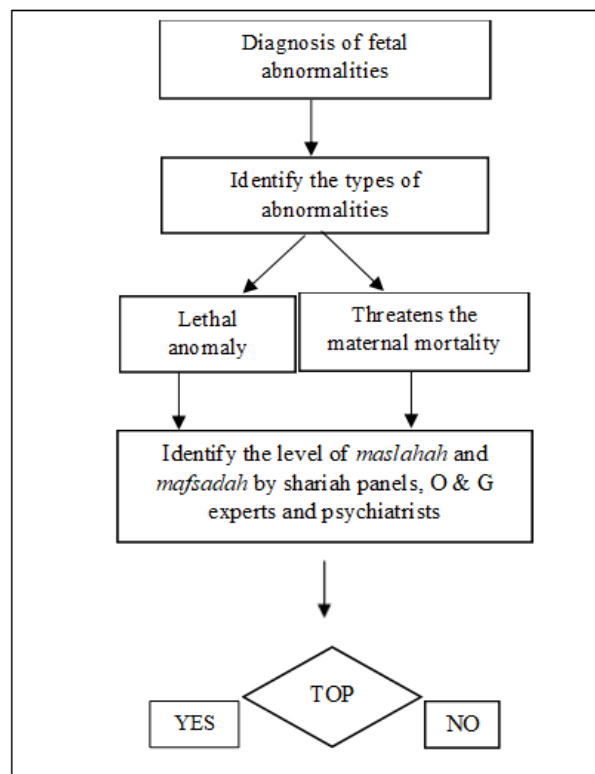


Figure 1: Termination of Pregnancy Model for Fetal Abnormalities

If the termination of pregnancy needs to be done on a robust medical justification and is allowed according to *shariah*, then some other aspects also need to be examined. For example, the moral support aspect of nursing staff towards women who experience abnormal fetal pregnancy and the phase after TOP is critical (Adzlin, 2019). In addition, support from the family also plays a vital role from the moral aspect and related knowledge (Sun et al., 2020). This is because their level of well-being decreases, and they experience emotional stress (Dawid. et al., 2021) and experience it for an extended period after the procedure (Keci et al., 2021). In general, handling the issue of holistic termination of pregnancy requires the collaboration of various experts, namely medical experts related to the TOP procedure (Khokha et al., 2017) and experts in the field of values and ethics, including religious people.

Conclusion

In summary, the approach that concerns life-threatening maternal pregnancies in implementing the TOP procedure is consistent with the legal, ethical, and medical aspects. These three aspects make maternal life's benefit (*maslahah*) more vital and dominant than a fetus' life. Applying this principle corresponds with the *maqasid al-shari'ah* even though this issue is elucidated from a general ethical perspective, regardless of religion. This matter shows that the *maslahah* and *mafsadah* aspects are evaluated in every decision made before performing TOP.

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References

- Al-Matary, A., and Ali, J. (2014). “Controversies and considerations regarding the termination of pregnancy for foetal anomalies in Islam,” *BMC Medical Ethics*, vol. 15: 10, pp. 1-10.
- JAKIM Fatwa Management Division (Bahagian Pengurusan Fatwa). (2015), *Kompilasi Pandangan Hukum Muzakarah Jawatankuasa Fatwa Kebangsaan Bagi Hal Ehwal Ugama Islam*, p.110.
- Christopher Kaczor. (2015). *The ethics of abortion: women's rights, human life, and the question of justice*, Routledge Taylor & Francis Group: New York.
- Dawid, W., Maciejewska, M., Janik-Fuks, I., Cwiek, D., Zimny, M., & Sipak-Szmigiel, O. (2021). Medical Staff In The Care Of A Pregnant Patient Diagnosed With Fetal Defect. *USA: National Library of Medicine* 74(1), 17–21.
- Fay, V., Thomas, S., & Slade, P. (2016). Maternal-fetal medicine specialists’ experiences of conducting feticide as part of termination of pregnancy: a qualitative study. *Prenat Diagn*, 36(1):92–9.
- Jururawat, K. (2001). cet. ke-18, Selangor: Penerbit Fajar bakti Sdn. Bhd.
- Kecir, K. A., Rothenburger, S., Morel, O., Albuissou, E., & Ligier, F. (2021). Experiences of fathers having faced with termination of pregnancy for foetal abnormality. *Journal of Gynecology Obstetrics and Human Reproduction*, 50(1).
- Khokha, M. K., Mitchell, L. E., & Wallingford, J. B. (2017). An opportunity to address the genetic causes of birth defects. *Pediatric Research*. Nature Publishing Group.
- Malini Mat Napes (Pakar Obstetrik dan Ginekologi, Hospital Sultanah Nur Zahirah (HSNZ), Kuala Terengganu, Malaysia), interview on 23 April 2019.
- Nuccetelli, S. (2017). Abortion for fetal defects: two current arguments. *Medicine, Health Care and Philosophy*, 20(3), 447–450.
- Sun, S., Yang, M., Zhang, J., Zhou, X., Jia, G., & Yu, X. (2020). Family Support For Pregnant Women with Foetal Abnormality Requiring Pregnancy Termination in China. *Health and Social Care in the Community*, 28(3), 1020–1029.
- Turlina, L., Ummah, F., & Sulistyowati. (2020). Risk Factors for Premature Rupture of the Membranes. *Jurnal Kebidanan Midwifery*, 6(2), 35–43.
- World Health Organization (WHO). “Congenital Anomalies,” achieved on 30 Mei 2022, Retrieved from https://www.who.int/health-topics/congenital-anomalies#tab=tab_1.