

An Islamic Political Jurisprudence Analysis of Reproductive Health Services under Article 103(4)(e) of Government Regulation No. 28/2024

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Abstract: This study examines the provision of reproductive health services as stipulated in Article 103 Paragraph (4) Letter e of Government Regulation (PP) No. 28 of 2024, focusing specifically on the distribution of contraceptives to school-aged children and adolescents. The research investigates the background and rationale behind the issuance of this regulation and analyzes it through the lens of *fiqh siyasah* (Islamic political jurisprudence). Employing a qualitative normative approach, this study is based on library research by systematically reviewing relevant literature, including books, scholarly articles, journals, and official publications. The researcher acts as the primary research instrument. The findings suggest that the emergence of this provision is influenced by several urgent social issues: the rise in teenage promiscuity, high rates of abortion among adolescents aged 15–19, an increasing number of marriage dispensations due to premarital sexual activity, and efforts to reduce the transmission of sexually transmitted diseases (STDs), including HIV/AIDS. From the perspective of *fiqh siyasah*, the legality of contraceptive distribution depends on the marital status of the recipients. For married adolescents, the use of contraceptives is considered permissible. However, for those who are unmarried, it is deemed impermissible (*haram*) as it potentially facilitates or legitimizes acts of *zina* (adultery), which are prohibited in Islamic law.

Abstrak: Penelitian ini membahas persoalan pelayanan kesehatan reproduksi dalam konteks Pasal 103 Ayat (4) Huruf e Peraturan Pemerintah Nomor 28 Tahun 2024, yang mengatur mengenai penyediaan alat kontrasepsi bagi anak usia sekolah dan remaja. Fokus utama kajian ini adalah menganalisis latar belakang lahirnya pasal tersebut serta meninjau ketentuan tersebut dari perspektif *fiqh siyasah*. Penelitian ini menggunakan metode penelitian kualitatif dengan pendekatan normatif melalui studi kepustakaan. Teknik pengumpulan data dilakukan secara sistematis melalui penelusuran literatur yang relevan, seperti buku, artikel ilmiah, jurnal, dan dokumen resmi yang membahas isu kesehatan reproduksi serta hukum Islam politik. Hasil penelitian menunjukkan bahwa lahirnya ketentuan dalam Pasal 103 Ayat (4) Huruf e dilatarbelakangi oleh meningkatnya pergaulan bebas di kalangan remaja, tingginya angka aborsi pada usia 15–19 tahun, banyaknya dispensasi pernikahan akibat hubungan pranikah, serta upaya pemerintah untuk menekan risiko penyebaran penyakit menular seksual (PMS) termasuk HIV/AIDS. Dalam perspektif *fiqh siyasah*, penyediaan alat kontrasepsi bagi remaja dipandang bergantung pada

status pernikahan mereka. Jika remaja telah menikah, penggunaan alat kontrasepsi dinilai mubah (diperbolehkan). Namun, apabila belum menikah, maka hukumnya haram karena dikhawatirkan menjadi sarana untuk melakukan perbuatan zina, yang bertentangan dengan prinsip-prinsip hukum Islam.

Keywords: Contraception, Adolescents, Reproductive Health, Fiqh Siyasah, Government Regulation No. 28/2024

Introduction

Government Regulation No. 28 of 2024, enacted on July 26, 2024, includes provisions concerning the distribution of contraceptive devices to school-aged children and adolescents. Article 103 Paragraph (1) stipulates efforts to improve reproductive health for youth, as previously outlined in Article 101 Paragraph (1) letter b. These efforts include the provision of communication, information, education, and reproductive health services. Paragraph (2) clarifies that communication, information, and education should, at minimum, address the following components: (a) understanding of the reproductive system, functions, and processes; (b) methods for maintaining reproductive health; (c) recognition of risky sexual behaviors and their consequences; (d) the concept of family planning; (e) skills to refuse unwanted sexual advances and protect oneself; and (f) age-appropriate media literacy.

Paragraph (3) notes that this educational content may be delivered through classroom teaching materials or other extracurricular learning activities. Paragraph (4) outlines that reproductive health services must include early disease detection measures such as screening, treatment, rehabilitation, counseling, and the provision of contraceptive devices. Furthermore, Paragraph (5) emphasizes that counseling must uphold privacy and confidentiality, and should be conducted by competent medical professionals, health workers, counselors, or trained peer counselors.

This regulation, signed by President Joko Widodo, has sparked controversy. Critics fear it may be interpreted as state endorsement of premarital sexual activity among youth (iNews, 2024). The debate has become polarized. Proponents argue that the policy aims to protect adolescent reproductive health and mitigate the risks associated with early sexual activity. Opponents, including the Head of MUI Makassar, Sheikh Anre Gurutta Baharuddin, contend that while the policy may prevent pregnancy, it does not address the root issue of zina (fornication). Similarly, Member of the House of Representatives' Commission IX, Netty Prasetyani Aher, warned that the policy could be misconstrued as a legal endorsement of teenage sexual behavior (EMediaDPRRI, 2024).

Article 103 Paragraph (4) letter e has drawn criticism due to its perceived endorsement of adolescent sexual activity. However, the Ministry of Health clarified that the regulation targets adolescents in early marriages, not those engaging in premarital sex. It aims to provide contraceptives to married adolescents categorized as being within the reproductive age group (Pasangan Usia Subur—PUS). While the wording of the regulation clearly outlines reproductive health services, including contraceptive provision, public backlash has been significant. Critics argue that unlike in Western countries—where such practices are normalized—the same approach cannot be accepted in Indonesia, a country grounded in religious and moral values, particularly those reflected in the first principle of Pancasila: belief in the One and Only God (Rasyid, 2024).

Contraceptives are devices designed to prevent or delay pregnancy by obstructing fertilization. They also play a role in preventing the transmission of sexually transmitted infections (STIs). Various contraceptive methods exist, some of which function hormonally, while others serve as physical barriers. Certain types even offer protection against viral, bacterial, and parasitic infections acquired through sexual contact (Lim, Pangaribuan, & Salvirah, 2024).

From an Islamic perspective, contraceptive use is discussed under the concept of *'azl* (coitus interruptus). According to Sheikh Taqiuddin an-Nabhani in *Nizhamul Ijtima'iy fil Islam*, contraception is permitted for married couples. However, if there is a strong suspicion (*ghalabatuzh-zhan*) that contraceptives are being used to facilitate unlawful sexual activity (*zina*), which is explicitly forbidden in Islam, their use becomes impermissible. In this light, providing contraceptives to unmarried adolescents is considered *haram* (forbidden), as it contradicts the objectives of lawful marriage. In Islamic teachings, sexual relations outside of marriage are regarded as a major sin. As stated in the Qur'an: "*Do not approach adultery, for it is truly an indecent deed and an evil way*" (QS al-Isra': 32).

Contraceptives

Contraception refers to measures taken to prevent or inhibit the meeting of a mature egg cell and sperm cell, which generally leads to pregnancy. Pregnancy typically results from the fertilization of an egg by a sperm cell. Therefore, contraceptives are used to prevent pregnancy among sexually active individuals who are fertile and do not wish to conceive. In essence, contraception is an effort to avoid pregnancy, either permanently or temporarily.

School-Aged Children and Adolescents

School-aged children are generally categorized as individuals aged 6 to 18 years, encompassing both primary and secondary education. Children aged 6 to 12 years typically attend primary school, while those aged 13 to 18 attend junior and senior secondary schools.

The National Population and Family Planning Board (BKKBN) defines adolescents as individuals in the transitional phase between childhood and adulthood, which involves a series of developments preparing them for adult life. This group includes those aged between 10 and 24 years who are unmarried.

Free Social Interaction Among Adolescents

Unrestricted or "free" social interaction among adolescents has become an increasingly concerning phenomenon in modern society. It refers to social behavior in which adolescents engage in romantic or sexual activities without the bounds of marriage or serious commitment. A notable consequence of such behavior is its association with nightlife and entertainment, which often includes drug use. These risky behaviors can lead to the spread of sexually transmitted infections (STIs), including HIV/AIDS, and may negatively impact various aspects of an adolescent's life.

This social trend among youth warrants serious attention due to its implications for their moral and behavioral development. As the future of a nation lies in the hands of its youth, their quality and direction will significantly influence the country's progress or decline (Government of Kulon Progo Regency, 2018).

Public Policy Theory: Article 103 Paragraph (4) Letter e of Government Regulation No. 28 of 2024

In an official statement quoted by InfoPublik on August 7, 2024, Ministry of Health spokesperson Mohammad Syahril stated that reproductive health education should include contraceptive use. He emphasized that contraceptives are intended for adolescents who are already married and wish to delay pregnancy until they are financially or medically ready. He further warned the public against misinterpreting the regulation. The forthcoming Ministerial Regulation will include detailed provisions derived from this government regulation (Birokrasi, 2024).

Vice President K.H. Ma'ruf Amin also clarified that this policy applies only to adolescents who are legally married. He acknowledged that the wording of the regulation is open to multiple interpretations due to its lack of explicit age and marital status restrictions, potentially leading to public misunderstanding. The Vice President also stressed that regulations should align with Islamic principles and must not alter what is considered lawful (*halal*) into unlawful (*haram*), or vice versa (Wapresri, 2024).

Justice Theory and Protection of the Rights of School-Aged Children and Adolescents

Reproductive health rights for adolescents encompass several crucial aspects aimed at ensuring their well-being, safety, and comprehensive protection. These rights extend beyond physical health to include mental and social well-being. Among the fundamental rights is the right to live with a standard of health that protects them from premature death, sexually transmitted infections (STIs), and health complications arising from early pregnancies. Since adolescent bodies are still developing, early pregnancies can result in severe medical conditions. Therefore, ensuring access to accurate information and healthcare services is vital to protect adolescents from preventable health risks (Viryadi & Yunita, 2024).

Theory of Maslahah (Public Interest): Article 103 Paragraph (4) Letter e of PP No. 28/2024

Imam Al-Ghazali emphasized that *maslahah* (public interest) must align with the objectives of *shari'ah*, even if it contradicts personal desires. This is because what people perceive as beneficial may often be driven by personal interests rather than divine guidance. For example, during the pre-Islamic era (*Jāhiliyyah*), women were denied inheritance rights, which society then regarded as a form of *maslahah*. However, such practices were contrary to *shari'ah* and thus invalid.

According to Al-Ghazali, the true measure of *maslahah* lies in its accordance with divine intent and not with human desires. Any act or policy must therefore serve the objectives of *shari'ah* to be considered a legitimate public good.

Fiqh Siyasah (Islamic Political Jurisprudence)

According to Zainuddin Ali, the term *fiqh* (Islamic jurisprudence) linguistically means understanding or knowledge. Historically, it referred to religious knowledge encompassing faith, ethics, and practical worship (*ibādah*), aligned with the concept of Islamic law (*Shari'ah Islāmiyyah*). The term *siyasah* originates from the word *sāsa*, which refers to governance, political wisdom, and regulation. Thus, *siyasah* involves political policy and regulation aimed at managing societal affairs to achieve certain objectives.

Fiqh siyasah is the field of Islamic jurisprudence that deals with the principles and regulations governing public administration and statecraft, aimed at ensuring justice and public welfare. It includes legislative authority (al-sulṭah al-tashrī'iyah), which is responsible for formulating and enacting laws in accordance with divine revelation. This legislative power is complemented by executive (al-sulṭah al-tanfidhiyyah) and judicial (al-sulṭah al-qaḍā'iyah) authorities in an Islamic governance framework.

According to Muhammad Iqbal (2014), *fiqh siyasah* enables the Islamic government to establish laws that regulate public affairs, provided these laws are consistent with the Qur'an and Sunnah and serve the overarching goal of public welfare.

Method

The method employed in this study is library research, a research approach that systematically collects information from various literature sources. This research is qualitative in nature and adopts a normative approach, aiming to analyze legal texts and scholarly opinions related to the topic of Reproductive Health Services: A Study of Article 103 Paragraph (4) Letter e of Government Regulation No. 28 of 2024 from the Perspective of Fiqh Siyasah.

Data collection techniques involved extensive literature review, including books, journal articles, academic papers, legal documents, and other relevant publications. In accordance with the nature of this research, the researcher served as the primary instrument for collecting and interpreting the data.

To obtain the necessary data, the researcher conducted a comprehensive documentary review, which involved reading, examining, and analyzing statutory regulations and scholarly works related to the research issue. The goal was to gather secondary data and supporting information through various sources, both in print and electronic formats – such as legislation, books, scholarly journals, and other reference materials – that provide insight and relevance to the legal and theoretical framework of this study.

Results and Discussion

The Background Behind the Formulation of Article 103 Paragraph (4) Letter e of Government Regulation No. 28 of 2024

1. The Phenomenon of Premarital Relations Among Adolescents

In contemporary society, the phenomenon of casual sexual behavior among adolescents has become increasingly alarming. This is characterized by sexual activity conducted without marital commitment or binding agreements (Devy, 2024). Premarital sex refers to consensual sexual activity between individuals who are not legally married. A survey among high school students found that 41.2% had engaged in sexual activity, 33.1% were sexually active, and 43.1% admitted to not using condoms during intercourse. In Indonesia, further research revealed that 5.1% of adolescents admitted to having engaged in sexual activity, with curiosity being the most common reason (50%). This behavior places them at high risk for sexually transmitted infections (STIs), including HIV/AIDS, primarily due to a lack of proper knowledge about sexual health and prevention strategies (Hacantya Yudanagara, 2024).

2. The Rise in Teenage Abortions

Data from the Guttmacher Institute (2000) indicated that 3.7% of women aged 15–49 experienced unwanted pregnancies resulting in abortion, equivalent to 37 abortions per 1,000 women. A 2022 study by Nurhafni found that 95% of 405 unplanned pregnancies occurred among adolescents aged 15–25. A case study in Bandung revealed that 20% of adolescents reported having engaged in premarital sex. Alarming, of the 2.5 million estimated abortion cases in Indonesia, 1.5 million involved teenagers. These statistics highlight the severity of the issue, especially among school-aged youth.

3. The Escalation of Marriage Dispensations

Data from the West Java Religious Court noted 8,312 applications for marriage dispensation in 2020, 6,794 in 2021, and a rise to 8,607 by the third quarter of 2022. According to Abdul Hadi Wijaya, Deputy Chair of the Regional Parliament Commission X, stakeholders must act to curb early marriage. West Java Provincial Government reported 5,523 underage marriages in 2022. The majority were prompted by unplanned pregnancies. In Indasari of the DP3AKB stated that 5,523 out of 5,777 dispensation requests were granted by the courts, reinforcing the correlation between premarital sexual activity and early marriage.

Fiqh Siyasah Perspective on the Provision of Contraceptives to School-Age Children and Adolescents

Family planning, or *tahdīd al-nasl*, refers to the regulation of birth in alignment with Islamic principles. According to the *fiqh* maxim:

الأصل في الأشياء الإباحة حتى يدل الدليل على التحريم

"*Al-aṣl fī al-ashyā' al-ibāḥah ḥattā yadulla al-dalīl 'alā al-taḥrīm*"

"The default ruling on things is permissibility unless there is evidence that forbids it."

Islam generally allows family planning, especially when grounded in health, economic, or social concerns (Zuhdi, 1997). However, Islamic law strongly forbids permanent sterilization or abortion unless there is a dire necessity. The permissibility of using contraceptives is contingent on marital status and intention. For married couples, contraceptives are allowed to prevent pregnancy under certain circumstances. In contrast, their use by unmarried adolescents is considered *haram* (forbidden) as it may facilitate zina (fornication), a grave sin in Islam:

"And those who do not invoke with Allah another deity or kill the soul which Allah has forbidden except by right and do not commit unlawful sexual intercourse..." (QS Al-Furqan: 68)

Conclusion

Based on the findings of this research, the following conclusions can be drawn:

The Background Behind the Enactment of Article 103 Paragraph (4) Letter e of Government Regulation No. 28 of 2024 is driven by several contributing factors. First, the widespread phenomenon of premarital sexual activity among adolescents, many of whom engage in such behavior while still attending school and before entering legal marriage. Second, the alarming rate of abortion among teenage girls aged 15–19, who experience unwanted pregnancies resulting from such relations; data suggests that of the 2.5 million abortion cases in Indonesia, approximately 1.5 million are committed by adolescents. Third,

the rise in marriage dispensations is also linked to the increasing number of teenagers seeking to marry due to premarital pregnancy, with most of these marriages being initiated as a result of unplanned conception.

The Government of Indonesia, through various regulatory initiatives, has acknowledged the urgent need to safeguard adolescent sexual and reproductive health, particularly for those at risk of exposure to sexually transmitted infections (STIs), including HIV/AIDS. The use of contraceptives is viewed as a means to mitigate these risks for adolescents already engaging in sexual activity. Thus, the state justifies the provision of contraceptives for school-aged children and adolescents as part of its broader reproductive health protection strategy.

From the Perspective of Fiqh Siyasah (Islamic Political Jurisprudence), the permissibility of contraceptive use depends upon the marital status of the adolescent. Contraceptive use to manage fertility is considered *mubah* (permissible) for legally married couples, especially in circumstances involving health concerns or economic limitations. However, for unmarried individuals, such usage is deemed *haram* (forbidden), as it could be exploited to facilitate or justify illicit sexual relations (*zina*), which is categorically prohibited in Islamic law.

Therefore, in Islamic jurisprudence, the use of contraceptives outside the bounds of marriage does not align with the ethical objectives (*maqāsid al-sharī'ah*) of preserving lineage and morality. Additionally, the National Population and Family Planning Board (BKKBN) of Indonesia stipulates that contraceptives are to be provided only to legally married couples or individuals diagnosed with HIV/AIDS, in accordance with medical recommendations. This approach aims to strike a balance between public health concerns and religious values in regulating adolescent reproductive behavior.

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