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TYPOLOGIES OF EMERGENCY IN ISLAMIC LEGAL EPISTEMOLOGY: HADD AL-AKHAF AND HADD AL-ASQAL AS A GRADED FRAMEWORK FOR MEDICAL ABORTION

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Abstract

This study examines the epistemological problems involved in applying the concept of necessity *(darūraḥ)* to determine the legality of medical abortion under Islamic law. To date, darūraḥ has often been treated as a binary condition (either present or absent), without clear gradations, thereby giving rise to interpretative ambiguity and legal inconsistencies. This study aims to develop a graded typology of darūraḥ through the concepts of hadd̩ al-akhaf (minimum threshold) and hadd̩ al-asqal (maximum threshold) within the framework of *Maqāsiḍ al-Syarī'ah* as the epistemological foundation of Islamic law. Using a qualitative method with a normative-empirical approach and deductive analysis, this study found that a graded typology of darūraḥ allows for the systematic differentiation of levels of necessity based on the degree of danger, threat to life, availability of alternatives, the affected Maqāsid̩, and the proportionality of maslaḥ aḥ and mafsadah. At the minimum level *(hadd al-akhaf),* abortion is permitted on a conditional basis *(rukhsaḥ)* in cases such as severe foetal abnormalities or rape, prior to 120 days. At the maximum level *(hadd al-asqaḷ),* abortion becomes obligatory *(ibāhaḥ)* to save the mother's life, even after 120 days. This research contributes to the development of contemporary usul al-fiqh by providing an operational and measurable analytical framework, whilst bridging the gap between classical Islamic legal theory and the challenges of modern bioethics. Its practical implications include guidance for fatwas, clinical decisions and Sharia-based health policies.

Keywords: *Darurah; Maqashid al-Shari'ah; Abortion; Islamic Law; Bioethics; Hadd al-Akhaf; Hadd al-Asqal.*

Abstrak

Penelitian ini membahas problem epistemologis dalam penerapan konsep darurat (darūraḥ) untuk menentukan legalitas aborsi medis dalam hukum Islam. Selama ini,

darūraḥ sering diperlakukan sebagai kondisi biner (ada atau tidak), tanpa gradasi yang jelas, sehingga menimbulkan ambiguitas interpretatif dan inkonsistensi hukum. Penelitian ini bertujuan mengembangkan tipologi bertingkat dari darūraḥ melalui konsep hadḍ al-akhaf (batas minimal) dan hadḍ al-asqal (batas maksimal) dalam kerangka Maqāsiḍ alSyarīʻah sebagai landasan epistemologi hukum Islam. Menggunakan metode kualitatif dengan pendekatan normatif-empiris dan analisis deduktif, penelitian ini menemukan bahwa tipologi gradasi darurat memungkinkan pembedaan tingkat kebutuhan secara sistematis berdasarkan derajat bahaya, ancaman jiwa, ketersediaan alternatif, Maqāsiḍ yang terpengaruh, serta proporsionalitas maslaḥ aḥ dan mafsadah. Pada tingkat minimal (hadd al-akhaḟ), aborsi dibolehkan secara bersyarat (rukhsaḥ) untuk kasus seperti kelainan janin berat atau perkosaan sebelum 120 hari. Pada tingkat maksimal (hadd al-asqaḷ), aborsi menjadi wajib (ibāhaḥ) untuk menyelamatkan nyawa ibu, bahkan setelah 120 hari. Penelitian ini berkontribusi pada pengembangan usul fikih kontemporer dengan menyediakan kerangka analitis yang operasional dan terukur, serta menjembatani kesenjangan antara teori hukum Islam klasik dan tantangan bioetika modern. Implikasi praktisnya mencakup panduan bagi fatwa, keputusan klinis, dan kebijakan kesehatan berbasis syariah.

Kata Kunci: *Darurat; Maqashid Syariah; Aborsi; Hukum Islam; Bioetika; Hadd al-Akhaf; Hadd al-Asqal.*

INTRODUCTION

The debate over the legality of abortion in Islamic law and contemporary medical practice is a central issue that continues to evolve alongside advances in healthcare technology and shifts in global bioethical awareness. On the one hand, classical fiqh explicitly prohibits abortion as it contradicts the principle of respect for human life guaranteed in the Qur'an (Surah al-Ma'idah: 32; Surah al-Isra': 31, 33) (Departemen Agama, 2005). On the other hand, medical reality shows that there are emergency situations in which continuing the pregnancy actually poses a threat to the mother's life, thereby giving rise to the need for legal exceptions (Sagandhi, 2025).

Within the body of Islamic law, the concept of darūraḥ (necessity) has long been recognised as a principle permitting the violation of Sharia prohibitions when necessary to save a life or prevent greater harm. The classical maxim al-darūrāt tubīḥ al-maḥ ẓ ūrāṭ (necessity permits what is otherwise prohibited) serves as the theoretical framework for various legal exceptions, including in medical matters (Keklik, 2012). However, the extent to which this concept can be applied to cases of abortion remains a subject of sharp disagreement amongst Muslim scholars and intellectuals.

The main problem faced is the lack of a systematic framework for assessing the level of urgency that permits abortion. Until now, darūraḥ has often been treated as a binary condition: either present or absent. This approach overlooks the fact that medical necessity spans a broad spectrum, ranging from mild discomfort to a genuine threat to life. Consequently, legal uncertainty has arisen: on the one hand, there are concerns that the concept of darūraḥ may be applied too loosely to justify abortion without compelling grounds; on the other hand, there are concerns that it may be applied too strictly, thereby disregarding genuine medical cases where saving a life is essential.

Regulatory developments in Indonesia have heightened the urgency of this study. Government Regulation No. 28 of 2024 on Health, which implements Act No. 17 of 2023, has authorised abortion in cases of medical emergency and for victims of sexual violence (UU No. 17 Tahun 2023, 2023). However, this regulation has not yet been accompanied by a clear and well-defined framework of Islamic law, meaning that the potential for conflict between religious norms and state policy remains a looming issue.

Previous studies have addressed certain aspects of this issue. Hamdani and Ishaq (2024) have shown that abortion may be permitted within the framework of the Maqāsid al-Sharīʻah if it meets the criteria of darūraḥ in order to save the mother's life. Nugroho found that contemporary fatwas apply the principles of *irtikāb akhaff al-dararayn* (choosing the lesser of two evils) and *al-darūrāt tubīḥ al-maḥ ẓ ūrāṭ* (S. Nugroho et al., 2025). Masri and Alamsyah (2026) criticised the reasoning behind the emergency fatwa, which relies solely on a single dimension (such as the psychological aspect) without taking into account the broader social and legal consequences. A key gap in the literature is the absence of a tiered typology that explicitly distinguishes between levels of emergency and assigns different legal qualifications to each level.

Research: To address this gap, this study offers a scientific novelty, namely by constructing a 'typology of graded necessity', which is operationalised through two key concepts: Ḥadd al-Akhaf (the minimum threshold of necessity) and *Ḥadd al-Asqal* (the maximum threshold of necessity). This innovation does not merely reiterate the classical principle of irtikāb akhaff al-dararayn, but rather transforms it from an abstract rule into a systematic and measurable multi-dimensional analytical framework. This framework simultaneously integrates five critical variables, namely: (1) the severity of the threat to health or life (severity), (2) the availability of alternative medical treatments (availability of alternatives), (3) the hierarchy of Sharia objectives *(al-maqāṣid al-khamsah),* (4) the proportional balance

between maṣlaḥah and mafsadah, and (5) the stage of pregnancy as a determinant of the foetus's ontological status.

The scientific contribution of this study is both theoretical and pragmatic. Firstly, from a theoretical perspective, this study enriches the discourse on Maqāṣid al-Sharīʻah by offering a new epistemological tool that bridges the dichotomy between classical texts and modern clinical reality, whilst also providing a solution to criticisms of partial emergency reasoning. Secondly, in practical terms, the frameworks of Ḥadd al-Akhaf and Ḥadd al-Asqal provide objective parameters for policymakers (particularly in Indonesia) in drafting technical regulations for the implementation of Government Regulation No. 28 of 2024, which are not only humane and medically sound but also possess strong legitimacy under Islamic law. Consequently, this study no longer treats darūrah as a black-and-white condition, but rather as a spectrum that can be measured and classified in juridical-medical terms.

RESEARCH METHODS

This study employs a qualitative approach using descriptive-analytical methods and a normative-empirical approach (Syamsuddin, 2026). The normative approach is used to analyse Islamic legal texts (the Qur'an, hadith, books on fiqh and usul al-fiqh), whilst the empirical approach is used to examine the reality of contemporary medical practice and health regulations (Anas & Aziz, 2025).

To achieve these objectives, this study integrates four complementary legal approaches: (1) the statutory approach to trace the hierarchy, ratio legis and ontological basis of health regulations in Indonesia; (2) the historical approach to trace the evolution of the concepts of darūrah and Maqāṣid al-Sharīʻah within the corpus of classical to contemporary fiqh; (3) a comparative approach (minor comparative) to compare abortion regulations in several Muslim countries with the Indonesian legal system; and (4) a case-based approach to analyse the ratio decidendi of court rulings and authoritative fatwas relating to the permissibility of medical abortion. The use of these four approaches is based on the premise that a single approach is insufficient to analyse the complexity of the case, as emphasised by Campbell and Marzuki. Furthermore, as the focus of this research is the epistemological construction of the typology of degrees of emergency (Ḥadd al-Akhaf and Ḥadd al-Asqal), this normative approach is enriched by an approach from the philosophy of Islamic law (shar'i epistemology) grounded in the frameworks of uṣūl al-fiqh and Maqāṣid al -Sharīʻah. This is intended to ensure that any reasoning (istidlāl) produced does not contradict the sharʻī discourse and is capable of

integrating classical legal theories with contemporary clinical realities in a cohesive manner.

Types and Sources of Data: the legal materials used are qualitative in nature and are classified into three categories. Firstly, primary legal sources, comprising classical and contemporary literature within the field of Islamic law, including works on the principles of Islamic jurisprudence (such as al-Muwāfaqāt by al-Shāṭibī and ʻIlm Uṣūl al-Fiqh by ʻAbd al-Wahhāb Khallāf), books on fiqh and fatwas (such as al-Umm by al-Shāfiʻī and al-Asybāh wa al-Naẓāʻir by al-Suyūṭī), as well as exegeses and commentaries on hadith that specifically address the status of the foetus and the prohibition on taking life. Secondly, secondary legal sources, which consist of relevant national legislation, particularly Law No. 17 of 2023 on Health and Government Regulation No. 28 of 2024 on Health (UU No. 17 Tahun 2023, 2023), as well as official fatwas from the Indonesian Ulema Council (MUI) governing abortion and medical emergencies. Thirdly, tertiary legal sources, which include essays, international journal articles, policy documents, and digital literature (including the Maktabah Shāmilah app) that discuss, on a thematic basis, the concepts of darūrah, maqāṣid and Islamic bioethics, even though they do not specifically address the entire scope of the research.

Data Collection and Analysis Techniques: The collection of legal materials for this research was carried out through comprehensive library research and documentation. The first stage involved the inventory and selection of all primary, secondary and tertiary legal materials relevant to the subject matter. Subsequently, an in-depth search (tracking) was carried out of written documents, in both printed and electronic form, including minutes of policy meetings and transcripts of academic discussions relating to the implementation of Government Regulation No. 28 of 2024. To strengthen and verify the literature findings, this study also utilised observation and limited interviews (supportive instruments) as triangulation tools. Observations were carried out directly at several healthcare facilities to map the management of obstetric emergency cases, whilst structured interviews (guided interviews) were conducted with competent informants in their respective fields comprising religious scholars, Islamic law academics, and specialist midwives to obtain practical perspectives that enrich the normative analysis. Data analysis employed a deductive method comprising the following steps: data reduction, data presentation, and drawing conclusions.

Simultaneous triangulation, both between data sources (primary, secondary and tertiary) (Zahroh et al., 2025) as well as across legal approaches (statutory law, history, comparative law and case law), in order to ensure the scientific validity and logical consistency of the typological constructs of Ḥadd al-Akhaf and Ḥadd al-Asqal.

Through a dialectical confrontation between the principles of uṣūl al-fiqh, national positive law, contemporary clinical facts, and casuistic rulings, the coherence of this new epistemological framework is rigorously tested to ensure that every formulated gradation of emergency does not deviate from the hierarchy of Maqāṣid al-Sharī'ah and is capable of providing objective and measurable parameters for the permissibility of medical abortion. Thus, this triangulation not only strengthens the scholarly foundations of the research but also ensures that the resulting typology is truly applicable, both as a guide for Islamic legal reasoning and as an instrument to refine national health regulations, which have so far left room for normative uncertainty.

RESULTS AND DISCUSSION

Results

The Legal Status of Abortion in Islam and Healthcare

Research confirms that abortion is, in principle, prohibited in Islam on the basis of evidence from the Qur'an and the hadith (Dol et al., 2025). However, this prohibition is not absolute; there are exceptions in emergency situations. Based on the stage of foetal development, the ruling on abortion is divided into: (1) Before 120 days (before the soul has been breathed into the foetus): there are differences of opinion amongst the schools of thought, but all agree that if there is a medical emergency threatening the mother's life, abortion is permitted; and (2) After 120 days (when the soul has been breathed into the foetus): all schools of thought agree that abortion is prohibited, unless the pregnancy definitively threatens the mother's life, in which case abortion is permitted and may even become an obligation based on the principle of 'choosing the lesser of two evils' *(irtikāb akhaff al-dararayn).*

From a medical perspective, the WHO notes that around 20 million unsafe abortions take place each year, resulting in 70,000 maternal deaths. In Indonesia, data from the National Population and Family Planning Board (BKKBN) estimates 2.4 million cases of abortion per year. Indonesian regulations (Government Regulation No. 28/2024) permit abortion under the following conditions: (1) a pregnancy that threatens the mother's life or health; (2) a foetus with a severe, irreparable congenital abnormality; and (3) victims of rape or sexual violence. (Tutik, 2009).

Therefore, in the epistemology of Islamic law, abortion is not an issue of ideological polarisation, but rather an arena in which uṣūl al-fiqh, maqāṣid, and empirical reality test one another. This leads to the understanding that the fundamental prohibition remains intact, yet its application is hierarchical and gradual, and open to verified ḍarūrah. Its main theoretical contribution lies in the

formulation of a multi-layered epistemology combining maqāṣid and empirical evidence which preserves the integrity of the naṣṣ whilst remaining responsive to concrete human suffering. This model offers an academic, ethical and practical middle ground for contemporary fiqh discourse.

The Relationship between Darurah and Abortion in Maqāsid al-Syarī'aḥ

Research has found that darūraḥ functions as an 'illah (legal rationale) that permits abortion under certain conditions. This relationship is governed by the principle of proportionality: the greater the emergency, the greater the leeway granted. The Maqāsid assessment involves weighing up the protection of the foetus's life against that of the mother's. Under normal circumstances, the protection of the foetus's life (part of hifz al-nasḷ) takes precedence. However, in an emergency that threatens the mother's life (hifz al-nafṣ), priority shifts to the mother because she is al-asḷ (the parent) who already bears social responsibilities, whereas the foetus does not (Nurdiansyah, 2025).

There are four main conditions for the declaration of a state of emergency: (1) a genuine emergency – not a mere suspicion or anticipation; (2) no alternative – no other lawful means of rescue; (3) proportionality – carried out only to the extent necessary; and (4) no violation of fundamental principles – not amounting to apostasy or unlawful killing (Hadi, 2024).

Thus, the epistemology of Islamic law regards ḍarūrah as an operational 'illah that permits abortion only within proportional limits, whereby the greater the degree of emergency, the greater the leeway granted, whilst the assessment of maqāṣid al-sharī'ah prioritises ḥifẓ al-nasl (the protection of the foetus's life) under normal circumstances, but hierarchically shifts to ḥifẓ al-nafs of the mother as the al-aṣl who bears social responsibility when her life is under a real threat.

The four strict conditions outlined above that the emergency be actual rather than speculative, the absence of a halal alternative, proportionality limited to what is necessary, and no violation of the fundamental principles of Sharia serve as epistemological criteria that ensure exceptions do not degenerate into relativistic absolutism, thereby yielding a theoretical contribution in the form of a 'ḍarūrah-proportionality layered with maqāṣid' model that integrates classical 'illah with a hierarchy of contemporary maṣlaḥah, affirming that the epistemology of fiqh regarding abortion is dynamic and hierarchical: the normativity of prohibition remains intact as the aṣl, whilst its application is opened up through measured ontological and social weighing to respond to bioethical realities without compromising the authority of the naṣṣ.

A Graded Typology Based on Hadd al-Akhaf and Hadd al-Asqal

Hadd al-akhaf (the minimum limit) and *hadd al-asqaḷ* (the maximum limit) are the two extremes of the emergency spectrum that enable a more precise assessment of the level of need. These two concepts are inspired by the classical principle of irtikāb akhaff al-dararayṇ and have been expanded to take various dimensions into account.

Hadd al-Akhaf (Minimum Threshold): The minimum level of emergency that permits a deviation from the original law. Characteristics: moderate level of danger (not directly life-threatening), indirect threat to life, limited alternatives, affected Maqāsid primarily. hājiyyāṭ and secondary darūriyyāṭ, moderate maslahah, moderate mafsadah, and a legal qualification in the form of conditional permissibility (rukhsaḥ). Examples of its application include abortion due to severe foetal abnormalities before 120 days, significant risks to the mother's health that do not directly threaten her life, and cases of rape with the consent of the victim and the medical team.

Hadd al-Asqal (Maximum Limit): The highest level of emergency permitting a deviation from the original law, even after 120 days. Characteristics: a severe level of danger (life-threatening), an immediate and certain threat to life, no other alternatives; the Maqāsid affected are essential darūriyyāt, particularly hifz al-nafs, a high maslahah (saving lives), extremely high mafsadah if left unaddressed, and the legal qualification being wajib (ibāhah). Examples of its application include ectopic pregnancy, severe pre-eclampsia, and malignant diseases such as advanced-stage cancer or severe HIV/AIDS.

Table 1. Typology of Emergency Situations in Medical Abortion

Dimensions	Hadd al-Akhaf	Hadd al-Asqal	Legal Implications
Degree of danger	Moderate; not life-threatening	Severe; life-threatening	The level of leniency increases in line with the level of risk
Life-threatening	Indirectly	Straight to Mum	Life-threatening conditions warrant the highest level
Alternative treatments	Limited	None	Exceptions are permissible if there are no alternatives
The maqāsiḍ are affected	Primary and secondary tuberculosis.	Essential necessities (hifz al-nafs)	Higher maqāsiḍ allow for greater flexibility
public interest	Currently	High (life-saving)	The greater good allows for a broader scope

Corruption	Currently	It is very serious if ignored	A high level of harm allows for greater flexibility
Gestational age	≤ 120 days	Any number (including >120 days)	A life-threatening condition may be permitted after 120 days
Approval	My mother and husband	Mother (if life-threatening)	A threat to life may override the husband's consent
Qualifications in law	Permitted on condition (rukhṣah)	Wajib (ibāhaḥ)	Different legal weight

Comparison with Previous Research

This study complements the findings of Hamdani and Ishaq (2024) by providing a scale for measuring severity, so that it not only identifies a 'state of emergency' but also quantifies 'how urgent' the situation is. This study also operationalises the principle of irtikāb akhaff al-dararayn, identified by Nugroho, by establishing a lower limit (hadd al-akhaf) and an upper limit (hadd al-asqal) as practical guidelines. (M. H. Nugroho et al., 2025). Furthermore, this study addresses the criticisms raised by Masri and Alamsyah (2026) regarding the single-emergency rationale by providing a multidimensional framework that takes various aspects into account (risk, alternatives, Maqāsid, stage of pregnancy, etc.).

This study contributes to the development of the theory of Maqāsid al-Syarī'ah by demonstrating that the priority of hifz al-nafs (life) over hifz al-nasl (progeny) applies only at the highest level of necessity (hadd al-asqal). At the lowest level of necessity, the consideration of hifz al-nasl remains dominant. This study also applies Ibn Qayyim's principle that the law changes in accordance with changes in time, place and circumstances, and provides legal certainty by establishing clear and measurable criteria.

The practical implications include: (1) for religious scholars and fatwa bodies, this typology can serve as a guide in formulating more detailed fatwas; (2) for medical practitioners, it provides a reference for determining when an abortion may be performed in accordance with Islamic law; (3) for policymakers, regulations such as Government Regulation No. 28/2024 can be enhanced by referring to this typology; and (4) for patients and their families, it provides a clear understanding of the legal status of abortion under various circumstances (*PP No. 28 Tahun 2024*, 2024).

Discussion

Al-Darurah as the Normative Basis for the Permissibility of Abortion in Certain Medical Circumstances

Etymologically, 'darurah' derives from the word 'ḍarar', which means harm or an unavoidable calamity (Fajri, 2025). Ibn Faris, in his Muʻjam Maqayis al-Lugah, states that the word ḍara has three main meanings: the opposite of benefit (nafʻ), the coming together of things (ijtimāʻ), and strength (quwwah) (Rashid, 2022). The definition that is the subject of discussion in this study is the first definition, namely the antonym of the word 'benefit'.

In terms of terminology, Islamic legal scholars define darurah using almost identical formulations, albeit with different emphases. Al-Jassas defines it as a person's fear of a danger that threatens their life or part of their body due to not eating. The findings of this study indicate that al-darurah is a central concept in granting rukhsah (dispensation) from Sharia prohibitions in certain circumstances, including the practice of abortion in medically life-threatening conditions (Hamdani & Ishaq, 2024).

Al-Suyuti, in al-Asybah wa al-Nazair, states that darurah is when a person reaches a point where, if they do not consume something that is forbidden, they will perish; and this situation permits a person to eat what is haram. (al-Suyuti, 2013). Meanwhile, al-Zarqa' defines darurah as something which, if disregarded, would result in harm, as is the case in situations of necessity and when there is a fear of perishing from starvation (Hasan, 2019).

However, Wahbah al-Zuhaili criticised these definitions, as he considered them too narrow, covering only cases of darurah relating to food. In his view, the definition of darurah must encompass all circumstances that result in the permissibility of what is otherwise prohibited or the neglect of what is obligatory. Al-Zuhaili then formulated a more comprehensive definition: darurah is the occurrence of a condition of extreme danger or hardship befalling a person, causing them to fear harm or damage to their life, limbs, honour, reason, property, and related matters. (Ghasemi Suteh et al., 2024).

In such circumstances, is there any alternative but to perform what is forbidden or to neglect what is obligatory, provided that one does not deviate from the conditions laid down by Islamic law?(Idris & Anita, 2020). The findings of this study emphasise that there is a very close link between darurah and the practice of abortion, as a person is permitted to do something prohibited by religion within certain limits.

Thus, the epistemology of Islamic law positions ḍarūrah, etymologically, as the antithesis of benefit (ḍarar) which refers to unavoidable harm and, terminologically,

has evolved from the narrow definition of al-Jassās, al-Suyūṭī, and al-Zarqā', which focused on the threat of death from starvation, towards the comprehensive formulation of Wahbah al-Zuḥailī, which encompasses all conditions of grave danger threatening life, limbs, honour, sanity or property as a central concept that grants a dispensation from Sharia prohibitions, including abortion in medically hazardous circumstances.

Therefore, the 'expansive-limited ḍarūrah' model in the epistemology of fiqh where al-Zuḥailī's broadening of the definition opens up scope for contemporary bioethical ijtihād without departing from the ḍawābiṭ sharʿī so that ḍarūrah functions not merely as an ad hoc exception but as a methodological 'illah that preserves the integrity of the fundamental principle of prohibition whilst responding to the reality of human suffering through a proportional and measured weighing of maqāṣid.

Abortion is, in principle, prohibited unless it is carried out in cases of emergency or for specific reasons that permit it (Shoaib, 2024). In other words, darurah functions as a legal mechanism of exception (istithnā') that allows for permissibility under very limited and specific conditions. This study identifies several conditions that can be categorised as darurah in the context of abortion, namely: (1) the foetus suffers from a genetic defect that is difficult to cure; (2) the pregnancy is the result of rape; (3) the pregnant woman suffers from a serious physical illness, such as advanced-stage cancer or tuberculosis with cavities; and (4) the pregnancy poses a threat to the mother's life(Kakrodi et al., 2025).

These circumstances reflect the existence of a threat to one of the five essential interests (al-ḍarūriyyāt al-khamsah) which constitute the fundamental objectives of Islamic law, namely the preservation of religion, life, reason, lineage and property (Amri & Ismail, 2026). The relationship between darurah and the permissibility of abortion can be understood through two fundamental principles of fiqh. Firstly, the principle of al-masyaqqah tajlibu al-taysīr (hardship leads to ease), which forms the conceptual basis of darurah in general (Sudrajad, 2023). Secondly, the principle of al-ḍarar yuzāl (harm must be removed), which specifically provides justification for medical interventions aimed at removing harm (Leslie Terebessy, 2026). In the context of abortion, these two principles operate simultaneously: the difficulties faced by the mother (a threat to her life or health) give rise to the concession that abortion is permissible, and the danger threatening the mother's life must be averted through this medical procedure.

This study also confirms that the permissibility of abortion on grounds of necessity is not an absolute right. There are strict conditions that must be met. Firstly, the emergency must actually exist; it must not merely be a subjective

concern or a speculative assumption. Secondly, in such a situation, there must be no other permissible alternative available to avert the danger. Thirdly, the action taken must not contravene the fundamental principles of Islam, such as the protection of others' rights and matters of faith.(لعفريت et al., 2023). Fourthly, in medical matters, there must be a statement from a qualified doctor confirming that there are no medicines or other treatments other than those prohibited by Islamic law.

This finding is consistent with the view of al-Syatibi, who divides the maqasid of Sharia into three levels: al-ḍarūriyyāt (essential needs), al-ḥājiyyāt (secondary needs), and al-taḥsīniyyāt (needs for improvement) (Nofiardi, 2025). Abortion on the grounds of life-threatening medical indications falls within the category of al-ḍarūriyyāt, as it concerns the preservation of life (ḥifẓ al-nafs), which is the highest priority. Meanwhile, abortion for non-medical reasons, such as financial hardship, psychological unpreparedness or personal preference, does not meet the criteria for darurah and remains prohibited (Sharma et al., 2025).

A comparison with previous research shows that, although classical jurists have discussed darurah in the context of food and drink, its application in the contemporary medical sphere particularly with regard to abortion requires expansion and adaptation. W

ahbah al-Zuhaili, as cited in this study, has made a significant contribution by broadening the scope of darurah beyond matters of food to include medical treatment, the protection of life and property, and various other aspects of life (Apriani et al., 2024). This paves the way for the application of the concept of darurah in medical cases that were unimaginable in classical times.

A criticism of this approach is the potential for the concept of 'darurah' to be misused to legitimise abortions that do not, in fact, meet the criteria for 'darurah'. This study explicitly states that not all social, economic or psychological reasons automatically fall within the category of 'darurah' (Pratama & Rif'ah, 2026). Therefore, strict control mechanisms are required, both from a medical perspective (diagnosis by a competent doctor) and from a legal perspective (compliance with the conditions for emergency treatment).

A synthesis of the above discussion shows that al-darurah serves as the normative basis for the permissibility of abortion under certain medical conditions by: (1) changing the legal status of abortion from ḥarām to mubāḥ, subject to certain restrictions; (2) establishing strict conditions that must be met; (3) limiting permissibility solely to circumstances where there is a genuine threat to the mother's life or health; and (4) making medical considerations an integral part of the legal decision-making process.

It is clear that 'necessity' must not be understood as a general justification for abortion, but rather as a highly limited legal mechanism for exceptions. The practical implication is the need to develop integrated medical and legal guidelines to ensure that the permissibility of abortion is genuinely based on actual and verified necessity, rather than on loose, subjective interpretations (Orsini et al., 2026). Ḥadd al-Akhaff and Ḥadd al-Asqal as the Epistemology of Limiting Necessity in the Determination of Abortion Law.

This sub-section constitutes the main theoretical contribution of the article. The research findings indicate that the primary issue in establishing abortion laws based on darurah is not merely whether abortion is halal or haram, but how to determine the epistemic threshold that allows certain conditions to be categorised as darurah and when such an exception should cease to apply. To address this issue, this study develops a conceptual framework comprising ḥadd al-akhaff (the minimum threshold for intervention) and ḥadd al-asqal (the maximum threshold of tolerance for harm) as the epistemology underpinning the limitations of darurah.

It should be emphasised that the terms ḥadd al-akhaff and ḥadd al-asqal are not explicitly found in the classical corpus of usul al-fiqh as standard terminology. These two terms are analytical constructs and conceptual syntheses developed in this study to explain more systematically how the principle of irtikāb akhaff al-ḍararayn (choosing the lesser of two evils) and its derivative rules can be applied in the context of abortion. In other words, ḥadd al-akhaff and ḥadd al-asqal are the result of an epistemological reconstruction aimed at operationalising classical principles within a contemporary medical context.

Ḥadd al-akhaff refers to the minimum limit of intervention based on necessity. This concept requires that, once a state of necessity has been identified, the measures taken must be kept to a minimum, limited only to what is necessary to avert the danger (Francini et al., 2018). In the context of abortion, ḥadd al-akhaff means that an abortion may only be performed if there are indeed no other, less severe alternatives available to save the mother's life or health (Kamali, 1995). This principle is in line with the maxim al-ḍarūrāt tuqaddaru bi-qadarihā (emergencies are assessed according to their severity) and the maxim al-maysūr lā yasquṭ bi al-ma'sūr (convenience is not negated by difficulty).

Consequently, this shifts the paradigm of medical jurisprudence (al-fiqh al-ṭibbī) from a static binary ḥalāl-ḥarām dichotomy towards an epistemology of epistemic thresholds based on proportionality. By reconstructing the classical principles of irtikāb akhaff al-ḍararayn and al-ḍarūrāt tuqaddaru bi-qadarihā within the analytical framework of ḥadd al-akhaff (the minimum limit of intervention) and ḥadd al-asqal (the maximum limit of tolerable harm), this study has succeeded in

transforming the concept of ḍarūrah from merely a casuistic justification (excuse/rukhṣah) into a measurable medical boundary (proportionality test). Ḥadd al-akhaff functions as a lower boundary requiring the exhaustion of all alternatives before abortion is undertaken as a medical procedure, whilst ḥadd al-asqal establishes an upper boundary as the culmination point at which legal certainty must be set aside to save the mother's life (ḥifẓ al-nafs).

In operational terms, ḥadd al-akhaff can be broken down into several parameters. Firstly, the level of medical intervention must be proportionate to the level of threat. If the threat to the mother can still be managed through intensive care without terminating the pregnancy, then abortion cannot yet be justified. Secondly, the choice of abortion method must take into account the minimal risk to the mother. Thirdly, the abortion must be carried out as early as possible once the decision to proceed has been made, to avoid greater risks in the later stages of pregnancy. Fourthly, the involvement of a competent specialist doctor is an absolute requirement to ensure that the intervention remains within the minimum necessary limits (Putri & Arisman, 2026).

Ḥadd al-asqal, on the other hand, refers to the maximum limit of tolerance for harm (Abul-Fadl, 2016). This concept holds that there is a point at which continuing a pregnancy actually causes greater harm than terminating it, and it is at that point that abortion may be justified (Antunes et al., 2025). However, ḥadd al-asqal also sets a maximum limit beyond which abortion can no longer be justified; for example, once the foetus has reached 120 days' gestation, at which point the soul has been breathed into it. This study confirms that abortion is forbidden if performed after the foetus has reached 120 days' gestation or after the soul has been breathed into it, as this is categorised as the killing of a human soul, which Allah has forbidden.

The parameter of ḥadd al-asqal encompasses several aspects. Firstly, the gestational age is a crucial parameter. A hadith from Ibn Mas'ud states that the infusion of the soul occurs after the foetus is 120 days old. A hadith from Hudzaifah ibn Asid mentions that the recording of destiny takes place after the foetus is 40 or 45 days old. Both of these hadiths, in terms of their isnad, are classified as sahih. This discrepancy indicates that there is some flexibility in determining the threshold; however, the consensus amongst scholars establishes that abortion after 120 days is absolutely haram, even under the most extreme circumstances. Secondly, the severity of the medical condition is a key parameter. Not all illnesses or health conditions automatically meet the criteria for darurah; only those that genuinely threaten the mother's life or cause permanent damage to her health may be considered. Thirdly, the availability of alternative treatments serves as a limiting

factor. If there are alternative treatments that are halal and effective, then abortion cannot be justified.

The relationship between ḥadd al-akhaff and ḥadd al-asqal forms an epistemological spectrum that enables the proportionate application of the law. On the one hand (ḥadd al-akhaff), there is a requirement to minimise intervention; on the other hand (ḥadd al-asqal), there is a maximum limit beyond which intervention is no longer tolerable. Between these two limits, there is scope for casuistic consideration that takes into account the specific conditions of the mother, the foetus, and the overall medical context.

The principle of irtikāb akhaff al-ḍararayn (choosing the lesser of two evils) forms the second key foundation of these two concepts. In the case of abortion, this principle means that when there are two evils maintaining a pregnancy that threatens the mother's life versus terminating the pregnancy, which entails sacrificing the foetus the lesser of the two evils must be chosen (Aisyah & Azwar, 2026). This study shows that in a conflict between ḥifẓ al-nafs (preservation of the mother's life) and ḥifẓ al-nasl (preservation of the foetus), priority is given to ḥifẓ al-nafs because the mother's life is a definite reality (muhaqqaq), whilst the foetus is still in a potential state (muqaddar).

However, it is important to note that the application of this principle is not straightforward. It requires a process of taḥqīq al-manāṭ (determination of the legal cause) involving: (1) an accurate medical diagnosis by a competent doctor; (2) an objective assessment of the level of risk; (3) consideration of the availability of alternative treatments; (4) an evaluation of the proportionality between the intervention and the harm avoided; and (5) adherence to the limits of Sharia law. This process requires collaboration between medical experts and Islamic legal scholars to ensure that the decisions taken are genuinely based on an actual and verified state of necessity.

A comparison with the approach of classical jurists shows that, although the principle of irtikāb akhaff al-ḍararayn is well established in the body of Islamic jurisprudence, its application in the contemporary medical context particularly with regard to abortion requires a more systematic operationalisation. Classical jurists such as al-Suyuti and Ibn Qudamah discuss darurah primarily in the context of food and situations of necessity in general (Auda, n.d.). Meanwhile, al-Zuhaili has broadened the scope of darurah to include medical treatment and the protection of life, but has not yet developed a systematic epistemological framework for determining the limits of its application in specific medical cases (Zhafirah, 2026).

This study fills this gap by developing ḥadd al-akhaff and ḥadd al-asqal as an epistemological framework that enables the boundaries of darurah to be defined

with greater precision. This framework not only answers the question of whether abortion is permissible, but also to what extent and until when such permissibility applies. Thus, the main theoretical contribution of this article lies in providing an analytical tool for determining the epistemic threshold of darurah in cases of abortion.

A criticism that could be levelled at this framework is the potential for subjectivity in determining these boundaries. Parameters such as 'the severity of the medical condition' or 'the availability of alternative treatments' may be interpreted differently by different parties. To address this, this study emphasises the importance of: (1) the involvement of a multidisciplinary medical team; (2) the use of evidence-based medical protocols; (3) adherence to objective diagnostic standards; and (4) rigorous review and oversight mechanisms.

A synthesis of the above discussion shows that ḥadd al-akhaff and ḥadd al-asqal form an epistemology of the limitations of necessity, which encompasses: (1) the identification of actual conditions of necessity; (2) the determination of the minimum limit of intervention; (3) the determination of the maximum limit of tolerance; (4) the process of taḥqīq al-manāṭ involving medical and legal experts; (5) the application of the principle of proportionality; and (6) control and oversight mechanisms. The novelty of this framework lies in its systematic attempt to operationalise classical principles within a contemporary medical context, thereby providing more concrete guidance for legal decision-making in complex abortion cases.

Maqāṣid al-Syarī'ah and the Integration of Medical Considerations in the Reconstruction of Contemporary Abortion Law

The findings of this study indicate that the maqāṣid al-sharī'ah approach offers a comprehensive and flexible framework for addressing the issue of abortion holistically, in line with the requirements of sharia and contemporary medical realities. Maqāṣid al-syarī'ah, as formulated by al-Syatibi in al-Muwāfaqāt, aims to realise the welfare of the servants of God (maṣāliḥ al-'ibād) both in this world and in the hereafter. In the context of abortion, this approach allows for a more nuanced interpretation of the conflict between various objectives of Sharia, particularly between the preservation of life (ḥifẓ al-nafs), the preservation of lineage (ḥifẓ al-nasl), and the preservation of honour (ḥifẓ al-'irḍ) (Al Chasani & Zaman, 2026).

This study identifies three concepts of maqāṣid al-sharī'ah relating to the practice of abortion: ḥifẓ al-nafs, ḥifẓ al-nasl, and ḥifẓ al-'irḍ. These three concepts are not always in harmony with one another in certain cases, thus requiring a mechanism of tarjīḥ (prioritisation) to determine which should take precedence

when a conflict arises. The research findings indicate that in cases where a pregnancy threatens the mother's life, ḥifẓ al-nafs takes precedence because the mother's life is a certain reality, whilst the foetus remains in a potential state.

Ḥifẓ al-nafs the preservation of life is a fundamental objective of Islamic law, occupying the highest rank in the hierarchy of maqāṣid (Norman & Ruhullah, 2024). In the Qur'an, Sura al-Maidah, verse 32, states that preserving the life of one human being is equivalent to preserving the lives of all humanity. In the context of abortion, ḥifẓ al-nafs serves as the primary justification for permitting abortion when the pregnancy poses a threat to the mother's life (Maharani, 2025). This study identifies cases such as ectopic pregnancy (a foetus outside the womb), advanced-stage cancer in a pregnant woman, or other serious medical conditions as situations in which ḥifẓ al-nafs must be prioritised.

Ḥifẓ al-nasl the preservation of the lineage is a fundamental objective of Islamic law (Hussein et al., 2025). Islam prescribes marriage to preserve and continue the family line, and prohibits adultery to safeguard the purity of lineage (Mohadi, 2023). In the context of abortion, ḥifẓ al-nasl is a consideration that precludes the permissibility of abortion, as abortion is, in essence, the termination of potential life and progeny (Putri, 2026). This study shows that ḥifẓ al-nasl is a key consideration in cases where the foetus is not expected to develop properly, such that its birth would actually endanger its safety or quality of life. In such cases, abortion is permitted to remove a non-viable foetus in order to safeguard the greater good (Sa'dibih, 2025).

Ḥifẓ al-'irḍ, the preservation of honour, is an objective of Islamic law relating to the protection of human self-respect and dignity. This study identifies cases of rape resulting in pregnancy as one of the circumstances in which ḥifẓ al-'irḍ is a key consideration (Indrawati, 2026). In this case, abortion is permitted provided that: (1) the foetus has not yet reached 120 days' gestation (the soul has not yet been breathed into it); (2) permission has been granted by the competent authority; and (3) the procedure is carried out in a licensed hospital. This permission is based on the consideration that continuing a pregnancy resulting from rape may cause severe psychological distress and undermine a woman's dignity, whilst abortion in the early stages of pregnancy does not contravene the principle of ḥifẓ al-nafs, as the foetus is not yet considered a fully formed soul.

The conflict between these three objectives of Sharia requires a systematic tarjīḥ approach. This study demonstrates that, in the case of abortion, tarjīḥ cannot be carried out solely through a textual approach, but requires the integration of: (1) Sharia texts; (2) maqāṣid; (3) medical diagnosis; (4) level of risk; (5) alternative treatments; and (6) the principle of proportionality. This integrated approach

enables the formulation of legal rulings that are more responsive to the complexity of contemporary medical cases. (Royhan & Surahman, 2025).

Developments in contemporary medical science have significant implications for the application of the maqāṣid in cases of abortion (AlJahsh, 2024). Increasingly sophisticated prenatal diagnostic techniques enable the early detection of genetic abnormalities in the foetus (Vermeesch et al., 2016). Medical imaging technology enables a more accurate assessment of pregnancy risks. Advances in intrauterine foetal therapy open up the possibility of treatment before birth (Saragih, 2026). All these developments influence the determination of whether a situation genuinely meets the criteria for an emergency or whether it can still be resolved by other means.

In this context, the role of doctors and healthcare workers is of crucial importance (Sari & Edi, 2026). This study emphasises that, in medical matters, there must be a statement from a doctor competent in matters of disease and treatment to the effect that there are no medicines or other treatments other than those prohibited under Islamic law. Doctors do not merely act as providers of medical services, but also as expert witnesses (khabīr) who provide information regarding the existence of danger, the level of risk, and the availability of alternatives. This medical information forms part of the process of taḥqīq al-manāṭ the determination of the legal cause (illat) that forms the basis for the application of darurah.

Islamic bioethics provides an additional framework for understanding the issue of abortion. The principles of Islamic bioethics include: (1) qawā'id al-fiqh (the principles of fiqh); (2) maqāṣid al-sharī'ah (the objectives of sharia); (3) al-ḍawābiṭ al-shar'iyyah (the limits of Sharia); and (4) al-muwāzanah bayna al-maṣāliḥ wa al-mafāsid (the balance between benefits and harms) provide guidance for ethical decision-making in cases of abortion. The integration of maqāṣid and bioethics enables an approach that is not only normative but also contextual and responsive to medical developments (Nassif, 2026).

The protection of women and the protection of the foetus are two sides of the same coin in the maqāṣid approach (Yusuf et al., 2026). This study shows that maqāṣid does not view the interests of the mother and the foetus as a binary conflict, but rather as two interests between which a balance must be maintained (Nisa, 2025). In cases where a balance cannot be maintained, priority is given to interests that are more fundamental or more certain (muhaqqaq) than those that are merely potential (muqaddar)(Sanusi & Subli, 2026).

The legal limits on abortion under the maqāṣid approach encompass several aspects. Firstly, the time limit: abortion may only be performed before the foetus reaches 120 days' gestation, except in the most extreme circumstances. Secondly,

the limit on indications: abortion may only be performed on the basis of clear medical indications, not for social, economic or personal reasons. Thirdly, the procedural limit: abortion must be carried out by competent medical personnel in an appropriate healthcare facility. Fourthly, the accountability limit: the decision to have an abortion must be medically and legally justifiable.

A comparison with the approach of classical jurists shows that maqāṣid offers greater flexibility in responding to medical developments (Rayyan & Frijatuluah, 2026). Classical jurists such as al-Jassas and al-Suyuti discussed abortion primarily within the framework of the prohibition on taking a life, with very limited exceptions (Hardisman, 2025). Meanwhile, the maqāṣid approach allows for a more comprehensive consideration of the various interests at stake, as well as a more dynamic response to developments in medical science and technology.

However, a criticism of the maqāṣid approach is the potential for overly broad interpretation, which could lead to abuse. To address this, this study emphasises the importance of: (1) adherence to clear Sharia boundaries; (2) the involvement of competent religious scholars in the law-making process; (3) the use of evidence-based medical protocols; and (4) strict oversight and accountability mechanisms (Hermanto, 2026).

A synthesis of the above discussion shows that the integration of maqāṣid al-sharīʻah with medical considerations in the reconstruction of contemporary abortion law encompasses: (1) the identification of relevant objectives of sharia (ḥifẓ al-nafs, ḥifẓ al-nasl, ḥifẓ al-ʻirḍ); (2) an analysis of the conflict between these objectives in specific cases; (3) the application of the tarjīḥ mechanism, taking into account the degree of certainty and urgency; (4) the integration of medical diagnosis and risk assessment as part of the taḥqīq al-manāṭ process; (5) adherence to Sharia boundaries and standard medical procedures; and (6) the development of ethical and legal guidelines that are responsive to advances in medical science.

The novelty of this approach lies in its systematic attempt to integrate the maqāṣid al-syarīʻah with contemporary medical considerations in determining the law on abortion. This approach not only addresses normative questions regarding whether something is halal or haram, but also provides a procedural framework for decision-making in complex cases involving conflicts between various objectives of Sharia and dynamic medical realities.

The practical implications of this approach are the need for: (1) the development of integrated medical-legal protocols for abortion cases; (2) capacity-building for healthcare professionals in understanding the principles of maqāṣid; (3) strengthening the role of religious scholars in issuing fatwas that are responsive

to medical developments; (4) developing consultation mechanisms between medical and legal experts; and (5) educating the public on the limits of the permissibility of abortion from an Islamic perspective.

CONCLUSION

This study has developed a hierarchical typology of emergencies (darūraḥ) through the concepts of hadd al-akhaf and hadd al-asqaḷ within the framework of Maqāsid al-Syarī'ah as the epistemological foundation of Islamic law for determining the legality of medical abortion. Based on the findings and discussion, it can be concluded that:

The legal status of abortion in Islam is, in principle, haram, but it may be permitted in medical emergencies where the mother's life is at risk, subject to strict conditions. Contemporary medical science also recognises exceptions for certain cases, and regulations in Indonesia (Government Regulation No. 28/2024) have accommodated these exceptions through standardised procedures.

The relationship between necessity and abortion is that necessity functions as an 'illah (legal rationale) that permits the act conditionally. The degree of permissibility is directly proportional to the level of necessity. In Maqāsid al-Syarī'ah, the protection of the mother's life (hifz al-nafs) takes the highest priority in cases of maximum necessity, whilst in cases of minimal necessity, the protection of the offspring (hifz al-nasl) remains predominant.

The typology based on hadd al-akhaf and hadd al-asqaḷ provides a systematic framework for assessing the level of urgency according to various dimensions: the degree of danger, the threat to life, the availability of alternatives, and the Maqāsid affected,.

maslahah versus mafsadah, gestational age, and procedural requirements. This typology allows for a more precise legal classification, ranging from 'permissible subject to conditions' at the minimum level to 'obligatory' at the maximum level.

The main contribution of this research is to bridge the gap between classical Islamic legal theory and contemporary bioethical challenges by providing an operational and measurable analytical tool. It is hoped that this framework will enrich the discourse on contemporary fiqh, assist in clinical decision-making and the issuance of fatwas, and serve as a guide for the formulation of Sharia-based health policies.

The identification of a typology of graded emergency levels (hadd al-akhaf and hadd al-asqal) in this study opens up scope for further academic exploration in two main areas. Firstly, through cross-country comparative studies (comparative fiqh

and bioethics), future research is recommended to test the validity and adaptability of this typology in relation to doctrinal variations across schools of thought and health regulations in Muslim-majority countries (such as a comparison between Indonesia, Saudi Arabia, Malaysia and Iran) in order to map how socio-political differences influence the determination of the legal threshold for abortion. Secondly, through empirical field research (empirical bioethics), a mixed-methods study is required, involving medical ethics committees, obstetrician-gynaecologists and fatwa authorities, to assess the extent to which this framework is operationalised in clinical decision-making, whilst also identifying discrepancies in the interpretation of maslahah and mafsadah in complex medical emergencies.

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