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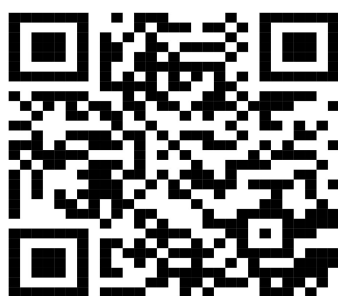
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COMPARATIVE STUDY OF THE PROTECTION OF WOMEN'S RIGHTS IN ARTICLE 463 OF THE NEW CRIMINAL CODE WITH LAW NUMBER 36 OF 2009 CONCERNING HEALTH PERSPECTIVE OF JASER AUDA

Abstract: This research wants to see how Article 463 in the New Criminal Code accommodates and protects the interests and rights of women's reproductive health. In addition to analyzing how it accommodates women, this study also analyzes how Article 463 of the New Criminal Code is viewed from the perspective of Jaser Auda's *Maqashid Syari'ah*. Before entering into the analysis, this research first compares Article 463 with the Health Law and the Law on criminal acts of sexual violence. This research uses normative legal research methods using a statutory approach or statute approach. Data sources are obtained from literature including laws and regulations and other internet sources. Primary data sources in this study are Article 463 of Law Number 1 of 2023 concerning the New Criminal Code and Law Number 36 of 2009 concerning Health. The theory used is comparative legal theory and Jaser Auda's *Maqashid Syari'ah* theory as an analysis knife in solving problems. The results showed that Article 463 of the New Criminal Code compared to the health law is more accommodating to women's interests is the health law because it more broadly explains what is included in sexual violence which is not only focused on three dimensions, namely forced prostitution, rape and sexual slavery. In addition, in terms of considering the health of pregnant women, the health law is more accommodating because it provides exceptions to abortion for pregnant women

who have emergency health conditions that endanger themselves and their babies. In Jaser Auda's perspective, this article is not in line with *Maqashid Syari'ah* because it does not interpret wisdom and justice for all universally, in this case, the woman.

Keywords: Abortion, New Penal Code, Health

INTRODUCTION

Unplanned or unwanted pregnancies can be caused by a variety of factors, such as inappropriate age, economic problems, domestic violence by a partner, irresponsible partners, employment contracts, and most significantly cases of sexual violence.¹ As reported by UNFPA, there are about 121 million incidents of unplanned pregnancies each year. Other statistics reveal that of married women, about 66% choose to have an abortion, with the majority, 87%, coming from urban areas.² It was noted that there are several reasons why married couples do not utilize contraceptive methods. Some of these factors include health considerations of the woman/wife, religious and customary legal considerations against contraceptive use, as well as women's lack of understanding of the protections and challenges in accessing them.³ The following article explores how recent revisions to the Criminal Code have integrated regulations related to the practice of abortion. An examination of article 463 is then used to identify the extent to which it takes steps to safely protect women's reproductive rights.

Law is the result of the ongoing formation of behavior in society and is also the result of existing forces. The values believed in and prevailing in society also influence the law. One important principle to note is that decisions are often made by authorized individuals or groups. Therefore, legal products reflect the interests of those in power or authority. In the context of abortion practices, this is closely related to the feminist perspective. In feminism's view, the powerful refers to individuals, both men and women, who embrace patriarchal values and dominance in social, cultural, and economic aspects.⁴

The injustices that exist in society are often perpetuated by laws that reflect patriarchal values, as these laws are created by groups that have power in society and have dominant views that are based on a patriarchal mindset. In abortion situations, women

¹ Dina Lumbantobing et al., "Community Knowledge and Behavior Towards Unwanted Pregnancy in Eight Provinces of Sumatra: Between Religious, Customary and State Norms," *Jurnal Perempuan* 24, no. 3 (2019): 275.

² Guttmacher Institute. 2008. "Aborsi di Indonesia: Dalam Kesimpulan," *Guttmacher Institute*, New York. Seri 2008 No. 2, diakses pada 13 Maret 2023, di https://www.guttmacher.org/sites/default/files/report_pdf/aborsi_di_indonesia.pdf.

³ Lumbantobing et al., "Community Knowledge and Behavior Towards Unwanted Pregnancy in Eight Provinces of Sumatra: Between Religious, Customary and State Norms."

⁴ Sandiata, "Perempuan Berhadapan Dengan Hukum: Refleksi Penggunaan Pasal 284 Dan 285 KUHP Dalam Pengalaman Pendamping Hukum," *Jurnal Perempuan* Vol. 23, no. 2 (2023): 117–27.

often face problematic situations when deciding to terminate a pregnancy, with significant physical and mental health consequences. However, the state does not always adequately consider these conditions. There are many cases where the state imposes sanctions on individuals who have abortions, when in fact they are victims of sexual violence. The new Criminal Code, particularly Article 463, is the focus of research to assess whether there is an opportunity or potential to protect women who undergo unwanted pregnancies, whether as a result of sexual violence, incest, or health issues.

Some of the questions that arise when examining this aspect involve how Article 463 manages the issue of abortion, whether the regulation on abortion in Article 463 of the revised Criminal Code is in line with the provisions in Law No. 12 of 2022 on Criminal Acts of Sexual Violence, and how Article 463 conflicts with Law No. 36 of 2009 on Health. This research is a juridical normative legal research using a statutory approach. The source of data comes from legislation, namely the relationship between several regulations between the new Criminal Code and the typical law and the health law. The theory used as an analytical knife in this research uses Jaser Auda's *Maqashid Syari'ah* theory, so that the theory will see and evaluate how the regulation protects, accommodates, and provides justice to women in this case related to abortion activities.

METHOD

This research uses a normative legal research method using a statutory approach or statute approach. Data sources are obtained from literature including laws and regulations and other internet sources. Primary data sources in this study are Article 463 of Law Number 1 of 2023 concerning the New Criminal Code and Law Number 36 of 2009 concerning Health. The theory used is comparative legal theory and Jaser Auda's *Maqashid Syari'ah* theory as an analytical knife in solving problems.

RESULT AND DISCUSSION

Abortion Rules in Law Number 1 Year 2023 on the New Criminal Code

Rules governing sanctions against subjects who perform abortions are contained in the new Criminal Code contained in Article 463.⁵ As paragraph (1) explains, women who practice and perform abortions can be sentenced to four years in prison. The word "women" in the article shows how the lawmakers explain that only women have the potential to perform abortions. In fact, in many cases, abortions are performed because of unwanted pregnancies and can occur due to the involvement of other parties such as family pressure, and husbands/lovers who are certainly not purely self-inflicted abortions. This article shows that there is an assumption that women have the most potential to commit acts and practices of abortion because of their biological role.

⁵ Undang-Undang Nomor 1 Tahun 2023 tentang KUHP Baru

From this article, it can be seen that for whatever reason, a woman will still be sentenced to four years for the consequences of her actions. However, there is an exception in paragraph (2) of Article 463. It is explained in the norm of paragraph (2) that if a woman has an abortion for pregnancy from sexual violence and rape, then the woman as the abortionist cannot be convicted.

The explanation of paragraph (1) explains that the content of the norm is to ensure the safety of the unborn child. However, if the baby in the womb is already dead, then the abortion action in the norm of this paragraph does not apply. Kaarena seen in this norm is what causes the death of the baby in the womb. So if the baby in the womb of the woman is dead and then aborted, then the norm in this paragraph does not apply. Meanwhile, the explanation of paragraph (2) in Article 463 explains that what is included in acts of sexual violence are sexual slavery, forced prostitution, and sexual exploitation.

The elucidation of Article 463 mentions "protecting the womb of a woman". However, if this protection is interpreted as interference with women's reproductive rights, it may turn into a new form of violence, known as forced pregnancy. Ironically, such a situation may occur when the pregnancy is unwanted. Such interference is expected to have the effect of encouraging individuals to have clandestine abortions, which are unsafe and harmful to women's health. Government intervention in protecting and guaranteeing women's health can be done by providing education in elementary, middle, and even high school. So that people understand the consequences of unsafe abortion. In addition, intervention to protect women's reproductive health can also be done by handling and preventing through education on responsible sexual relations.

Interestingly, in the explanation of paragraph (2), it is explained that the perpetrator of abortion can be free from punishment if the gestational age has not reached 14 weeks. Furthermore, the elucidation of paragraph (2) states that the types of sexual violence are rape, forced prostitution, and sexual slavery. It is interesting if it is connected to the Law on criminal acts of sexual violence which more broadly discusses what is included in the category of sexual violence. Article 4 paragraph (1) explains that rape, incest, and sexual violence in marriage are included in sexual violence that may cause pregnancy.⁶

It can be seen from this comparison that Article 463 of the new Penal Code implies that victims of sexual violence who are allowed to have an abortion outside of gestational age only include those who have been subjected to repeated rape, such as in situations of forced prostitution, sexual exploitation, or sexual slavery. The legislators of the new Penal Code do not realize that a single act of physical violence is included in sexual violence, including rape and incest, which can lead to pregnancy.

Abortion Law No. 36/2009 on Health in Indonesia

⁶ Undang-Undang Nomor 12 Tahun 2022 tentang Tindak Pidana Kekerasan Seksual

It is interesting to see the rules and regulations on abortion with the health law. There is disharmony between the norms in the new Criminal Code and the health law. Article 75 of the health law states that every person is prohibited from having an abortion. If we look at the difference between Article 75 paragraph (1) in the health law and Article 463 paragraph (1) in the new Criminal Code, we can see the difference in subjects who can perform abortions. In the health law, it is explained that everyone is prohibited from having an abortion. In this case, it is not only women. This norm is different from Article 463 paragraph (1) which clearly emphasizes that women are prohibited from abortion.⁷ The word "women" in this norm is emphasized as if only women as subjects can perform abortions. In many cases, women may be pressured by their families or partners to have abortions.

The exceptions are stipulated in paragraph (2) of Article 75 of the health law. The exception to the criminal consequence is that abortion can be done if there is emergency medical advice and action from a doctor. As there are abnormalities and content that can endanger the mother and the baby. The second exception is that abortion can be performed on someone who is a victim of sexual violence which causes the victim to be traumatized. In the explanation of paragraph two, the exception of the emergency action of the doctor must go through counseling which is divided into pre-action and post-action against the mother. The counseling must also be done by a competent counselor.

In article 75 paragraph (2) about exceptions to the legality of abortion is done when experiencing sexual violence and rape. Second, if the mother or fetus faces an emergency medical situation. This medical condition can also be the basis for abortion in women who are pregnant with specific health conditions. According to the author, from a feminist perspective, Article 75 paragraph (2) is an exception to the permissibility of abortion by considering the health condition of the baby and the mother is more accommodating to women's health and reproductive rights than Article 463 paragraph (2) in the New Criminal Code. Article 75, the health condition factor that causes a pregnant woman to experience an emergency medical situation (based on special health reasons), which in reality is often experienced by Indonesian women, is recognized as one of the reasons that allow women to undergo abortion.

Information on the medical emergencies often experienced by Indonesian women during pregnancy, as revealed in the latest 2016 SRS Litbangkes survey on Maternal Mortality Rate (MMR) in Indonesia, shows a ratio of 305 cases per 100,000 live births based on data from SUPAS in BPS (2015). The main causes of maternal mortality in Indonesia include hypertension/preeclampsia/eclampsia, bleeding, and infection.⁸ Article 75 also explains the foundation of the permissibility of abortion. In paragraph (2) point b, for

⁷ Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan

⁸ BPS. 2015. Hasil Survei Penduduk Antar Sensus 2015. Badan Pusat Statistik, diakses pada Maret 2023, di: https://www.bps.go.id/indikator/indikator/view_data/0000/data/1349/sdgs_3/1.

example, it is clearly stated that the exception is the victim of rape. There is no expansion of the meaning that the victim received sexual violence repeatedly and repeatedly as in the new Criminal Code. Article 75 is more explicit that the exception is for victims of rape that can result in pregnancy even though it was committed only once. More interestingly, Article 75 of the health law emphasizes the element of psychological trauma experienced by the victim. From the explanation in Article 75, it is clear that this Article better accommodates women's reproductive health rights and better guarantees victims of sexual violence who experience pregnancy.

Article 76 reaffirms the process of exceptions to legal abortion. This article sets out the requirements to be able to have an abortion. First, the gestational age is six weeks starting from the last menstrual period. Second, the abortion is performed and assisted by a competent, authorized health worker who has a certificate issued by the government. Third, there is consent from the pregnant woman and her husband, except for victims of sexual violence and rape. Fourth, it is performed by an authorized health provider recognized by the government as competent.

What is interesting about Article 76 is that it requires the consent of the pregnant woman, as listed in item c, as one of the conditions for abortion, referring to the conditions stipulated in Article 75. While this requirement may not fully reflect women's experiences, at least the use of the word "pregnant woman" shows that the law recognizes women's authority over their bodies, however weak it may be. The weak point of Article 76 lies in the wording of item c, which is "based on the husband's permission, except for victims of rape". If the perspective underlying item c is the view that pregnancy is the joint responsibility of husband and wife, then the inclusion of item c will not diminish a woman's authority over her body. However, if the background of point c is based on the idea that the wife's body is under the husband's authority, as stipulated in Marriage Law Number 1 Year 1974 which describes the wife as a housewife and the husband as the head of the household, then it is reasonable to argue that the husband has absolute rights in decision-making, including in terms of the wife's reproduction. If this is true, then the regulation may have patriarchal elements that harm women's authority over their bodies, including in terms of reproduction.⁹ In terms of safety, this article also better accommodates the protection of reproductive health because it must be carried out by competent health workers and service providers who have a certificate from the government through the Ministry of Health.

Furthermore, Article 77 of the Health Law emphasizes that the government is obliged to protect and prevent unsafe and unqualified abortions that are not contrary to religious norms and laws and regulations in force in Indonesia. Further explanation in Article 77 which is meant by unsafe, unqualified, and irresponsible is, that the practice of

⁹ Donna Lee Bowen, "Abortion, Islam, and the 1994 Cairo Population Conference," *International Journal of Middle East Studies* Vol. 29, no. No. 2 (2009).

abortion is done without the consent of the person concerned, performed by health workers who are not competent, professional, and do not have a certificate from the government, and prioritize rewards rather than devotion to the medical profession.

The content of Article 77 has been clarified to strengthen the responsibility of the government (state) in ensuring the protection of a safe abortion process. In a further explanation of the article, it is explained that abortion is considered unsafe if it is performed forcibly, i.e. without obtaining the consent of the pregnant woman. In addition, the term "unsafe abortion" includes abortions performed by unqualified health professionals. The approach used by lawmakers to define the term discriminatory in this context is if the abortion provider lacks women's involvement. For example, this may occur if the provider's motives are focused on material gain rather than consideration of medical indications.

Analysis of Article 463 of the New Criminal Code from Jaser Auda's *Maqashid Syari'ah* Perspective.

A closer look at Article 463 of the New Criminal Code and Articles 75, 76, and 77 of the Health Law reveals that there is a difference in regulation between the two laws. First, in the context of the implementation of the provisions contained in the New Penal Code, the situation of abortion in relation to the health condition of the pregnant woman indicates a risk that the woman undergoing the abortion process is at risk of potential criminal prosecution. This is because these situations do not meet the criteria or requirements that permit abortion without criminal risk, which only applies if the woman is a victim of sexual violence. In this case, the *maqashid* that is used cannot just use the *maqasid klaisk* which is only about protecting offspring. Rather, it is a contemporary *maqashid* that is oriented towards protecting the family and caring for the institution of the family.¹⁰

Furthermore, the possibility of having an abortion in cases where the pregnant woman is a victim of sexual violence has been narrowed down to include only situations where the woman is a victim of sexual violence such as forced prostitution, sexual exploitation, and/or sexual slavery. In situations where the pregnancy results from an act of rape or forced sexual intercourse in the presence of deception about marriage or in the context of a dating relationship, the opportunity to choose the abortion option has been eliminated following the provisions of the New Penal Code.

Regulations related to abortion should consider the experiences and conditions of women as individuals who bear the responsibility of pregnancy. This is especially true in the case of pregnancies arising from acts of sexual violence or rape. The government needs to protect women and their reproductive roles. The government also must prevent cases of death of pregnant women due to risky and unsafe abortions. This is related to one of the

¹⁰ Mariyati Mile, Nur Mohamad Kasim, and Jufryanto Puluhulawa, "Penjatuhan Hukuman Terhadap Pelaku Tindak Pidana Pembuangan Janin Bayi Hasil Aborsi Ditinjau Dari Perspektif Hukum Pidana Islam," *Aufklarung : Jurnal Pendidikan, Sosial Dan Humaniora* 3, no. 1 (2023): 56–61.

System elements of Jaser Auda's theory, namely openness, which is open and sees what is experienced by women.¹¹

In practice in the community, marrying a victim of sexual violence that causes pregnancy or does not cause pregnancy that occurs outside of marriage with the perpetrator of sexual violence is a solution to solving problems in the community. This happens to reduce and eliminate the shame of the victim and the victim's family. Moreover, sexual violence causes pregnancy. Marrying off the victim to the perpetrator of sexual violence is considered by the community to be a more competent solution than aborting a pregnancy that occurred as a result of sexual violence.

Options and solutions carried out by the community by marrying off victims of sexual violence with perpetrators of sexual violence can increase the suffering of victims and even children born from sexual violence that causes pregnancy. The victim has the potential to experience acts of violence, be it physical violence, psychological violence, or economic neglect by the husband because he feels that he is forced to marry the victim. Even children who have been born are often witnesses and even victims of further sexual violence or incest. If this happens, it is not following the contemporary *maqashid*, namely *al- Nasl*, which should be oriented toward protecting the family and family institutions. If married, likely, that the husband will not be harmonious with the wife because he feels that the marriage is due to coercion. Then the family institution will not be maintained.

In the context of pregnancy due to incest, it is very difficult for a victim to continue her pregnancy. In addition to the trauma experienced, the victim will also face responses from the community regarding her pregnancy due to incest. In addition to facing the response from the community, the victim will also experience and deal with unfair power relations from the perpetrator who is usually a father, brother, uncle, or grandfather who has authority over her which allows the perpetrator to still have access to manipulate the incident.¹²

The law is expected to be able to bring change for the better. But the law must also look at the circumstances and conditions of society. A good law is a law that follows the customs and circumstances of society. Government efforts in forming regulations related to overcoming abortion, can not only contain a ban. However, the rules and regulations that contain the prohibition must also be linked to what is experienced by the subject of law. Concerning the new Criminal Code Article 463, the subject of the law is the victim of sexual violence who experiences pregnancy due to sexual violence so that they have an abortion. In this case, the government has failed to protect and accommodate victims of sexual violence from unsafe abortion. This is evident because the explanation of Article

¹¹ M. Amin Abdullah, *Multidisiplin, Interdisiplin, Dan Transdisiplin, Metode Studi Agama Dan Studi Islam Di Era Kontemporer* (Yogyakarta: IB Pustaka, 2022), hlm. 49.

¹² Hendrastiati ed., "Narasi Pengingkaran Dari Kasus Lima Ayah Pelaku Inses," *Jurnal Perempuan* Vol. 26, no. No. 2 (2023): 121–33.

463 tightly closes the opportunity for victims of violence to have an abortion. Victims of sexual violence can only have an abortion if the pregnancy occurs as a result of forced prostitution, sexual slavery, and sexual exploitation. The protection of the lives of victims of sexual violence due to emergency medical or health conditions is not accommodated in this Article. Law is a construction of the social system of society, so the law cannot be separated from the values that live and develop in society.¹³ Concerning Article 463 of the new Criminal Code, when viewed from a feminist perspective, this article interprets patriarchy in society. Three things indicate that this article is an interpretation of the patriarchal system.

First, related to the explanation in Article 463 that there will be no pregnancy for sexual intercourse that is done only once. It is proven in the explanation of the article that what is included in the act of sexual violence so that the victim is legalized to perform abortion is forced prostitution, sexual exploitation, and sexual slavery. Secondly, this article does not protect and guarantee the need for abortion for victims of incest who age is very young so that they experience severe trauma. Thirdly, this article does not provide protection and accommodation for the health conditions of those who experience pregnancy as referred to in the health law as "medical emergencies". In addition to not accommodating the health conditions of pregnant women, the regulators also did not consider Indonesia's diverse geography. Not all pregnant women live in areas with easy access to health facilities and affordable costs.¹⁴

In a feminist legal analysis of Article 463, it is important not only to look at the issue of abortion as an unlawful act that needs to be punished. Rather, it is important for lawmakers to first understand how the values of the law being created will affect women, and how women's experiences are integrated within the legal framework. In this way, the law will reflect the experiences and concepts of justice of society at large, not just the views of a select elite group.

From various considerations and analyses of Article 463, according to the author, the article does not follow *Maqashid Syari'ah*. When using the language of Jase Auda, the article does not fulfill and is based on the main principles of Sharia, namely wisdom and the realization of benefit justice and mercy during human life.¹⁵ Related to this, Jaser Auda further states that every problem or thing that comes out of justice cannot bring grace and is unable to realize the benefit is not sharia. This is of course contrary to the spirit of the law, namely the realization of social justice. In addition, the existence of Article 463 is

¹³ Satjipto Rahardjo, *Hukum Progresif, Sebuah Sintesa Hukum Indonesia*. (Jakarta: Kencana Pranada Media Group, 2009), hlm. 93.

¹⁴ Perihan Elif Ekmekci, "Abortion in Islamic Ethics, and How It Is Perceived in Turkey: A Secular, Muslim Country," *Gulf Studies* Vol. 2, no. No. 1 (2017): 52–64.

¹⁵ Jaser Auda, *Membumikan Hukum Islam Melalui Maqasid Syariah* (Bandung: Mizan Pustaka, 2015), hlm. 22.

maqashid juz'i which is the foundation and foundation of *maqashid ammah*, namely realizing the protection of rights and justice, in this case, women.

In general, abortion on a fetus that has not reached the age of 40 days is permissible (*ja'iz*) and there is nothing wrong with it. This is because what is in the womb is not yet a fetus. After all, it is still in the stage of being *nutfah* (blood clot), not yet reaching the phase of creation that shows the minimum characteristics of a human being. In addition, aborting the *nutfah* before it becomes a fetus is legally comparable to '*azl* (coitus interruptus), which is intended to prevent pregnancy. '*Azl* is performed by a man who does not want the pregnancy of the woman he is having intercourse with because this method is an act of removing sperm outside the woman's vagina. This action will result in the death of the sperm cell, as it will result in the death of the egg cell, so that there will be no meeting of the sperm cell with the egg cell which will certainly not lead to pregnancy.¹⁶

As long as the law is right and can realize a sense of justice, then that is the essence of the law and must be enforced. However, if the opposite happens then the creation of lawmakers is needed. Thus, legislators should consider the general *maqashid* in Article 463, which is not in line with the interests and reproductive health of women. Moreover, this article is the result of the interpretation of a legal text that should be understood thoroughly contextual-historical by looking at the conditions experienced by women related to their traumatic psychological conditions and not just containing an abortion ban. This is in line with the opinion of Khaled M. Abou el Fadl who said that the law and future legislation must be free from the interests of the parties holding authority, in this case, the men, even every authoritarian of the readers themselves to be able to play an effective role for all layers of groups, women.¹⁷

As a result of human cognition, the provisions of Article 463 should accommodate the interests of women by at least following the health law that more loosely provides guarantees and protection for pregnant women who have emergency health conditions and are given special legalization to perform abortions. As an openness to criticism, it is very likely to be reformed or even reinterpreted by the Constitutional Court as an authorized institution. As a product that cannot be separated from politics, Mahfud MD stated that the law cannot only be seen as imperative articles but must be seen as a subsystem that in the reality of the formulation of materials and articles as well as in the implementation and enforcement is very likely not separated from the various contexts of space and time, both socio-political, economic and cultural in this case the reality experienced by women.¹⁸ David Trubeck as quoted by Suparman Marzuki, more clearly states that a legal product is not sterile from the interests of groups or potential forces that want their interests. In this case,

¹⁶ Nelly Yusra, "Aborsi Dalam Perspektif Hukum Islam," *Marwah: Jurnal Perempuan, Agama Dan Gender* 11, no. 1 (2012): 1.

¹⁷ Khaled M. Abou el Fadl, *Atas Nama Tuhan Dari Fikih Otoriter Ke Fikih Otoritatif* (Jakarta: Serambi, 2004), hlm. 373.

¹⁸ Moh. Mahfud MD, *Politik Hukum Di Indonesia* (Depok: Rajawali Pers, 2020), hlm. 72.

the authority is the lawmaker while the lawmaker is dominated by men.¹⁹ When compared to the Classical *Maqashid* in terms of protecting honor (*al-Irdh*) is no longer relevant to the present. What is used should be contemporary *Maqashid Syari'ah*, namely maintaining and protecting human dignity, maintaining and protecting human rights, in this case, the rights and interests experienced by women.

CONCLUSION

The results showed that if Article 463 of the New Criminal Code is compared with the health law, the health law is more accommodating to women's interests because it more broadly explains what is included in sexual violence which is not only focused on three dimensions, namely forced prostitution, rape, and sexual slavery. In addition, in terms of considering the health of pregnant women, the health law is more accommodating because it provides exceptions to perform abortions on pregnant women who have emergency health conditions that endanger themselves and their babies. In this case, Article 463 in the New Criminal Code focuses on prohibition only, without seeing and considering what pregnant women who are victims of sexual violence experience psychologically and traumatically. In Jaser Auda's perspective, this article is not in line with *Maqashid Syari'ah* because it does not interpret wisdom and justice for all universally, in this case, the woman.

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¹⁹ Neng Isma et al., "Islam Dan Fundamentalisme Dalam Al ' Qur ' an" 2, no. 1 (2023): 1299-1310.

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