



Abortion Law as Premeditated Murder: Assessing the Equality of Human and Fetal Rights to Life

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Abstract. Abortion is a complex issue that involves legal, ethical, and religious debates regarding the right to life. This article argues that abortion should be treated as premeditated murder because it involves the deliberate termination of a human life. By examining the concept of the right to life as outlined in international law, Islamic Law, and bioethical perspectives, the article explores whether fetuses have the same rights to life as fully developed humans. It further delves into the implications of abortion as a violation of the right to life and the potential legal consequences of treating abortion as a premeditated crime. The article also reflects on how different countries' abortion regulations align with or contrast the notion of protecting the fetus's right to life.

Keywords: Abortion, Bioethics, Premeditated Murder.

Abstrak. Aborsi adalah isu kompleks yang melibatkan perdebatan hukum, etika, dan agama mengenai hak untuk hidup. Artikel ini berpendapat bahwa aborsi harus diperlakukan sebagai pembunuhan yang direncanakan karena melibatkan pengakhiran kehidupan manusia secara sengaja. Dengan memeriksa konsep hak untuk hidup sebagaimana diatur dalam hukum internasional, Agama Islam, dan perspektif bioetika, artikel ini mengeksplorasi apakah janin memiliki hak yang sama untuk hidup seperti manusia yang telah berkembang sepenuhnya. Artikel ini juga membahas implikasi aborsi sebagai pelanggaran hak untuk hidup dan kemungkinan konsekuensi hukum dari memperlakukan aborsi sebagai kejahatan yang direncanakan. Selain itu, artikel ini merefleksikan bagaimana regulasi aborsi di berbagai negara sejalan atau bertentangan dengan gagasan untuk melindungi hak hidup janin.

Kata kunci: Aborsi, Bioetika, Pembunuhan yang Direncanakan.

INTRODUCTION

Abortion remains a deeply contentious issue, with ongoing debates about whether it should be legally and morally equated with premeditated murder, given the conflict between a woman's right to make decisions about her body and the fetus's right to life.

This study examines the complex ethical implications of whether fetuses possess the same moral and legal rights as born humans, particularly focusing on whether abortion should be treated like homicide. While much research has explored abortion through the lens of women's rights and reproductive health, fewer have compared it directly to premeditated murder from a legal-philosophical perspective. By critically analyzing this comparison, the study seeks to contribute to the broader discourse surrounding abortion laws and the moral and legal status of fetuses, especially in the context of evolving legal and cultural reforms.

IMPLEMENTATION METHOD

This study examines non-numerical data such as words, narratives, symbols, or behaviors to understand the complexity of a social issue or phenomenon, involving either individuals or groups. Data can be gathered through methods like in-depth interviews, observations, library research, or case studies (Sugiono, 2020). The approach to data collection depends largely on the research context and the questions being posed. In this case, library research methods were employed for data collection.

In library research, the data does not come directly from the individuals or groups under study but from published materials in libraries. Researchers analyze themes, patterns, and meanings that arise from these documents or written sources, typically without generating new data. Selecting relevant documents or literature is essential in this method. The researcher focuses on identifying and analyzing sources that offer the most valuable insights and information related to the research topic.

This research is centered on a literature-based examination of the concept of reason through various sources such as Philosophy, Law, And Islam religion.

RESULT AND DISCUSSIONS

The right to life is one of the universally recognized rights in international law. Article 3 of the Universal Declaration of Human Rights (UDHR) states, "Everyone has the right to life, liberty, and personal security" (United Nations, 1948). The right to life is not distinguished between individuals who are already born and those who are developing in the womb, although many countries impose certain limits regarding when this right to life begins. However, from a biological and international legal perspective, a person's

right to life begins at the moment of conception, when human life biologically starts (Booth, 2020). Some legal and ethical scholars argue that the fetus, from the very beginning of life in the womb, possesses the same right to life as an adult human (Harris & Marks, 2022). Therefore, any action that seeks to terminate the life of a fetus, such as abortion, should be treated with caution and considered very seriously. If we recognize the right to life of an adult human being as an inalienable right, then the same applies to the fetus, which has the potential to develop into a full human individual.

The key point in the abortion debate is whether humans and fetuses can be considered to have equal rights to life. Many argue that fetuses, although not fully developed, are still humans with a right to life that must be respected. In this argument, fetuses are viewed as entities with intrinsic value as developing humans, and the act of ending a fetus's life is considered an unlawful form of murder (Bates, 2021). Bioethicists like Singer (2022) argue that human life begins at the moment of conception, which is the starting point of human biological life. Therefore, in this view, fetuses have the same right to live as born humans. In other words, a fetus is an individual with the right not to be killed, and hence abortion carried out deliberately, aimed at ending that life, must be treated as an act of murder.

The fetus is a potential human being, depriving it of its rights means killing a human being and should be considered as murder and sentenced to imprisonment for fifteen years, Pasal 338 KUHP which states that: "*barangsiapa sengaja merampas nyawa orang lain, diancam, karena pembunuhan, dengan pidana penjara paling lama lima belas tahun. (Whoever deliberately takes the life of another person, is threatened, for murder, with a maximum prison sentence of fifteen years.)*" while Pasal 346 KUHP state that if a woman has an abortion, she is sentenced to four years in prison: *Seorang wanita yang sengaja menggugurkan atau mematikan kandungannya atau menyuruh orang lain untuk itu, diancam dengan pidana penjara paling lama 4 tahun. (A woman who deliberately aborts or terminates her pregnancy or instructs another person to do so, is threatened with a maximum prison sentence of 4 years.)*"

Even if we consider some of the arguments in favor of a woman's right to decide the fate of her body, that right should not conflict with the fetal right to life which also

has a vested interest in being protected (Smith, 2023). In this context, abortion should not only be seen as an individual right, but also as a violation of the right to life of another unborn individual.

Even abortion can trigger an existential crisis, a psychological condition marked by feelings of meaninglessness, lack of purpose in life, and a sense of alienation from oneself and the world. experiences such as loss or deep regret, often following abortion, can intensify feelings of anxiety and depression, leading to an existential crisis. This crisis typically involves intense reflection on the meaning of life, personal values, and identity, which can be further exacerbated by feelings of guilt or moral questioning after abortion. This illustrates how emotional trauma associated with abortion can significantly impact an individual's psychological well-being, especially in the context of searching for life's meaning and understanding oneself. (Razkiazka, 2024).

Premeditated murder is a deliberate and planned act to end a person's life, usually with malicious intent and pre-prepared actions. In the case of abortion, there is an element of intent to end the life of the fetus, which is carried out with deliberate medical procedures and often with careful planning. Therefore, in this context, abortion can be considered premeditated murder because it has a planning element similar to other crimes involving murder (Williams & Thompson, 2023).

According to criminal law, premeditated murder is usually punished with more severe punishments, because the act is based on malicious intent and more careful planning. In this case, abortion performed with a specific medical procedure has similarities with premeditated murder, since there is already an intention and preparation to stop the life that is developing in the womb. Legally, if premeditated murder is punished harshly, then abortion should also be treated seriously in terms of punishment and legal responsibility (Miller, 2024).

If we look at some religion such as Islam both Sunni and Shi'a, Imam Abu Hasan al-Ash'ari (d. 324 H) is better known as the figure who founded the theological school of Ahlus Sunnah wal Jama'ah or as well known as Sunni, As a theologian, Imam Ash'ari's views do not touch much on practical fiqh issues such as abortion. However, his thoughts on human rights and the protection of life can be the basis for understanding how he and his followers see the issue. In Imam Ash'ari's view, although he emphasizes more on the

theological and religious aspects, the basic principle in Islam is to protect life, both the life of individuals and communities. Therefore, abortion, which involves the termination of a potential life, would be considered a prohibited act, except in a very urgent emergency, such as if the mother's life is threatened. However, there are also many scholars who follow the outline of the teachings of Imam Ash'ari who tend to prohibit abortion except in certain circumstances, which threaten the life of the mother or the life of the fetus in a very deformed condition.

Imam Shafi'i and his followers are known to be more strict in prohibiting abortion. For them, abortion after the age of 40 days is strictly prohibited, except in emergency situations, such as threats to the mother's life (Al-Shatibi, I. 2020). Abortion in the early stages of pregnancy (before the age of 40 days) is still acceptable, but it must still be based on legitimate reasons and urgent needs, such as medical conditions that endanger the mother (Shah, M. 2022).

Similarly, according to the Shi'a scholars, various hadith narrations of the Imams show that abortion is not permissible even on the first day after the egg is fertilized. One of the hadiths comes from Imam Kazim: *"I told Imam Kazim: A woman, because she is afraid of getting pregnant, takes medicine to abort her pregnancy. Imam replied: It is not permissible. I said: But it is still in the stage of the nutfah (zygote). He replied: 'The first thing that was created was nutfah.'"* (Man La Yahduruhu al-Faqih, Volume 4, Page 171)." For example, in a long history of compensation for the killing of the fetus, Imam Ali stated: *"Diyah for the fetus is one hundred dinars [...]. If in the fetus grows another being, namely the spirit, then it becomes a human being (nafs), with a diyah full of a thousand dinars if it is a man, and five hundred dinars if it is a woman."* (Wasa'il al-Shia, Volume 29, Page 312)". According to both Imam killing a fetus is the same as killing a human because there are the same sanctions, a diyah.

Some countries already have stricter rules when it comes to abortion, considering it an act that violates the right to life of the fetus and imposing severe penalties on abortion perpetrators (Greenwood, 2020). In some states in the United States, for example, abortion has been restricted or even banned altogether following the Supreme Court's decision in the case of *Dobbs v. Jackson Women's Health Organization* in 2022, which returned the power to decide abortion issues to individual states (Jones, 2023). This

suggests that some countries are beginning to see abortion as a violation of the right to life that should be strictly regulated.

Meanwhile, in some other countries, abortion rights are still considered legal as long as they meet certain conditions, such as a threat to the health of the mother or severe disability to the fetus. However, despite differences in abortion regulations in different countries, awareness that abortion leads to the taking away of fetal life rights is growing among policymakers and society (Clark & Reed, 2021).

CONCLUSION

Abortion should be treated as an act equivalent to premeditated murder, as both involve taking away the right to life. Both human beings who have been born and the fetus have the right to life that must be respected and protected. Given that the right to life is a fundamental right that cannot be revoked without a valid reason, abortion that ends the life of the fetus should be considered a violation of human rights that deserves serious attention. Through this debate, it is hoped that there will be a deeper understanding of the right to life and how the state should protect human life, both born and developing in the womb.

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