

## VASECTOMY IN ISLAMIC LAW PERSPECTIVE

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**ABSTRACT** : This writing discusses the Islamic perspective on one of the permanent contraceptive of Family Planning (KB), namely Vasectomy. Vasectomy is term of surgery science which is formed from two words namely vas and entomic. Vas or vase differentia means seed channel namely the channel circulates spermatozoa out of testis where the seed cell is produced towards pocket of sperm (vesikulamenalis) as place of spermatozoa reception before being spread while having ejaculation. Ektomi or ektomia means cutting of part. So vasectomy means cutting of part (0,5-1 cm) of seed channel so there is distance between the edge of seed channel of testis side, other seed channels left and each of both of the remaining channel edge are tied then it is clogged. Indonesia Cleric Assembly (MUI) as institution of discussion for all Indonesian clerics has legalized a fatwa about prohibition of vasectomy. The people who have done the practice of vasectomy just think to avoid bearing children anymore in order to reduce economy problem.

**Keywords** : Vasektomy, Family Planning (KB), Indonesia Cleric Assembly (MUI).

### A. Introduction

The implementation of Family Planning (KB) in the time of the Prophet Muhammad SAW was called azal (coitus interruptus), which is having intercourse by spilling male semen outside the woman's womb (wife). In the Hadith it is stated that the Prophet SAW said:

و عن جابر رضى الله عنه قال: " كنا  
نعزل على عهد رسول الله صلى الله  
عليه وسلم فبلغ ذلك نبى الله عليه  
وسلم فلم ينهنا عنه".<sup>1</sup> (رواه  
البيهقى)

Artinya:

*From Jabir ra. He said, "We did the Azal at the time of the Messenger of Allah. So it reached the Prophet Muhammad saw, and he did not forbid us from doing something like that."*

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<sup>1</sup> Abu Bakar Ahmad bin al-Husain bin Ali al-Baihaqi, *Assunnan Assaghir* (Pakistan: Jami'ah ad-Dirasat al-Islamiyah, cet. I, 1989), jilid III, h. 69.

On the other hand, to avoid pregnancy, a calendar system or periodic abstinence is carried out, where during the fertile period (fertilization) for the woman, the husband does not have intercourse. Moreover, at that time many people practiced polygamy, husbands could rotate between their wives. But with the existence of the Marriage Law and Government Regulation (PP) Number 10 of 1983, both the general public and civil servants in particular are not easy to practice polygamy. Therefore, the calendar system or periodic abstinence is no longer considered effective. In the past, pregnancy prevention was carried out in various regions using traditional methods. With the advancement of science and technology today, various types of contraceptives have been obtained for pregnancy prevention which are considered more effective and perfect when compared to doing azal. The contraceptives that we know today consist of various types, including spirals (IUD), tablets, condoms, injections, vasectomy and tubectomy.

As for using contraceptives or other means that cause the reproductive organs to not function and result in not being able to produce offspring, both male and female, with or without consent, then the law is forbidden. And scholars agree that it is forbidden. Examples of what is forbidden are vasectomy (termination of the sperm duct) and tubectomy (termination of the fallopian tube). In Dorland's medical case, vasectomy (vas, ectomy) means surgical removal of the ductus (vas) deferens, or part of it, performed together with a prostatectomy, or to cause infertility.<sup>2</sup>

Permanent male contraception or vasectomy is a method of minor operative contraception in men that is very safe, simple and very effective, takes a short operation time and does not require general anesthesia. Vasectomy is one of several choices of contraceptive use for the Family Planning (KB) program implemented by BKKBN in an effort to reduce the population growth rate in Indonesia.<sup>3</sup>

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<sup>2</sup> Tim Penerjemah EGC, *Kamus Kedokteran Dorland (Dorland's Illustrated Medical Dictionary)*, edisi 26 (Jakarta: Penerbit Buku Kedokteran EGC, 1994), h. 2022.

<sup>3</sup> Hanafi Hartanto, *Keluarga Berencana dan Kontrasepsi* (Jakarta: Pustaka Sinar Harapan, 1994), h. 281.

Vasectomy is the act of cutting the sperm ducts that connect the testicles to the sperm sac, so that no more sperm are found in a man's ejaculate, in women the term is tubectomy (cutting the fallopian tubes).

As a result of cutting and tying these ducts, the germ cells produced in the testicles cannot come out and are blocked in the seed ducts on the side of the tied testicles. As a result of cutting and tying these seed ducts, the function of the testicles as an organ that produces male seed cells and sex hormones is not disturbed, so that the libido in men who undergo vasectomy is not disturbed.

Semen is still emitted at the peak of intercourse, but does not contain male seed cells. This effect is used as a solid contraceptive method. Seed cells that are blocked in the tied ducts will die after approximately 100 days. On the other hand, the function of the testicles in producing seed cells and other functions continues to function.<sup>4</sup>

The Fatwa Commission of the Indonesian Ulema Council, in 1979, issued a fatwa that vasectomy/tubectomy is haram. The fatwa, which was issued on June 13, was decided after discussing a working paper compiled by KH. Rahmatullah Siddiq, KH. M. Syakir and KH. M. Syafi'i Hadzmi, which emphasized that; (i) sterilization is prohibited by religion; (ii) vasectomy/tubectomy is a form of sterilization; (iii) in Indonesia it has not been proven that vasectomy/tubectomy can be reconnected.<sup>5</sup>

This fatwa was then revised in 1983 at the National Congress on Population and Development. This Congress issued another fatwa that vasectomy and tubectomy are prohibited by Islam except in emergencies. Along with the development of technology, vasectomy can now be restored to its original condition. Connecting the spermatozoa duct (vas deferens) can be done by a urologist by surgery using a microscope. However, the ability to have children again will be greatly reduced depending on the duration of the vasectomy procedure.<sup>6</sup>

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<sup>4</sup> <http://diyoyen.blog.friendster.com/2008/11>.

<sup>5</sup> "Hasil-hasil ijtima ulama komisi fatwa se Indonesia III dalam detesis masalah tentang Vasektomi," Padang Panjang, 24-26 Januari 2009.

<sup>6</sup> *Ibid.*,

On January 24-26, 2009, the MUI issued a fatwa prohibiting vasectomy with recanalization efforts (reconnection). The MUI argued that recanalization efforts do not guarantee the restoration of fertility levels, therefore the MUI declared the practice of vasectomy with recanalization efforts haram in the forum of the Indonesian fatwa commission's Ijtima ulama III in Padang Panjang, West Sumatra.

At this time, calls for carrying out family planning are being intensively carried out by authorized institutions in this matter, both through print and electronic communication media, seminars and direct counseling to the community. Even for those who carry out vasectomy (acceptors) they receive replacement costs during the recovery period after the vasectomy. On the one hand, the MUI has issued a fatwa on the prohibition of vasectomy, on the other hand, official government institutions (BKKBN) are intensively encouraging the community to carry out family planning to suppress the increasing population rate in Indonesia.

One phenomenon that the author saw in the field about the implementation of family planning through vasectomy in several sub-districts in Medan city which are inhabited by a majority of Muslims is that there is a tendency for acceptors to prefer to do the vasectomy because of their very low economic background/poor so that they are afraid of having many children which in their view will make their lives even more miserable. From the data obtained by the author from the initial research there were 147 people who had Vasectomy in Medan Tembung Sub-district (Data until the end of July 2011), and this number increased rapidly when the Medan City Government in collaboration with KODAM Bukit Barisan carried out a record-breaking Indonesian Record Museum (MURI) and even an International record in the implementation of mass Vasectomy which was carried out on 23 and 24 October 2012 with a total of 1,575 Acceptors.<sup>7</sup>

## **B. Analysis And Discussion**

### **1. Vasectomy As A Permanent Male Contraception**

Vasectomy has many names including: Sterilization in men, some also call it Male Sterilization (KONTAP), not a few also call it the Male Operation Method

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<sup>7</sup> [http://www.pemkomedan.go.id/news\\_detail.php?id=13498](http://www.pemkomedan.go.id/news_detail.php?id=13498), Dinas Kominfo Kota Medan diakses tgl 10 Januari 2014 pukul: 09.05 wib.

(MOP). Vasectomy is a term in surgery that is formed from two words, namely vas and ectomy. Vas or vasa deferentia means the seed channel, namely the channel that channels male germ cells (spermatozoa) out of the scrotum (testes), which is where the germ cells are produced to the seminal sac (vesicles) as a place to store male germ cells before being released at the peak of intercourse (ejaculation). Ectomy or Ectomia means partial cutting. So Vasectomy means partial cutting (0.5-1 cm) of the seed channel so that there is a distance between the end of the seed channel on the side of the testes and the remaining seed channel on the other side and at each end of the two remaining ends of the channel is tied so that the channel becomes blocked or blocked.<sup>8</sup>

Vasectomy is a clinical procedure to stop a man's reproductive capacity by performing vas deferens grafting so that the sperm transport path is blocked and the fertilization process (union with the ovum) does not occur.

In the sociology and population dictionary, Vasectomy is an operation that has one goal of eliminating the production of male sperm. Another definition of Vasectomy is also obtained from the big Indonesian dictionary, Vasectomy is an operation to sterilize men by cutting the sperm duct or seminal duct from below the testicles to the sperm sac.<sup>9</sup>

Vasectomy is a surgery with the aim of sterilizing men. Vasectomy is a minor surgical procedure involving cutting the vas deferens, which is the tube that carries sperm from the two testicles to the seminal vesicles.<sup>10</sup>

Vasectomy is a simple operation to cut the sperm ducts from the scrotum (testicles) to the penis. What is cut is not the testicles and not the penis shaft. This operation is easy enough to do so that health workers anywhere can do it (not necessarily a surgeon). And it only takes a few minutes. Vasectomy does not make men impotent. Nor does it reduce sexual pleasure during sex. Even after the

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<sup>8</sup> <http://diyoyen.blog.friendster.com/28/11>.

<sup>9</sup> Tim Penyusun Kamus Pusat Bahasa Indonesia, *Kamus Besar Bahasa Indonesia* (Jakarta: Balai Pustaka, cet. III, 2001), h. 1259.

<sup>10</sup> T. Hermaya, *Ensiklopedi Kesehatan* (Jakarta: Cipta Adi Pustaka, 1992), h. 550.

operation he will ejaculate or release semen. It's just that now his semen does not contain sperm.<sup>11</sup>

In the medical language guide or in English a popular guide to medical language written by Edward R Brace, vasectomy-Vasectomy is stated:

"Partial cutting of the vas deferens, by means of surgery, usually performed on the seminal duct (semen duct) of both testicles, as a sterilization action."<sup>12</sup>

Vasectomy is the cutting of the vas deferens, which are the tubes that carry sperm from the epididymis in the testicles to the seminal vesicles. By cutting the vas deferens, sperm are unable to be ejaculated and a man will be infertile once the vas deferens are clear of sperm, which takes about three months.<sup>13</sup>

Vasectomy is the act of cutting the vas deferens (ductus deferens) with the aim of cutting off the continuity of sperm transport from the testicles to the outside, resulting in azoospermia in men who have undergone a vasectomy.<sup>14</sup>

According to the author, vasectomy or Male Operation Method (MOP) or male sterilization is a contraceptive method through minor surgery by cutting and tying the right and left vas deferens and can be done in just 10 minutes.

### **Preparation before Vasectomy surgery**

Although the skin cannot be sterilized, cleaning with antiseptics has greatly reduced microorganisms on the surface of the skin (scrotum and inguinal), especially microorganisms that can cause serious complications (tetanus).

- a. Patients should take a shower and wear clean, loose clothing before visiting the clinic. If the client does not have enough time to take a shower, the client is advised to clean the scrotum and inguinal/groin area before entering the operating room.
- b. The client is advised to bring special pants to support the scrotum.

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<sup>11</sup> *Bila Perempuan Tidak Ada Dokter (panduan perawatan kesehatan dan pengobatan bagi perempuan)*, (Yogyakarta: Insist Press, 2005), h. 291.

<sup>12</sup> Edward R Brace, *Penuntun Populer Bahasa Kedokteran* (Bandung: Angkasa, 1983), h. 35.

<sup>13</sup> Suzanne Everret, *Hand Book of Contraception and Reproductive Sexual Health, (Buku Saku Kontrasepsi dan Kesehatan seksual Reproduksi)*, terj. Nike Budhi Subekti (Jakarta: Penerbit Buku Kesehatan EGC, 2008), h. 70.

<sup>14</sup> Djoko Rahardjo, *Panduan Pelayanan Vasektomi Tanpa Pisau* (Jakarta: Perkumpulan Kontrasepsi Mantap Indonesia (PKMI), 1996), h. 1.

- c. Pubic hair is shaved if it covers the surgical area. The best time to shave is just before the procedure is carried out so that the risk of infection is suppressed as low as possible.
- d. Wash/clean the surgical area with soap and water then repeat once more with an antiseptic solution or apply an antiseptic directly (povidone iodine).
- e. If a povidone iodine solution such as betadine is used, wait 1 or 2 minutes until the free iodine that is released can kill microorganisms.<sup>15</sup>

### **Steps in Vasectomy Operation**

- a. a. Pants are opened and the patient is laid in a supine position.
- b. b. The skin area of the scrotum, penis, supra pubis and the inside of the left and right thighs are cleaned with a non-stimulating liquid such as 0.75% Iodofoor solution (betadine) or 4% chlorhexidine solution (hibiscrub). If there is hair, it needs to be shaved first, which should be done by the patient themselves before going to the clinic.
- c. c. Cover the cleaned area with a sterile cloth with holes in the place where the scrotum is protruding out.
- d. d. Right in the median line above the vas deferens, the scrotal skin is given local anesthesia (procaine or novocaine or xylocaine 1%) 0.5 ml, then the needle is continued in and in the distal and proximal areas of the vas deferens, another 0.5 ml is deposited each.
- e. e. The scrotal skin is incised longitudinally 1 to 2 cm, right above the vas deferens that has been protruded to the surface of the skin.
- f. f. After the skin is opened, the vas deferens is held with a clamp, weeded until the vas deferens looks shiny like a pearl, bleeding is treated carefully. It is better to add more anesthetic to the vas deferens fascia and then the fascia is cut longitudinally for 0.5 cm. Try to make the edges of the incision even (can be achieved if the knife is sharp enough) to make it easier to re-suture. After the vas deferens fascia is opened, the vas deferens is seen to be white and shiny

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<sup>15</sup> Abdul Bari Saifuddin dkk., *Buku Panduan Praktis Pelayanan Kontrasepsi* (Jakarta: Yayasan Bina Pustaka Sarwono Prawirohardjo, cet. II, 2006), h. 83-84.

like a pearl. Next, the vas deferens and its fascia are freed with fine scissors with sharp tips.

- g. g. Clamp the vas deferens with a clamp in two places with a distance of 1-2 cm and tie both ends with thread. After tying, do not cut it first. Pull the thread that ties the two ends of the vas deferens to see if there is any hidden bleeding. Clamp only at the point of bleeding, not too much, because it can clamp other blood vessels such as the testicular or deferential arteries which can result in the death of the testis itself.
- h. h. Cut between the two ties for 1 cm. Use silk thread No. 00, 0, or 1 to tie the vas. The tie should not be too loose but also not too tight as it can cut the vas deferens.
- i. i. To prevent spontaneous recanalization, it is recommended to perform fascial interposition of the vas deferens, namely by re-stitching the injured fascia in such a way that the distal vas deferens (next to the ureter) is immersed in the fascia and the proximal vas deferens (next to the testis) is located outside the fascia. This method will prevent recanalization.
- j. j. Perform the above actions (steps 6-9) for the right and left vas deferens, and after completion, close the skin with 1-2 plain catgut sutures No. 000 then treat the surgical wound properly, cover with sterile gauze and plaster.<sup>16</sup>

#### **Post-Vasectomy Care**

- a. a. Rest for 24 hours, avoid heavy work for 7 days or until the surgical wound has completely healed.
- b. b. Avoid sexual intercourse for one week.
- c. c. If you do not use other contraceptives, during intercourse the husband must use a condom until 15 ejaculations (ejaculation) or until the sperm test results are negative.
- d. d. Take medication according to the instructions given by the doctor.
- e. e. Maintain personal hygiene, especially in the area of the scar/surgery (the scar should not be wet or dirty).

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<sup>16</sup> Saifuddin dkk., *Buku Panduan*, h. 85-89.



- f. f. Controls for examination of the surgical wound will be carried out 1 week, 2 weeks, 3 weeks and 1 month after surgery.
- g. g. Don't forget to check yourself after 1 month, 2 months, 3 months after surgery.
- h. h. If there is severe pain in the surgical wound, bleeding, fever, immediately return to the clinic or contact the nearest doctor.
- i. i. Check semen after 15 ejaculations to ensure the success of the Vasectomy.<sup>17</sup>

## 2. Legal Reasons For Vasectomy

If we examine the health legislation, there is not a single article that regulates this vaectomy, but if we interpret certain articles broadly in the context of health services, the following articles can be linked:

Law Number 9 of 1960 concerning Health Principles:

Article 1

Every citizen has the right to obtain the highest level of health and must be included in government health efforts.

Article 2

What is meant by health in the Law includes physical, spiritual (mental) and social health, and not only a condition free from disease, disability and weaknesses.

Article 3

1. Perfect child growth in a healthy living environment is important to achieve a healthy generation and a strong nation.

2. Public understanding and awareness of health maintenance and protection is very important to achieve the highest level of health.

Article 4

The government maintains and improves the health of the people and organizes and intensifies efforts in the fields:

- 1. Prevention and eradication of disease.
- 2. Health recovery.

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<sup>17</sup> Perkumpulan Kontrasepsi Mantap Indonesia (PKMI), *Buku Saku Kontrasepsi Mantap untuk Petugas Lini Lapangan* (Jakarta: t.pn.1995), h. 29-30.

3. Health information and education for the people.
4. Health worker education.
5. Supplies of medicines and medical devices.
6. Investigations.
7. Supervision, and
8. Other necessary efforts.

The provisions/articles above can be taken as an understanding that the highest degree must be achieved. The definition of health includes a broad meaning and is even considered since the baby is in the womb. The government together with the community are trying to organize and intensify efforts in health services in order to achieve the highest degree of health.

If we relate it to KONTAP for the benefit of the family to be physically and mentally healthy, one of the factors must be planned to have a small family, ways to plan a small family include: not getting married at a very young age or after marriage, participating in family planning by using contraception or participating in KONTAP. Therefore, from a health perspective, this Steady Contraception is part of the health services outlined in Law Number 9 of 1960 concerning the principles of health, Article 9 paragraph (2), the government makes special efforts for the health of offspring and perfect child growth, both in the family environment, as well as in the school environment, as well as the youth and sports community environment and therefore those who provide the intended health services must be health workers.<sup>18</sup>

### **3. Analysis Of Mui's Haram Fatwa On Vasectomy**

Since the legal aspect of contraception is firmly included in Medical Law, it might be useful for the author to explain a little about this branch of law which is still relatively new in Indonesia. Medical Law in Indonesia has been temporarily translated as Medical Law. In England, Australia and the United States the term Medical Law is used, in France and Belgium it is called Droit Medical, in Germany

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<sup>18</sup> Nani Soewondo, *Aspek-aspek Hukum Kontrasepsi Mantap* (Jakarta: Perkumpulan Kontrasepsi Mantap Indonesia, 1985) h. 41- 46.

Gesundheitsrecht, in the Netherlands Gezondheidsrecht, while the World Health Organization (WHO) uses the term Health Law.

In the meetings of the "World Congress on Medical Law", organized by "The World Association for Medical Law" since 1967, discussions have been held mainly from the medical and legal aspects regarding various problems concerning health and medicine.

In January 1983, the National Legal Development Agency (BPHN) of the Ministry of Justice formed a medical law study team, with the task of studying and developing legal science/medical law profession in the context of national legal development. In collaboration with the Indonesian Doctors Association (IDI), the BPHN also held a medical law symposium in Jakarta in June 1983, with the following discussion topics: Health service law, criminal/civil law aspects, sociological aspects, ethical aspects, handling of medical ethics violations, aspects of responsibility in the medical field and medicine in the international world. In addition, on the initiative of Indonesian participants at the World Congress on Medical Law in Gent in 1982, an Indonesian Medical Law Study Group was formed on November 11, 1982. Then on July 7, 1983, the Association for Indonesian Medical Law (PERHUKI) was formed. In its articles of association ratified by Notarial Deed dated February 24, 1984, medical law has been formulated as follows:

"All legal provisions directly related to health maintenance/services and their implementation as well as rights and obligations, both from the health service providers, and from individuals and all levels of society as recipients of health services in all its aspects, taking into account aspects of organization, facilities, international medical guidelines, customary law and written law in the field of health, jurisprudence and medical science.."<sup>19</sup>

From a legal perspective, there are no obstacles to the implementation of KONTAP, because there is no prohibition in the Criminal Code (KUHP) or other laws and regulations. As stated in Article 1 paragraph (1) of the Criminal Code,

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<sup>19</sup> Soewondo, *Aspek-aspek*, h. 14-15.

"No act can be punished except by the criminal powers in the legislation that existed before the act occurred".

Regarding government policy on KONTAP, it is necessary to mention the Regulation of the Head of the National Family Planning Coordinating Board (BKKBN) Number 145/HK.010/B5/2009 concerning guidelines for increasing male participation, in addition to the Instruction of the Minister of Health/Head of BKKBN No. 316/Menkes/Inst/VIII/1980, among other things, it is stipulated that sterilization may not be used in connection with the national family planning program. It is also stipulated that the method must be carried out on clear indications based on the instructions of the Ministry of Health.

In the implementation of the KONTAP method, it can only be done at the voluntary request of the husband and wife, after obtaining a solid medical explanation from the doctor concerned. In the implementation guidelines, the Directorate General of Health Services stipulates, among other things, that sterilization is an alternative or the only way to free a husband and wife from a high-risk situation.

The KONTAP method is the last option. Therefore, it requires a firm and wise decision by the husband and wife (Pasutri). In determining the contraceptive method they choose, both husband and wife have the same rights and obligations and equal status. A couple who choose KONTAP are a couple who are harmonious and live happily.

In Indonesia, a KONTAP application and approval form is used which is signed by the couple (husband and wife) and the doctor who will perform the operation. There is a form for those who can read and write and one for those who are illiterate. Signing the form is proof that the applicant and their partner have given their consent voluntarily and also provides legal protection for the doctor who provides KONTAP services.

An important problem is if the KONTAP method fails, namely another pregnancy occurs. There is a possibility of a lawsuit from the patient if they consider that there has been suffering due to an unwanted pregnancy. In this case, it can be submitted

to the court for a decision. Of course, clear legal provisions are still needed. The same thing can happen if the patient experiences medical complications..<sup>20</sup>

What is meant by family here is the smallest social unit in society, which is bound by a legal marriage bond. So the family here is the nuclear family, which according to the Javanese term *batih*, or in English nuclear family, which consists of husband, wife and children; not an extended family or large/extended family, which consists of the nuclear family plus other close family members, whether they are still related by blood (lineage) such as father/mother, siblings, or those who are related by marriage, such as in-laws or in-laws.

Family Planning (KB) is the official term used in our state institutions such as the National Family Planning Coordinating Board (BKKBN). The term KB has the same meaning as the term commonly used in the international world, namely family planning or planned parenthood, such as the International Planned Parenthood Federation (IPPF), the name of an international family planning organization with its headquarters in London.<sup>21</sup>

In the Qur'an and Hadith, which are the main sources of Islam that serve as a guideline for life (way of life) for Muslims, there is no clear statement that explicitly forbids or orders family planning. Therefore, the law on family planning must be returned to the rules of Islamic law (*qaidah fihiyyah*) which states:

الأصل في الأشياء والأفعال الإباحة  
حتى يدل الدليل على تحريمها  
*“Basically everything/action is permissible, unless/so there is an argument that shows it is forbidden.”*

In addition to adhering to the Islamic legal principles above, we also find several verses of the Qur'an and the Hadith of the Prophet that provide indications. Sometimes the law of family planning can even change from permissible to sunnah, obligatory, makruh or haram, as with the law of marriage for Muslims, the original law of which is also permissible. However, this permissible law can change

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<sup>20</sup> *Ibid.*, h. 49-50.

<sup>21</sup> Masjfuk Zuhdi, *Masail Fiqhiyah Kapita Seleka Hukum Islam* (Jakarta: Haji Masagung, 1991), h. 53-54.

according to the situation and condition of the Muslim individual concerned and also take into account changes in time, place and conditions of society/country. This is in accordance with the Islamic legal principle which states:

تغير الأحكام بتغير الأزمنة والأمكنة  
والأحوال

“*Hukum-hukum itu bisa berubah sesuai dengan perubahan zaman, tempat dan keadaan.*”<sup>22</sup>

﴿وَالْوَالِدَاتُ يُرْضِعْنَ أَوْلَادَهُنَّ حَوْلَيْنِ كَامِلَيْنِ لِمَنْ أَرَادَ أَنْ يُتِمَّ الرَّضَاعَةَ وَعَلَى الْمَوْلُودِ لَهُ رِزْقُهُنَّ وَكِسْوَتُهُنَّ بِالْمَعْرُوفِ لَا تُكَلَّفُ نَفْسٌ إِلَّا وُسْعَهَا لَا تُضَارَّ وُلْدَةٌ بِوَالِدِهَا وَلَا مَوْلُودٌ لَهُ بِوَالِدِهِ وَعَلَى الْوَارِثِ مِثْلُ ذَلِكَ فَإِنْ أَرَادَا فِصَالًا عَنْ تَرَاضٍ مِنْهُمَا وَتَشَاوُرٍ فَلَا جُنَاحَ عَلَيْهِمَا وَإِنْ أَرَدْتُمْ أَنْ تَسْتَرْضِعُوا أَوْلَادَكُمْ فَلَا جُنَاحَ عَلَيْكُمْ إِذَا سَلَّمْتُمْ مَا آتَيْتُم بِالْمَعْرُوفِ وَاتَّقُوا اللَّهَ وَاعْلَمُوا أَنَّ اللَّهَ بِمَا تَعْمَلُونَ بَصِيرٌ ٢٣٣﴾  
(البقرة/ ٢: ٢٣٣)

Artinya:

“*Mothers should breastfeed their children for two full years, that is, for those who want to complete breastfeeding. and the father's obligation to feed and clothe mothers in a virtuous manner. A person is not burdened but according to the level of his ability. Let not a mother suffer misery because of her child and a father because of his child, and the heirs are also obliged to do so. If both of them want to wean (before two years) with their consent and deliberation, then there is no sin on either of them. and if you want your child to be breastfed by someone else, then there is no sin for you if you pay according to what is appropriate. Fear Allah and know that Allah is All-Seeing of what you do.*”<sup>23</sup>

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ حَمَلَتْهُ أُمُّهُ وَهْنًا عَلَى وَهْنٍ وَفِصْلُ فِي عَامَيْنِ أَنْ اشْكُرْ لِي  
وَلِوَالِدَيْكَ إِلَيَّ الْمَصِيرُ ١٤ (لقمان / ٣١: ١٤)

Artinya:

“*And We commanded man (to do good) to his two parents; his mother had conceived him in a state of increasing weakness, and weaned him in two years. Be grateful to me and to your parents and parents, only to Me is your return.*”<sup>24</sup>

<sup>22</sup> Hal ini juga sejalan dengan kaidah hukum Islam:

الحكم يدور مع العلة وجودا وعدم

*Hukum itu berputar bersama illatnya (penyebab adanya hukum), baik ada maupun tidak adanya hukum. Dari kitab Min Falsafah al-Tasyri' al-Islami, h. 176-177.*

<sup>23</sup> Q. S. Al-Baqarah: 233, Departemen, *Alqur'an*, h. 29.

<sup>24</sup> Q. S. Luqman: 14, *Ibid.*, h. 329.

وَوَصَّيْنَا الْإِنْسَانَ بِوَالِدَيْهِ إِحْسَانًا حَمَلَتْهُ أُمُّهُ كُرْهًا وَوَضَعَتْهُ كُرْهًا وَحَمَلُهُ وَفِصْلُهُ ثَلَاثُونَ شَهْرًا حَتَّىٰ إِذَا بَلَغَ أَسُدَّهُ وَبَلَغَ أَرْبَعِينَ سَنَةً قَالَ رَبِّ أَوْزِعْنِي أَنْ أَشْكُرَ نِعْمَتَكَ الَّتِي أَنْعَمْتَ عَلَيَّ وَعَلَىٰ وَالِدَيَّ وَأَنْ أَعْمَلَ صَالِحًا تَرْضَاهُ وَأَصْلِحْ لِي فِي ذُرِّيَّتِي إِنِّي تُبْتُ إِلَيْكَ وَإِنِّي مِنَ الْمُسْلِمِينَ ١٥ (الأحقاف/٤٦:١٥)

Artinya:

“We command humans to do good to both parents, their mothers conceived them with difficulty, and gave birth to them with difficulty (also). carrying her until weaning her is thirty months, so that when she is an adult and reaches forty years of age she prays: "O my Lord, guide me to be grateful for Your blessings which You have given to me and to my parents and so that I can do good deeds that You are pleased with; grant me goodness by (giving goodness) to my children and grandchildren. Verily I repent to You and Verily I am one of those who submit..”<sup>25</sup>

Regarding the Prophetic Hadiths which can be used as evidence to justify family planning include the following:

حدثنا أبو نعيم حدثنا سفيان عن سعد بن إبراهيم عن عامر بن سعد عن سعد بن أبي وقاص رضي الله تعالى عنه قال جاء النبي صلى الله عليه وسلم يعودني وأنا بمكة وهو يكره أن يموت بالأرض التي هاجر منها قال يرحم الله بن عفراء قلت يا رسول الله أوصي بمالي كله قال لا قلت فالشطر قال لا قلت الثلث قال فالثلث والثلث كثير إنك أن تدع ورثتك أغنياء خير من أن تدعهم عالة يتكفون الناس في أيديهم وإنك مهما أنفقت من نفقة فإنها صدقة حتى اللقمة التي ترفعها إلى في امرأتك وعسى الله أن يرفعك فينتفع

<sup>25</sup> Q. S. Al-Ahqaf: 15, *Ibid.*, h. 402.

بك ناس ويضر بك آخرون ولم يكن له  
يومئذ إلا ابنة<sup>26</sup>

*Abu Nu'aim then Sofyan said from Sa'd bin Ibrahim from 'Amar bin Sa'd from Sa'd bin Abi Waqash Allah was pleased with him, he said: When I was sick in Mecca, the Prophet Saw came to see me. I said: "I have a number of assets, I will make a will to hand over all my assets," the Apostle answered: No way!" "Half?" I said. "No," answered the Apostle. "Is it okay to have a third?" I asked again. The Apostle answered: "One third is fine, but it is still too much. It would be better for you to leave your heirs well-off than to leave them to be a burden to others. All the expenses you spend are charity and reward you. Even if you put a bite of rice into your wife's mouth, hopefully Allah will not make you someone who is useful for a group of people, but will bring disaster to other groups." (Hadith History of Al-Bukhari and Muslim from Saad bin Abi Waqqash RA).*

The meaning of al-'azl from an etymology (language) point of view is at-tanhiyyah (removal or distance). An example of an expression: 'Azaltu ash-syai'a 'an ghairihi 'azlan (I get rid of something from another). From wazan dharabayadhibu ('azala-ya'zalu). Wa 'azaltuhu wan 'azala wa ta'azzala, meaning: nahaituhu janiban fa Tanahha (I pushed him to the edge until he was knocked out).

Among the meanings is also 'azaltu 'anna 'ibaka al- deputy (I remove the successor from the status of deputy) if I remove him from the legal status he holds.

So, the 'azal of a person who has intercourse ('azlu al-majami'), "When a person is about to reach ejaculation (during sexual intercourse), then he pulls out (his penis) and releases his semen outside the (woman's) genitals."

As for the terminology (term), the meaning of al-'azl cannot be separated from the meaning from a linguistic perspective.

In the book of Syarh Muslim, Imam An-Nawawi said, "Al-'Azl is having sexual intercourse and when the man is about to ejaculate, he pulls out his penis, then releases it outside (vagina)."

In the book of Fathul Bari Ibn Hajar said, "Al-'Azl is pulling out the penis after entering the vagina with the aim of releasing his semen outside (vagina)."

The scholars of the madhhab in giving their assessment of the issue take guidance from the Hadith related to the issue because there is no text of the Qur'an that

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<sup>26</sup>Abu Abdillah Muhammad bin Ismail bin Ibrahim bin al-Mughirah al-Bukhari, *al-Jami'u as-Shahih* (Kairo: Dar al-Sya'ab, cet. I, 1987), juz 4, h. 3.



mentions it. They are of the opinion that 'azl is permissible (mubah) but is considered an inappropriate practice (makruh) because this act eliminates the right of free women to feel sexual satisfaction and have children. Imam Al-Ghazali in the book *Ihya' Ulum Ad-Din* explains why 'azl is considered makruh (not recommended or inappropriate) with the following sentence: "The habit of 'azl is lawful, but this habit is not commendable on the grounds that the benefits of the sperm emitted are wasted. For example, it is makruh or not recommended or not commendable if someone sits lazily in the mosque without remembering Allah. The basis of the thinking is that if an action is done for a purpose other than that intended then it is said to be makruh. There is a policy in giving birth to children but this is sacrificed in 'azl."<sup>27</sup>

### **Mazhab Hanafi**

In the Book of *Bada'i Al-Sama'i* volume 2, Imam Al-Kasani, a thinker from this school of thought, says that it is makruh for a husband to commit 'azl with his wife (free woman) without her permission, because sexual intercourse which ends in ejaculation is the cause of conception, and women have the right to give birth to their children. 'Azl results in the absence of a child's birth and therefore negates his or her rights. But if 'azl is done with his permission then it is fair to him because he has agreed to lose his rights.<sup>28</sup>

### **Mazhab Maliki**

Imam Malik bin Anas, the author of *Al-Muwatta*, the basic text of this school, said that a man has no right to commit 'azl with his wife without her consent.<sup>29</sup>

### **Mazhab Syafi'i**

In the chapter "Rules of 'azl" in *Sahih Muslim* Volume 3, written by Imam Muslim, by Imam Al-Nawawi, a thinker in this school of thought explains that 'azl means having sexual intercourse, but before ejaculation occurs (the man) withdraws (his

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<sup>27</sup> Abu Muhammad Hamid al-Ghazali, *Ihya' Ulum ad-Din* (Beirut: Dar al-Ma'rifah, t.t), juz 12, h. 51.

<sup>28</sup> *Bada'i Al-Sama'i*, jilid 2, karya 'ala al-Din ibn Mas'ud Al-Kassani, h. 334.

<sup>29</sup> Abu Abdullah Malik bin Anas bin Malik bin Abi Amir bin Amar al-Haris bin Gaiman bin Husail bin amar bin al-Haris al-Asbahi al-Madam, *al-Muwwata'* (Misr: Kitab Sya'ab, t.t), h. 409.

penis) and allows ejaculation to occur outside the woman's vagina. Imam Al-Nawawi said,

“This act is makruh (not recommended or not commendable), in any condition whether the wife agrees or not. But if the wife agrees then this act is not forbidden, if she does not give her consent, there are two opinions, and the correct opinion is that this act is not forbidden.”<sup>30</sup>

### **Mazhab Hanbali**

In the book *al-Mughni* chapter 7, ibn Qudamah, a scholar from this school of thought, said that doing 'azl without reason is makruh, but not haram. 'Azl may not be performed with a free woman without her consent.<sup>31</sup>

### **Mazhab Ja'fari**

This school. Like the four schools mentioned above, it concludes that 'azl with a free woman is only permissible with her permission. This permission is stipulated with the woman's consent as a condition in the marriage contract. Thus, the emphasis on the wife's permission, as stated above, is to emphasize her right to have children, and secondly, by considering that such an act will reduce her satisfaction in sexual relations..<sup>32</sup>

### **Indonesian Ulema Council (MUI) Fatwa on Vasectomy**

The Indonesian Ulema Council (MUI) in the 1983 National Conference (MUNAS) on Population, Health and Development, one of the points of its fatwa was: Carrying out a vasectomy (an attempt to tie/cut the male sperm ducts so that men cannot fertilize egg cells) and a tubectomy, an attempt to tie or cut both fallopian tubes so that women generally cannot get pregnant again, is against Islamic law (haram), except in very urgent circumstances (emergencies) such as to prevent the transmission of disease from the mother/father to their offspring who will be born or the mother's life is threatened if she becomes pregnant or gives birth again..<sup>33</sup>

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<sup>30</sup> an-Naisaburi, *al-Jami'*, h. 612.

<sup>31</sup> Abu Muhammad Abdullah bin Muhammad ibn Qudamah, *al-Mughni* (Mesir: Thaqafiyah al-Islamiyah, t.t), juz 7, h. 23.

<sup>32</sup> Abu Fadl Mohsin Ebrahim, *Biomedical Issues, Islamic Perspective*, terj. Sari Meutia, *Isu-isu Biomedis dalam Perspektif Islam* (Bandung: Mizan, 1997), h. 63.

<sup>33</sup> MUI, *Himpunan Fatwa MUI Sejak 1975* (Jakarta: Erlangga, 2011), h. 327.

The quoted hadith concerns many issues: the recommendation to get married as soon as possible if according to the law you are able, the need for Muslims to be able-bodied, the importance of leaving children with sufficient wealth rather than poverty, the practice of interrupted coitus (coitus interruptus) / 'azal in the time of the prophet, and the obligation of parents to educate their children well. These hadiths are considered reliable, because three of them have been recorded by Bukhari and Muslim and others by Tarmidhi and al-Hakim.

حدثنا عمر بن حفص بن غياث حدثنا أبي حدثنا الأعمش قال حدثني عمارة عن عبد الرحمن بن يزيد قال دخلت مع علقمة والأسود على عبد الله فقال عبد الله كنا مع النبي صلى الله عليه وسلم شبابا لا نجد شيئا فقال لنا رسول الله صلى الله عليه وسلم يا معشر الشباب من استطاع الباءة فليتزوج فإنه أغض للبصر وأحصن للفرج ومن لم يستطع فعليه بالصوم فإنه له وجاء (رواه البخارى)<sup>34</sup>

*It means:*

*"Telling us Umar bin Hafsa bin Ghiyas conveyed to us 'Amasy, he said convey to me Umarah from Abdurrahman bin Yazid he said, I along with al-Qamah and al-Aswad came to Abdullah, then said Abdullah, when we were with the Prophet SAW when we were young, we did not get anything then the Messenger of Allah said to us: O young generation, whoever among you is able to have a family should marry, because he can maintain his views and protect the sanctity of farji and whoever is unable to (marry) should fast because fasting is a shield for him." (History of Bukhari)*

The last fatwa on vasectomy was a fatwa issued in Padang Panjang on 24-26 January 2009 in the Ijtima' Ulama of the Fatwa Commission throughout

<sup>34</sup> al-Bukhari, *al-Jami'u*, juz 7, h. 3.

Indonesia by the Ijma' Ulama of the Fatwa Commission throughout Indonesia material team, which reads as follows:

1. Vasectomy as a contraceptive is currently carried out by cutting the sperm duct. This results in permanent sterility.
2. Recanalization efforts (reconnection) do not guarantee the restoration of the fertility level of the person concerned.
3. Therefore, the Ijtima' Ulama of the Fatwa Commission throughout Indonesia decided that the practice of vasectomy is haram.

The basis for the MUI's consideration in issuing this haram fatwa is the verses of the Qur'an which explain the prohibition of killing children because of fear of poverty and the prohibition of committing cruel acts, there are also verses which explain that Allah is the one who has the right to determine whether a person is sterile or does not have children. In other verses, it is also mentioned the prohibition of changing something that Allah has created which in the case of vasectomy, there is something that is cut, namely the seminal duct.

While the Hadith used as the basis for MUI's consideration is the Hadith from the companion Mughirah RA, which contains a prohibition on killing a girl (alive), another Hadith mentions a prohibition on changing the creation of Allah SWT. The fiqh principles used are those related to changes in time, place and conditions for changes in law. In the legal considerations for this Vasectomy fatwa, namely the explanation of an expert and also a representative from the National Family Planning Coordinating Board (BKKBN) at the MUI halaqah on vasectomy and tubectomy held in Jakarta on January 22, 2009.

In determining the fatwa prohibiting vasectomy, the MUI uses the qiyas method (equating something that has no legal text with something that has a legal text because of the similarity of legal illat). The prohibition of vasectomy is equated with the prohibition of killing children for fear of poverty. In addition, the MUI also equates vasectomy with the prohibition of changing the creation of Allah SWT which already has a text, both in the Qur'an and Hadith. From the explanation above, it can be concluded that in dealing with the problems of the Family Planning

program, the Ulema Council has issued a series of legal fatwas, both in the aspect of family planning itself as a government policy, in population development, and in the technical aspects of its implementation. To complete the legal study in this problem, they use three approaches to legal study, namely the linguistic analysis approach, with the al-nas and Amar and Nahy signal analysis system, the istidlal analysis method, and the istislahy analysis approach with fathu al-zari'at and sad al-zari'at. All of these approaches are methods of legal study that have been developed by the early scholars from different schools of thought. And now the Council of Ulama uses all of these methods more proportionally, without paying attention to the schools of thought that initially formulated them. Thus, they are not among the followers of one school of thought who are fanatical about only one method of legal study from a particular school of thought, but adopt (combine) various methods from different schools of thought proportionally, according to the needs of legal study in solving the problems they face.<sup>35</sup>

### **C. Conclusion**

After conducting an in-depth investigation of primary and secondary sources in this study, it can be concluded that:

The law on carrying out vasectomy is haram according to the fatwa of the Central MUI in 2009, the result of the Ijtima' Ulama Fatwa Commission III throughout Indonesia on January 24-26, 2009 in Padang Panjang, West Sumatra.

Vasectomy as a contraceptive is currently carried out by cutting the sperm duct. This results in permanent infertility.

Recanalization efforts (reconnection) do not guarantee the restoration of the fertility rate of the person concerned. Therefore, the Ijtima' Ulama Fatwa Commission throughout Indonesia decided that the practice of vasectomy is haram.

Meanwhile, this practice continues to be carried out by the BKKBN as a government agency that carries out the task of reducing the population of Indonesia which is increasing sharply. Vasectomy, which in BKKBN terminology is known as MOP (Medical Operation for Men) is one of the effective contraceptive methods

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<sup>35</sup> Muhammad Hasbi Umar, *Nalar Fiqih Kontemporer* (Jakarta: Gaung Persada Press, cet. I, 2007), h. 204.

included in the BKKBN program system. The advantages of this contraceptive are that it has very few side effects, a very small failure rate and is long-term. The people who do vasectomy only think that how can they not have more children when they already have enough so that they can help the family economy. Because of the lack of socialization about the MUI fatwa to the community, they do not know that Vasectomy is forbidden according to the MUI's view.

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