

**REPRODUCTIVE HEALTH SERVICES IN THE FORM OF  
PROVIDING CONTRACEPTIVES FOR ADOLESCENTS AND  
SCHOOL-AGE CHILDREN PERSPECTIVE MAQASHID SYARIAH  
ASY-SYATIBI**

**THESIS**

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**CONSTITUTIONAL LAW STUDY PROGRAM (SIYASAH)  
FACULTY OF SHARIA  
MAULANA MALIK IBRAHIM STATE ISLAMIC UNIVERSITY MALANG  
2025**

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CONTRACEPTIVES FOR ADOLESCENTS AND SCHOOL-AGE  
CHILDREN PERSPECTIVE MAQASHID SYARIAH ASY-SYATIBI**

**THESIS**

**Submitted to meet the requirements to obtain a Bachelor of Law (S.H.)  
Bachelor of Laws (S.H.) degree**

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2025**

## STATEMENT OF AUTHENTICITY OF THESIS

For the sake of Allah SWT,

With awareness and a sense of responsibility for scientific development, the author stated that the thesis with the title:

**REPRODUCTIVE HEALTH SERVICES IN THE FORM OF  
CONTRACEPTIVES FOR ADOLESCENTS AND SCHOOL-AGE  
CHILDREN FROM THE PERSPECTIVE OF MAQASHID SYARIAH ASY-  
SYATIBI**

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March 04, 2025  
  
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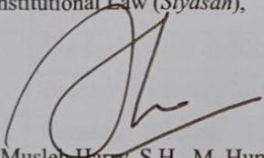
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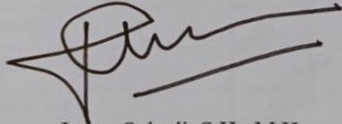
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## **MOTTO**

O people, if God's promise is true, do not be tempted by the life  
of the world, nor tempted by God's vanity

"O people, the promise of Allah is true. So do not let the life of the world deceive  
you, and do not deceive you about Allah."

**(Q.S Al- Fathir : 5)**

It's okay to celebrate success, but it's more important to pay attention to the  
lessons of failure."

**-Bill Gates.**

## FOREWORD

Alhamdulillah Rabbil 'Alamiin, who has given grace and help in writing a thesis entitled: "REPRODUCTIVE HEALTH SERVICES IN THE FORM OF PROVIDING CONTRACEPTIVES FOR ADOLESCENTS AND SCHOOL-AGE CHILDREN FROM THE PERSPECTIVE OF *MAQASHID SYARIAH ASY-SYATIBI*" WE CAN COMPLETE IT WELL. Our prayers and greetings to the Prophet Muhammad PBUH who has given uswatun hasanah to us in living this life according to shari'i. By following him, may we be classified as believers and receive his intercession on the last day of judgment. Amien.

With all the teaching, guidance/direction, and assistance of the services that have been given, the author with all humility expresses his incomparable gratitude to:

1. Prof. Dr. H. M. Zainuddin, MA., as the Rector of the State Islamic University of Maulana Malik Ibrahim Malang.
2. Prof. Dr. Sudirman, M.A., CAHRM, as the Dean of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang.
3. Dr. Musleh Harry, SH, M.Hum., as the Head of the Study Program of the Faculty of *Sharia*, Maulana Malik Ibrahim State Islamic University Malang
4. Yayuk Whindari, S.H., M.H., L.L.M., as the author's guardian lecturer while studying at the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang. Thank you to the author for providing guidance, advice, and motivation during the lecture.
5. Imam Sukadi S.H., M.H., as the writer's supervisor who has devoted time to providing direction and motivation in completing the writing of this thesis.



6. The Thesis Examiner Board in this Research, the author would like to thank the critics, suggestions, and recommendations in improving this Research.
7. All lecturers of the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University of Malang who have provided learning to all of us. With sincere intentions, hopefully their deeds will all be part of worship to get the pleasure of Allah SWT.
8. My parents, Mr. Wahidin Manurung and Mrs. Nurimtihani Br. Siregar. Yang has given me full support and trust in carrying out this study.

With the completion of this thesis report, it is hoped that the knowledge we have gained during the lecture can provide charitable benefits in this world and the hereafter. As a human being who is never far from the word mistake, the author really expects forgiveness as well as criticism and suggestions from all parties for good efforts in the future.

Malang, March 6, 2025

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## TRANSLITERATION GUIDELINES

### A. General

Transliteration is writing from the Arabic form into Indonesian (Latin) script, not Arabic translation into Indonesian. Writing that contains Arabic consonants in the content of the discussion or in the bibliography also uses transliteration guidelines. The transliteration used by the Faculty of Sharia, Maulana Malik Ibrahim State Islamic University of Malang uses EYD plus, which is a transliteration based on the Joint Decree (SKB) of the Minister of Religion, Education and Culture of the Republic of Indonesia, January 22, 1998, No. 159/1987 and 0543.b/U/1987. In this study, there are several terms or sentences that come from Arabic, but are written in Latin. The writing is based on the following rules.

### B. Consonants

The list of Arabic letters and their transliteration into Latin can be seen on the following page:

ل = Not denoted	z = dl
B = B	i = th
T = T	z = da
ط = Ta	خ = face up
c = j	g = gh
h = h	P = F
x = kh	q = q

B = D	k = k
y = dz	l = l
t = r	m = m
g = z	n = n
x = s	and = w
u = sy	E = h
y=Sh	j = y

Hamzah (ء) which is often denoted by alif, if it is located at the beginning of a word then in its transliteration follows the vowel, it is not symbolized, but if it is located in the middle or at the end of the word, then it is denoted by the comma above ('), reversed with a comma (,) for the replacement of the symbol ع.

### C. Long Vowals and Diphthongs

Each Arabic writing in the form of vocal *fathah* is written with "a", kasrah with "i", *dlommah* with "u", while the long recitation is written in the following way:

- b. Vowel (a) long = â e.g. قال .becomes qâla
- c. Vowel (i) length = i e.g. قيل .becomes qila
- d. Long vowel (û) = û e.g. دون .becomes dûna

Especially for the reading of "yes" nisbat, then it should not be replaced with "i", but still written with "iy" in order to be able to describe ya" nisbat at

the end. Likewise for diphthong, wawu and ya" sounds after fafhah is written with "aw" and "ay". Consider the following example:

- a. Diphthongs (aw) = **قؤل** e.g. **قؤل** becomes qawlun
- b. Diphthongs (ay) = **خير** e.g. **خير** becomes khayru

#### **D. Ta' marbutah**

Ta"marbûthah is transliterated with "t" in the middle of the sentence, but if the ta"marbuthah is at the end of the sentence, then it is transliterated using "h" for example **الرسالة للمدرسة** to al-risalat li al-mudarrisah, or if it is in the middle of the sentence consisting of the arrangement of *mudlaf* and *mudlaf ilayh*, then it is transliterated using "t" which is connected to the next sentence, for example **في رحمة هلا** becomes *fī rahmatillâh*.

#### **E. Words and Words of Jalalah**

The verb in the form of "al" is written in lowercase letters, unless it is located at the beginning of the sentence, while the "al" in the lafadh jalalah which is in the middle of the sentence that is supported (*idhafah*) is omitted. Consider the following examples:

1. Al-Imâm Al-Bukhâriy said...
2. Al-Bukhâriy in his muqaddimah of his book explains...
3. *Lâ haula wa lâ qûwata illâ billâh* Billah azza wa jalla

#### **F. Writing Arabic words commonly used in Indonesian**

In general, all words of Arabic origin must be created using the transliteration system. If the word is an Indonesian Arabic name or an Indonesian Arabic name, then there is no need to write it using a transliteration system. Consider the following example. One of the agreements to abolish

nepotism, collusion, and corruption in Indonesia, on the one hand, strengthens prayers in various offices... Pay attention to the spelling of the names "Abdurrahman Wahid" and "Amin Rais". The word "Prayer" is written using the Indonesian spelling that matches the spelling of the name. Although these words are of Arabic origin, they are Indonesian names and have been translated into Indonesian, so there is no need to write "Abdal Rahman Wahîd" or "Amîn Raîs" instead of "shalât".

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## ABSTRAK

Nuraida Manurung. NIM 210203110086. **Pelayanan Kesehatan Reproduksi Berupa Kontrasepsi Remaja dan Perspektif Usia Mahasiswa Maqashid Syariah Ash-syatibi.** Tesis. Program Studi Hukum Tata Negara (*Siyasah*) Fakultas Syariah Universitas Islam Negeri Maulana Malik Ibrahim Malang. Pembimbing: Imam Sukadi, S.H., M.H.

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**Kata kunci:** Alat Kontrasepsi, Remaja, *Maqashid Syariah*.

Penelitian ini mengkaji secara kritis kebijakan pemberian kontrasepsi bagi remaja sebagaimana diatur dalam Pasal 103 ayat 4 huruf e Peraturan Pemerintah Nomor 28 Tahun 2024 tentang Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 tentang Kesehatan. Meskipun tujuan dari kebijakan ini adalah untuk meningkatkan layanan kesehatan reproduksi dan mencegah kehamilan yang tidak diinginkan dan penyakit menular seksual, ada ambiguitas yang signifikan dalam norma. Ambiguitas ini disebabkan oleh tidak adanya definisi yang lebih jelas tentang "remaja" dan "anak usia sekolah", sehingga membuka ruang interpretasi yang dapat menyebabkan potensi penyalahgunaan kebijakan dan bertentangan dengan nilai-nilai moral dan norma-norma agama yang berlaku.

Penelitian ini menggunakan metode yuridis normatif dengan pendekatan studi literatur atau perundang-undangan dan pendekatan konseptual. Materi hukum utama dalam penelitian ini adalah Undang-Undang Nomor 17 Tahun 2023 tentang Peraturan Kesehatan dan Pemerintahan Nomor 28 Tahun 2024 tentang Peraturan Pelaksanaan UU Kesehatan.

Hasil penelitian menunjukkan bahwa kurangnya kejelasan batas usia dan definisi penerima layanan dalam artikel tersebut menghasilkan banyak interpretasi yang berpotensi menyebabkan legalisasi kontrasepsi bagi remaja secara keseluruhan, sehingga akan mengikis nilai-nilai moral dan norma sosial. Dari perspektif *Maqashid Syariah*, kebijakan ini dinilai tidak membawa manfaat karena kebutuhan primer manusia tidak terpenuhi, sehingga ada risiko membuka ruang perilaku yang tidak sesuai dengan nilai-nilai agama dan etika masyarakat.

## ABSTRACT

Nuraida Manurung. NIM 210203110086. **Reproductive health services are in the form of providing contraceptives for adolescents from the perspective of *maqashid syariah Asy-syatibi***. Thesis. Constitutional Law Study Program (*Siyasah*), Faculty of Sharia, Maulana Malik Ibrahim State Islamic University, Malang. Supervisor: Imam Sukadi, S.H., M.H.

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**Keywords: Contraceptives, Adolescents, *Maqashid Sharia*.**

This study critically examines the policy of providing contraceptives for adolescents as stipulated in Article 103 paragraph 4 letter e of Government Regulation Number 28 of 2024 concerning the Implementation of Law Number 17 of 2023 concerning Health. Although the aim of the policy is to improve reproductive health services and prevent unwanted pregnancies and sexually transmitted diseases, there is a significant ambiguity in the norm. This ambiguity is due to the absence of a clearer definition of "adolescents" and "school-age children", thus opening up a space for interpretation that can cause potential policy abuse and conflict with applicable moral values and religious norms.

This research uses a normative juridical method with a literature or legislation study approach and a conceptual approach. The primary legal materials in this study are Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024 concerning Regulations for the Implementation of the Health Law.

The results of the study show that the unclear age limit and definition of service recipients in the article results in multiple interpretations that have the potential to cause the legalization of contraceptives for adolescents as a whole so that it will erode moral values and social norms. From the perspective of Maqashid Sharia, this policy is considered not to bring benefits because the primary human needs are not met, so it risks opening up a space for behavior that is not in accordance with religious values and ethics of the community and community ethics.

## خلاصة

نوريدا مانورونج ٢١٠٢٠٣١١٠٠٨٦. خدمات الصحة الإنجابية في شكل وسائل منع الحمل للمراهقين والمنظور العمري لطلاب المقاشيد الشريعة السيائبي. اطروحه. برنامج دراسة القانون الدستوري (سياسة)، كلية الشريعة، جامعة مولانا مالك إبراهيم الإسلامية الحكومية، ملانج. المشرف: الإمام سكاوي، س. ح. م.، م. ح.

الكلمات المفتاحية: وسائل منع الحمل، المراهقون، المقاشيد الشريعة.

تبحث هذه الدراسة بشكل نقدي في سياسة توفير وسائل منع الحمل للمراهقين على النحو المنصوص عليه في المادة ١٠٣ الفقرة ٤ من الحرف e من اللائحة الحكومية رقم ٢٨ لسنة ٢٠٢٤ بشأن تنفيذ القانون رقم ١٧ لسنة ٢٠٢٣ بشأن الصحة. وعلى الرغم من أن الهدف من هذه السياسات هو تحسين خدمات الصحة الإنجابية ومنع حالات الحمل غير المرغوب فيها والأمراض التي تنتقل عن طريق الاتصال الجنسي، فإن هناك غموضا كبيرا في المعايير. ويعزى هذا الغموض إلى عدم وجود تعريف أوضح لـ "المراهقين" و"الأطفال في سن الدراسة"، مما يفتح مجالا للتفسير يمكن أن يؤدي إلى إساءة استخدام محتملة للسياسات ويتعارض مع القيم الأخلاقية والمعايير الدينية السائدة.

يستخدم هذا البحث مسلوبا قانونيا معياريا مع نهج دراسة الأدبيات أو التشريع ونهج مفاهيمي. المادة القانونية الرئيسية في هذه الدراسة هي القانون رقم ١٧ لسنة ٢٠٢٣ بشأن اللائحة الصحية والحكومية رقم ٢٨ لسنة ٢٠٢٤ بشأن اللوائح الخاصة بتنفيذ قانون الصحة.

تظهر نتائج الدراسة أن عدم وضوح الحد العمري وتعريف متلقي الخدمة في المقال ينتج عنه العديد من التفسيرات التي يمكن أن تؤدي إلى تقنين وسائل منع الحمل للمراهقين ككل، وبالتالي تآكل القيم الأخلاقية والأعراف الاجتماعية. من وجهة نظر الشريعة المقاشدية، تعتبر هذه السياسة غير ممنوحة لأن الاحتياجات الأساسية للإنسان لا تلبى، لذلك هناك خطر فتح مساحة للسلوك الذي لا يتفق مع القيم الدينية والأخلاق المجتمعية.

## CHAPTER I

### INTRODUCTION

#### A. Background

Reproductive health is an important part of the national health system that is directly related to the welfare of the community. The government in order to create reproductive welfare seeks to improve public health services as mandated by Article 28H paragraph 1 of the 1945 Constitution of the Republic of Indonesia that "everyone has the right to live a prosperous life in birth and mind, to live, and to have a healthy and healthy environment and to have the right to health services."<sup>1</sup>

Adolescents and school-age children are a vulnerable group to various reproductive health problems, such as unwanted pregnancies (KTD), the spread of sexually transmitted infections (STIs), and a lack of understanding of the reproductive system and contraception.<sup>2</sup> To overcome this, the Government of Indonesia ratified Government Regulation (PP) Number 28 of 2024 concerning the Implementation of the Health Law<sup>3</sup>, which is a derivative of Law Number 17 of 2023 concerning Health<sup>4</sup>. One of the articles that is of concern in this PP

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<sup>1</sup> "The Constitution of the Republic of Indonesia in 1945," t.t.

<sup>2</sup> Umbulsari Indah, "Adolescent reproductive health," BKKBN, November 19, 2024, <https://kampungkb.bkkbn.go.id/kampung/65185/intervensi/1229202/kesehatan-reproduksi-remaja>.

<sup>3</sup> Article 3 paragraph 4 letter e, "Government Regulation Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health," Pub. L. No. Statute Book of the Republic of Indonesia Year 2024 Number 135, Supplement to Statute Book of the Republic of Indonesia Number 6952 (t.t.).

<sup>4</sup> "Law No. 17 of 2023 concerning Health," Pub. L. No. Statute Book of the Republic of Indonesia No. 105 of 2023 and Supplement to Statute Book of the Republic of Indonesia No. 6887 (t.t.).

is Article 103 paragraph (4) letter e, which regulates the provision of reproductive health services for adolescents and school-age children.<sup>5</sup>

Controversy that arose due to the existence of article 103 paragraph 4 letter e which regulates the provision of contraceptives as part of adolescent reproductive health services. Article 103 of Government Regulation Number 28 of 2024 Government Regulation No. 28 of 2024 concerning Regulations for the Implementation of the Health Law reads:<sup>6</sup>

- (1) Efforts to improve the reproductive system of school age and adolescents as referred to in Article 101 paragraph (1) b are at least in the form of providing communication, information, and education, as well as reproductive health services.
- (2) The provision of communication, information, and education as intended in paragraph (1) is at least related to:
  - a. the system, function, and process of reproduction;
  - b. maintain reproductive health;
  - c. risky sexual behavior and its consequences;
  - d. family planning;
  - e. protect oneself and be able to refuse sexual intercourse; and
  - f. selection of entertainment media according to the age of the child.
- (3) The provision of communication, information, and education as intended in paragraph (2) can be provided through teaching materials or teaching and learning activities at school and other activities outside the school.
- (4) Reproductive health services as intended in paragraph (1) at least include:
  - a. early detection of diseases or screening;
  - b. treatment;
  - c. rehabilitation;
  - d. counseling; and
  - b. provision of contraceptives.**
- (5) Counseling as intended in paragraph (41) letter d is carried out with regard to privacy and confidentiality, and is carried out by Medical

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<sup>5</sup> Operator, "PB ABKIN's Critical Analysis of Health Policy in Government Regulation No. 28/2024," S2BK UM Metro, August 2024, <https://magisterbk.pascasarjana.ummetro.ac.id/analisis-kritis-pb-abkin-terhadap-kebijakan-kesehatan-dalam-pg-no-282024>.

<sup>6</sup> Government Regulation Number 28 of 2024 concerning Implementation Regulations of Law Number 17 of 2023 concerning Health.

Personnel, Health Workers, counselors, and/or peer counselors who have competence in accordance with the authority.

The main controversy is contained in Article 103 paragraph 4 letter e, where the existence of this regulation examines the urgency between public health policies and social and religious values in Indonesia. Some parties such as religious leaders, legislators, and the public are worried that this regulation could be misinterpreted as an opportunity for teenagers to engage in sexual activities.<sup>7</sup> This concern arises due to the vague norms due to the absence of clear limits related to adolescents referred to in this Regulation.

The concerns raised by the Deputy Chairman of Commission X of the House of Representatives of the Republic of Indonesia, Abdul Fikri Faqih, assessed that the provision of contraceptives for students is not in line with the mandate of national education which is based on noble ethics and upholding religious norms.<sup>8</sup> In line with that, Commission IX of the House of Representatives of the Republic of Indonesia, Netty Prasetiyani Aher, criticized that there needs to be an explanation of the purpose and purpose of conducting education on sexual behavior that is healthy, safe and responsible so that it does not lead to the permissibility of sex before marriage.

The opinion of the Indonesian Ulema Council is also against this policy, where Djubaedah, one of the members of the Indonesian Ulema Council, argued

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<sup>7</sup> Maburri pudya Salim, "Examining the Polemic of PP Number 28 of 2024, Consider Controversial Articles," liputan6.com, August 14, 2024, <https://www.liputan6.com/hot/read/5672244/menelaah-polemik-pp-nomor-28-tahun-2024-simak-pasal-yang-kontroversial>.

<sup>8</sup> admin, "Provision of Contraceptives for School Students - EMedia DPR RI," August 4, 2024, <https://emedia.dpr.go.id/2024/08/04/penyediaan-alat-kontrasepsi-bagi-siswa-sekolah/>.

that this regulation is contrary to religious norms and Pancasila because it seems to allow the use of contraceptives.<sup>9</sup> In response to this, the Spokesperson for the Ministry of Health, Mohammad Syahril clarified that actually the provision of contraceptives is not intended for all adolescents, but is only intended for married adolescents with the aim of delaying pregnancy when the mother-to-be is not ready due to health or economic to avoid the risk of maternal and child death and the risk of stunting.<sup>10</sup>

Basically, this regulation is emphasized to provide services that include reproductive health for adolescents by promoting the provision of communication, information, comprehensive education about reproductive health and also reproductive health services themselves. The lessons include understanding how the reproductive system works, the function of each organ, tips for maintaining the health of the reproductive system, understanding the potential dangers that can arise from unsafe sexual behavior and strategies to avoid sexual intercourse if it is undesirable.<sup>11</sup>

The absence of an explanation related to the target of adolescents and the form of effort in question has caused multiple interpretations among the public.

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<sup>9</sup> MUI-Islamic Ulema Council, "PP 28 of 2024 and Problematic Contraceptive Rules, Here's the Record of MUI Kumham," MUI-Islamic Ulema Council, August 2024, <https://mui.or.id/baca/berita/pp-28-tahun-2024-dan-aturan-kontrasepsi-yang-rentan-masalah-begini-catatan-kumham-mui>.

<sup>10</sup> Aldi Prima Putra, "PP 28/2024: Focus on the Reproductive Health of Married Adolescents," Ministry of State Apparatus Empowerment and Bureaucratic Reform, August 8, 2024, <https://menpan.go.id/site/berita-terkini/berita-daerah/pp-28-2024-fokus-pada-kesehatan-reproduksi-remaja-yang-sudah-menikah>.

<sup>11</sup> Aldi Prima Putra, "PP 28/2024: Focus on the Reproductive Health of Married Adolescents," Ministry of State Apparatus Empowerment and Bureaucratic Reform, August 8, 2024, <https://menpan.go.id/site/berita-terkini/berita-daerah/pp-28-2024-fokus-pada-kesehatan-reproduksi-remaja-yang-sudah-menikah>.

Therefore, an in-depth study is needed to evaluate this policy, especially from the perspective of sharia maqashid, in order to assess whether this policy is in line with the goals of Islamic sharia in safeguarding the benefit of the ummah.

The phenomenon of juvenile delinquency such as promiscuous sexual behavior often exposes them to the phenomenon of unwanted pregnancy to sexually transmitted diseases such as HIV/AIDS. Based on the results of an interview with the head of the National Population and Family Planning Agency (BKKBN), Hasto Wardoyo explained that in 2020 the number of unwanted pregnancies in Indonesia was quite high, reaching 17.5%.<sup>12</sup> In addition, the Indonesian Ministry of Health noted that there were 6,855 cases of syphilis and gonorrhea among adolescents aged 15-19 years, and there were 35,415 cases of HIV and 12,481 AIDS, 19 percent of which occurred in adolescents aged 20-24 years. This figure is one of the government's concerns to minimize the increase in the figure.

The high rate of teenage pregnancy and the increase in STI cases show that adolescents in Indonesia still have limited access to adequate reproductive health information and services, so government policies related to reproductive health services for adolescents need to be further studied by involving religious leaders and experts in the health field.

In Islam, all policies related to the benefit of the ummah must be in line with the principles of maqashid sharia. Imam Ash-Syatibi, one of the scholars who formulated the theory of maqashid sharia systematically, classified five main

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<sup>12</sup> "BKKBN - SIGA," accessed February 9, 2025, <https://siga.bkkbn.go.id/>.



aspects in Islamic law, namely hifzh ad-din (safeguarding religion), hifzh an-nafs (safeguarding the soul), hifzh al-'aql (safeguarding the intellect), hifzh an-nasl (safeguarding offspring), and hifzh al-mal (safeguarding property).<sup>13</sup> The policy of providing contraceptives for adolescents, it is necessary to analyze whether this policy is able to protect the soul (hifzh an-nafs) by preventing unwanted pregnancies and infectious diseases, maintain reason (hifzh al-'aql) by providing correct reproductive health education, and protect offspring (hifzh an-nasl) by ensuring that future generations are born in more planned and healthy conditions.

This reproductive health policy must also take into account public acceptance and social norms. Some community groups and religious organizations, such as the Indonesian Ulema Council (MUI), have the view that contraception for adolescents should only be given in an educational context and should not be a means to encourage sexual behavior outside of marriage. Therefore, the government needs to implement this policy with a more sensitive approach to cultural and religious values, for example by involving scholars, community leaders, and religious organizations in socialization and reproductive health education for adolescents.

Government Regulation Number 28 of 2024<sup>14</sup> will be promulgated in March 2024, as part of the implementation of Law Number 17 of 2023 concerning

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<sup>13</sup> Zulkarnain Abdurrahman, "The Theory of Maqashid Al-Syatibi and Its Relation to Basic Human Needs According to Abraham Maslow," *Ushuluddin Journal: The Media of Islamic Thought Dialogue* 22, no. 1 (August 27, 2020): 57, <https://doi.org/10.24252/jumdpi.v22i1.15534>.

<sup>14</sup> Article 3 paragraph 4 letter e, Government Regulation Number 28 of 2024 concerning Implementation Regulation of Law Number 17 of 2023 concerning Health.

Health<sup>15</sup> , which was previously ratified on August 8, 2023. The implementation of this policy is carried out nationally, with implementation in schools, health service centers such as health centers and youth clinics, as well as through community-based education programs. However, this policy still faces several obstacles in its implementation, especially related to social resistance from certain community groups, lack of adolescent understanding of reproductive health, and limited access to health services in some areas.

Based on the problems that arise from the passage of this Regulation, this study aims to analyze Government Regulation Number 28 of 2024 regarding the implementation of Law Number 17 of 2023 concerning Health<sup>16</sup> based on Maqashid Sharia. To further understand the implications of this policy, the main focus of this study is to assess whether this policy has met the principles of sharia maqashid formulated by Ash-Syatibi, as well as identify challenges and solutions in the implementation of reproductive health policies for adolescents in Indonesia. if viewed from Article 103 Paragraph 4 letter e of Government Regulation No. 28 of 2024, it is very contrary to the basic principles of Islamic sharia and not in accordance with sharia, because it is considered to give space for adultery to children and adolescents, therefore the author is very interested in researching and studying more deeply this research with the title **"Reproductive Health Services in the Form of Provision of Contraceptives**

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<sup>15</sup> Law Number 17 of 2023 concerning Health.

<sup>16</sup> Article 3 paragraph 4 letter e, Government Regulation Number 28 of 2024 concerning Implementation Regulation of Law Number 17 of 2023 concerning Health.

**for Adolescents and School-Age Children from the Perspective of Maqashid Sharia Ash-Syatibi”.**

#### **B. Problem Formulation**

Based on the background of the problems that have been explained earlier, the questions that will be discussed in this study are as follows:

1. What is the basis for providing reproductive health equipment in the form of contraceptives for adolescents and school-age children.
2. How is the analysis of Article 103 paragraph 4 Letter e of Government Regulation Number 28 of 2024 concerning the Implementation of Law Number 17 of 2023 concerning Health from the perspective of maqashid sharia Ash-syatibi.

#### **C. Research Objectives**

Based on the formulation of the problem above, the objectives of this study are as follows:

1. Analyze and describe what underlies the provision of reproductive health equipment in the form of contraceptives for adolescents and school age.
2. Analyze and describe Article 103 paragraph 4 letter e of Government Regulation Number 28 of 2024 concerning the implementation of Law Number 17 of 2023 concerning the Health Perspective of Maqashid Sharia

#### **D. Research Benefits**

Based on the research objectives that have been explained earlier, this research has benefits, both from theoretical and practical benefits:

## **1. Theoretical Benefits**

The researcher hopes that this research can contribute or become a source of useful information for the development of science, especially in the field of law in the future.

## **2. Practical Benefits**

### **a. For health implementers**

This research can provide a better understanding to health implementers regarding the policy of providing contraceptives for adolescents in the context of reproductive health. By understanding the perspective of sharia maqashid, health implementers can be more sensitive to the social and cultural values that exist in society. And later it can be used to design health programs that are more effective and in accordance with the needs of adolescents, including education about reproductive health and the use of contraceptives.

### **b. For the government**

Research on reproductive health services in the form of the provision of adolescent contraceptives with a sharia maqashid perspective, offers a number of significant benefits for the government in formulating policies. This research can provide a deeper understanding of the provision of contraceptives for adolescents, both from social, religious, cultural, and legal aspects. With a

comprehensive understanding, the government can design policies that are right on target, such as explaining the conditions for allowing contraceptives not for adolescents in general but only for married adolescents.

In addition, this research can be a reference for the government in formulating better health policies, especially those related to adolescent reproductive health. So as to provide insight into how the policy can be in line with the principles of sharia maqashid. This research can assist the government in evaluating the effectiveness of Government Regulation No. 28 of 2024 and provide recommendations for more inclusive and sustainable policy improvements.

c. For academics

This research can contribute to the development of science in the field of health law and sharia maqashid, as well as provide a new perspective in the study of reproductive health. So that it can be a reference for future research related to reproductive health, law, and sharia maqashid, as well as encourage further research in this field.

d. For the community

Research on reproductive health services in the form of providing adolescent contraceptives from the perspective of maqashid sharia also provides significant benefits to the community at large. One of the main benefits is increasing public awareness about contraceptives

in adolescents. With in-depth research, the public will understand the correct information about the provision of contraceptives in adolescents, reproductive health, and other reproductive options.

The results of this research can also be used to build public awareness about reproductive health issues faced by adolescents, as well as the importance of family and community support in providing appropriate education. With a better understanding of reproductive health and contraceptives as well as sharia maqashid, it is hoped that it can reduce sexual behavior among adolescents and reduce the rate of unwanted pregnancies and other reproductive health problems.

## **E. Conceptual Definition**

In an effort to avoid confusion in thinking and make it easier to understand this research, it is necessary to understand the meaning of some of the words that exist. Some of the definitions used are as follows:

1. Reproductive health is a condition of complete physical, mental and social well-being and is not only limited to being disease-free.<sup>17</sup> Overall, other meanings of health include systems, functions and reproductive processes regardless of gender.
2. Adolescence is growing towards maturity both physically, socially, and psychologically.<sup>18</sup> So it can be understood that adolescence is a

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<sup>17</sup> WHO, "Reproductive health," accessed March 2, 2025, <https://www.who.int/westernpacific/health-topics/reproductive-health>.

<sup>18</sup> Elizabeth B Hurlock, *Developmental Psychology: A Lifespan Approach. Fifth Edition*. Jakarta: Erlangga, fifth (Jakarta: Erlangga, 1991).

transitional period from childhood to adulthood. This happens because of the maturation period of adolescent reproductive organs.

3. Contraceptives are a way to prevent pregnancy from occurring with contraceptive devices or drugs such as spirals, condoms, or pills.<sup>19</sup> In other words, this contraceptive is an effort to prevent pregnancy using a device and can be temporary or permanent.
4. Maqashid Shari'ah is to understand the meanings, wisdoms, goals, secrets and things that are behind the formation of a law.<sup>20</sup> Simply put, it is intended as the purpose or purpose of the shari'a of Islamic law. The goal to be achieved is the wisdom and benefit for the people from the new policies that emerge.

## **F. Previous Research**

There are several previous studies that have tried to raise the same discussion, in relation to the previous research has differences with this research both the focus of the discussion and the topic that is trying to be raised. Moreover, regarding this study, it tries to raise topics that have generally been raised a lot, but in this study the researcher will focus on different angles. In this study, the researcher will present several data findings from previous research that are related to the issue being researched, and become a differentiator as well as the originality of the research being conducted. The previous research explored in various literature is as follows:

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<sup>19</sup> "The meaning of the word contraception according to the Great Dictionary of Indonesian (KBBI) Online," accessed September 29, 2024, <https://kbbi.web.id/kontrasepsi>.

<sup>20</sup> "Come on, *"Maqashid Syariah: Definition and Opinion of Scholars"* 4 No. 2 July-December 2021 (2021): 206.

1. The research conducted by Indana Zukfah and Cahaya Permata with the title "Child Protection Against the Free Marketing of Contraceptives in Mini Markets Reviewed from Saad Al-Dzari'at", Islamic law journal at UIN North Sumatra, 2022. The formulation of the problem discussed is the causative factors and impact of the free marketing of contraceptives in mini markets on children reviewed from saad al-dzari'at. The results of the study stated that 1) Until now, in Indonesia there is no legal stipulation that regulates child protection efforts in limiting the free marketing of condom contraceptives in Minimarkets 2) In the theory of saad al-dzari'ah as an effort to protect children in preventing the consequences of the marketing of contraceptives freely states that the law is not allowed. Provided that the contraceptive is used by people who are not yet entitled/legal to use it. When the user is a legal person under Islamic Law, the law is permissible. 3) Regarding the Criminal Code (KUHP) and Law No. 52 of 2009 article 543, it is necessary to affirm the free marketing of contraceptives in Minimarkets so that children under the age of 18 do not freely access the contraceptive condoms for abuse.
2. Research by Helena Krisnawati with the title "Juridical Analysis of Article 534 of the Criminal Code Concerning the Crime of Displaying Means of Preventing Pregnancy Overtly Related to Health Law Policy", Thesis at the Faculty of Law, Islamic University of Kalimantan, 2021. The formulation of the problem discussed is: 1) What is the meaning of Article 534 of the Criminal Code? 2) What is the position of Article 534 of the



Criminal Code in health law policy? This research uses a normative legal research method. The results of the study stated that 1) The act of performing contraceptives that are justified is for the purpose of sex education and family planning services as long as the act is carried out by authorized professionals. To do so in exercising his authority. 2) The Position of Article 534 of the Criminal Code in Health Law As one of the highest forms of law under the 1945 Constitution. Seeing the many rules and regulations that regulate related to the health sector, the position of Article 534 of the Criminal Code is often associated with the decriminalization process. The process of decriminalization is a process in which there is an act that is considered a crime because it is prohibited in laws and regulations, then the provision is no longer considered a crime.

3. Research by Zamzam Mustofa, Nafiah, and Dyna Prasetya Septianingrum with the title "The Law of the Use of Contraceptives in the Perspective of Islamic Religion", Journal of Islamic Education at IAIN Ponorogo, 2020. The formulation of the problem discussed is what is the legal position in problems related to the use of contraceptives This research uses normative legal research methods. The results of the study stated that 1) All forms of contraception, both traditional and modern, can be used in Islam, with the aim of not restricting, preventing and eliminating births, unless it is really in a state of dzorurot. 2) If the use of contraceptives is used to terminate a (permanent) birth, it clearly falls under the haram law because it is considered to precede the destiny or will of Allah SWT and in such

conditions people will more easily fall into adultery. However, if the use of contraceptives is only to regulate the birth rate or to provide a distance not to get pregnant and give birth too early, then from the ijtiḥad of the scholars this is allowed in Islam because indeed this contraceptive is a form of figurative way to delay birth in this era of globalization and is believed to be more likely to guarantee its success, especially in modern contraceptives. In addition, it is unlawful to install this contraceptive device because of fear of not being able to support the family because there are too many children, worrying that they cannot eat, cannot survive and so on, because in this position people consider that Allah does not guarantee sustenance in their lives.

4. Research by Amin Wijayanto with the title "Pregnancy Delay by Using Contraceptives in Early Marriage in a Review of Islamic Law", Thesis thesis at the Faculty of Sharia and Law, Sultan Syarif Kasim State Islamic University/2019. The formulation of the problem discussed is 1) What are the reasons that affect the delay of pregnancy by using contraceptives in the Bangko Mukti District, Bangko Pusako District, Rokan Hilir Regency? 2) What is the review of Islamic law on the reasons for delaying pregnancy in early marriage? This study uses *a field research* method. The results of the study stated that 1) The main factors that cause pregnancy delay for married couples at an early age in the Bangko Mukti District, namely the desire to stay in school and risk factors that are dangerous to the mother and child if pregnant at an early age compared to delaying pregnancy at an

early age and. 2) In our time today, there are contraceptives that can be ensured to be beneficial as desired by the Prophet PBUH, namely protecting children who are still breastfeeding from dangers including mafsadah/other negative impacts by not associating with wives during breastfeeding, but this is very burdensome for husbands. On this basis, to create a quality family, the law of postponing pregnancy in early marriage is mubah/allowed. Imam Ahmad and others stipulate that such a thing is permissible if the wife allows. Because he is the one who has more rights to the child and he is also the one who has more right to have fun. And as narrated from Umar ra, that he forbade 'azl except with the permission of his wife.

5. Research by Pramuja Aldi Pratama with the title "Promotion of Contraceptives for Minors in a Review of Health Law (Study of Article 408 of Law Number 1 of 2023 concerning the Criminal Code)", Thesis at the Faculty of Law, Islamic University of Kalimantan MAB, 2023. The formulation of the problem discussed is: 1) How is the arrangement regarding the promotion of contraceptives to minors? 2) How is the analysis of the promotion of contraceptives based on Article 408 of Law Number 1 of 2023 concerning the Criminal Code. The research method used is normative legal research. The results of this study state that 1) Of the many regulations regarding the promotion of contraceptives to minors, none of them specifically explain the promotion of contraceptives. The regulation in particular is Law Number 1 of 2023 concerning the Criminal

Code. Article 408 provides a prohibition on promoting contraceptives to children who will be punished with a maximum fine of category I. 2) Legal analysis of the promotion of contraceptives, based on Article 408 of Law Number 1 of 2023 concerning the Criminal Code, that there is a need for further regulation regarding this Article. The prohibition on the promotion of contraceptives to minors is indeed appropriate because it considers the interests of children's growth and development. This is based on the enactment of the Child Protection Law. What is of concern is that when the ban is given for the reason of child protection, the Criminal Code should not give the government the freedom to promote. This article must also provide an age limit for the child in question not to be promoted, because children with adolescent age need to have sexual readiness, especially when they are about to get married.

The previous research above is summarized in the form of a table below to make it easier to understand

**Table 1**  
**Previous Research**

<b>Ye s</b>	<b>Name/College /Year/Title</b>	<b>Problem Formulation</b>	<b>Research Results</b>	<b>Difference</b>	<b>Elements of Novelty</b>
1	Indana Zulfah, Cahaya Permata <sup>21</sup> /Child Protection Against the Free Marketing of Contraceptives	The factors causing and impacting the free marketing of contraceptives in mini markets on children are	There is no legal provision that regulates the regulation of child protection efforts in the free marketing	The difference is that in this study it explains the various types of condom-shaped contraceptive	This research aims to improve the basis of thinking on pre-existing policies related to contraceptives in adolescents, so

<sup>21</sup> Indana Zulfah and Cahaya Permata, "Child Protection Against the Independent Marketing of Contraceptives in Mini Markets Reviewed from Saad Al-Dzariâ€™Mat," *Al-Mashlahah Journal of Islamic Law and Social Institutions* 10, No. 02 (29 October 2022): 751–62, [HTTPS://Day.org/10.30868/Am.V10I02.3050](https://day.org/10.30868/Am.V10I02.3050).

	in Mini Markets Reviewed from Saad Al-Dzari'at/Journal of Islamic Law/UINSU/2022	reviewed from saad al-dzari'at.	of condom contraceptives in Minimarkets. Legal contraceptives are not allowed if they are done by people who are not yet legal, so there needs to be an affirmation related to the free marketing of contraceptives in Minimarkets in the Criminal Code and Law No. 52 of 2009 article 543	cases that are marketed without being adjusted to the applicable rules. The focus is on the inconsistency of facts with the rules, while the research to be conducted focuses on the analysis of legal products on reproductive health services by providing contraceptives for school-age and adolescents that contain ambiguity of norms.	that the resulting legal policies are able to influence the correct position for adolescents as contraceptive users.
2.	Helena Krisnawati <sup>22</sup> /Juridical Analysis of Article 534 of the Criminal Code concerning the Crime of Displaying Means of Preventing Pregnancy in a Way That Is Overtly	<ul style="list-style-type: none"> <li>- What is the meaning of Article 534 of the Criminal Code?</li> <li>- What is the position of Article 534 of the Criminal Code in health law policy?</li> </ul>	<ul style="list-style-type: none"> <li>- The meaning of Article 534 of the Law is that the act of displaying authorized contraceptives is for the purpose of sex education and family planning services</li> <li>- The position of Article 534 of</li> </ul>	The difference between this research and the one to be studied is in the object of discussion where this research looks at contraception through Article 534 of the Criminal Code while the	Government regulations that have been passed are then analyzed because there are articles that have multiple interpretations so that they can provide a gap in the meaning contained in the policy.

<sup>22</sup> Helena Krisnawati, "Juridical Analysis of Article 534 of the Criminal Code on the Crime of Displaying Means of Preventing Pregnancy in a Manner Explicitly Related to Health Law Policies" (Kalimantan, Islamic University of Kalimantan MAB, 2021).

	Related to Health Law Policies. /Thesis/Uniska /2020		the Criminal Code is often associated with the decriminalization process.	research that will be carried out is more specific, namely focusing on the interpretation of the meaning of new rules related to contraception for adolescents.	
3.	Zamzam Mustofa, Nafiah, Dyna Prasetya Septianingrum <sup>23</sup> /The Law on the Use of Contraceptives in the Perspective of Islamic Religion/ Journal/IAIN Ponorogo/ 2020	What is the legal position in matters related to the use of contraceptives.	- All forms of contraception, both traditional and modern, can be used in Islam with the aim of not restricting, preventing and eliminating births, unless it is really in a state of dzorurot. - If the use of contraceptives is used to terminate a (permanent) birth, it clearly falls under the haram law because it is considered to precede the destiny or will of Allah SWT and in such conditions	The difference between the two lies in the object of the research. This study discusses the law on the use of contraceptives with the goal of family planning. Meanwhile, the research to be studied focuses on the confusion of rules regarding the provision of contraceptives for adolescents.	The analysis of the article from the aspect of health and also religious norms, whether there is benefit to the community or actually causes a lot of harm when viewed from the perspective of siyasah syar'iyah.

<sup>23</sup> Zamzam Mustofa, Nafiah Nafiah, and Dyna Prasetya Septianingrum, "The Law of the Use of Contraceptives in the Perspective of Islamic Religion," *MA'ALIM: Journal of Islamic Education* 1, no. 02 (13 December 2020), <https://doi.org/10.21154/maalim.v1i02.2625>.

			people will more easily fall into adultery. But if the use of contraceptives is only to regulate the birth rate or to provide a distance not to get pregnant and give birth too soon, then from the ijtiḥad of the scholars this is allowed in Islam		
4.	Amin Wijayanto <sup>24</sup> /Pregnancy Delay by Using Contraceptives in Early Marriage in a Review of Islamic Law /Thesis/Sultan Syarif Kasim State Islamic University/2019	<ul style="list-style-type: none"> <li>- What are the reasons that affect the delay of pregnancy by using contraceptives in Kepenghuluan Bangko Mukti, Bangko Pusako District, Rokan Hilir Regency?</li> <li>- What is the review of Islamic law on the reasons for delaying pregnancy in early marriage?</li> </ul>	<ul style="list-style-type: none"> <li>- Risk factors that are dangerous to mothers and children if they get pregnant at an early age compared to delaying pregnancy at an early age and.</li> <li>- The ruling on delaying pregnancy in early marriage is mubah/permissible. Imam Ahmad and others stipulate that such a thing is permissible if</li> </ul>	The difference between the research subjects is that this research focuses more on social, cultural, and Islamic law reasons in the context of pregnancy delay, especially in the Bangko Mukti Headship area. Meanwhile, the research that will be carried out is more focused on the basis of legal policies and	Review aspects of adolescent reproductive health policy in the context of the latest health law with a legal objective approach in state policy. thus making new contributions that connect law, health, and religion.

<sup>24</sup> Amin Wijayanto, "Pregnancy Delay by Using Contraceptives in Early Marriage in a Review of Islamic Law" (Pekanbaru, Riau, Sultan Syarif Kasim State Islamic University, Pekanbaru, 2019).

			<p>the wife allows. Because he is the one who has more rights to the child and he is also the one who has more right to have fun.</p>	<p>regulations related to the provision of contraceptives for adolescents and school age as well as the analysis of sharia maqashid in the context of health law.</p>	
5.	<p>Pramuja Aldi Pratama<sup>25</sup>/ Promotion of Contraceptives for Minors in a Review of Health Law (Study of Article 408 of Law Number 1 of 2023 concerning the Criminal Code)/Thesis/Islamic University of Kalimantan//2024</p>	<ul style="list-style-type: none"> <li>- What are the regulations regarding the promotion of contraceptives to minors?</li> <li>- How is the legal analysis of the promotion of contraceptives based on Article 408 of Law Number 1 of 2023 concerning the Criminal Code</li> </ul>	<p>There is no regulation that specifically explains the ability to promote contraceptives to minors, the Criminal Code should not give the government the flexibility to promote. This article must also provide an age limit for the child in question not to be promoted, because children with adolescent age need to have sexual readiness, especially when they are about to get married.</p>	<p>The difference is in the final result, where this research asks for the formation of regulations while the research to be carried out is to analyze the ambiguity of norms in existing regulations.</p>	<p>This study provides the results of an analysis of articles that discuss the provision of contraceptives for adolescents in general and school-age children.</p>

<sup>25</sup> Pramuja Aldi Pratama, "Promotion of Contraceptives for Minors in a Review of Health Law (Study of Article 408 of Law Number 1 of 2023 concerning the Criminal Code)" (2023).



## **G. Research Methods**

Research methods are an important thing in a scientific work. This is because the correctness of the data and the steps taken in the research will affect the essence of a research. Research methods as a scientific method in an effort to find data for certain goals and uses. Through an in-depth examination of certain factors, a solution to the problems that arise is sought.<sup>26</sup>

The data collection efforts and writing methods used in writing this thesis are as follows:

### **1. Types of Research**

In this study, the researcher will use a type of normative juridical research or also called literature research. This research is a form of legal research conducted by researching literature materials and focusing on examining the application of positive legal rules or norms.<sup>27</sup>

This type of legal research will determine whether an event is right or wrong according to the law. Using normative legal research, this research is carried out by analyzing and researching primary and secondary literature materials. This is because the object of study is a rule and legal rule, so it will examine legal rules or regulations as a system related to events.<sup>28</sup>

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<sup>26</sup> Surjono Soekanto, *Introduction to Legal Research* (Jakarta: UI Press, 2010), 43.

<sup>27</sup> Johnny Ibrahim, *Normative Legal Research Theory & Methodology*, cet 2 (Malang: Bayumedia Publishing, 2006), 295, <https://bintangpusnas.perpusnas.go.id/konten/BK26135/teori-and-metodologi-penelitian-hukum-normatif>.

<sup>28</sup> ND Mukti Fazaar Dan Uliyaant Asmad, *The dualism of legal research: normative & empirical* (Student Library, 2010), 36.

## 2. Research Approach

The research approach was carried out to obtain information from various aspects related to the issues discussed to get answers.<sup>29</sup> The research approach is carried out as an effort to understand the meaning of a problem, so that the research approach focuses on understanding the object of the related problem. Through this approach, researchers will get information from various aspects about the issue being researched. Therefore, in this normative juridical type of research, the approach steps used are the statue approach and the conceptual approach.

The legislative approach is an approach based on various written legal rules and has *a comprehensive* nature because the legal norms in it are logically related, *all-inclusive* because the collection of legal norms is quite capable of accommodating existing legal problems and is *systematic*, Where these legal norms are arranged hierarchically. The researcher in his research will examine government regulations related to contraceptives by studying the alignment or conformity between these regulations and other regulations.<sup>30</sup>

The conceptual approach is also needed to observe and conduct a study of legal concepts or ideas with views and doctrines in law. According to Marzuki, a conceptual approach is carried out when researchers do not move

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<sup>29</sup> Peter Mahmud Marzuki, *Legal Research* (Jakarta: Kencana, 2024), 133.

<sup>30</sup> Jonaedi Efendi and Johnny Ibrahim, *Legal Research Methods: Normative and Empirical* (Prenada Media, 2018), 132.

from existing legal rules.<sup>31</sup> A conceptual approach is used to find ideas that give birth to legal concepts that are relevant to the issue of government regulation on the provision of contraceptives for school-age/adolescents.

### **3. Types and Sources of Legal Substances**

Legal material is anything that can be used or needed to analyze the applicable law.<sup>32</sup> Legal materials can be categorized into primary, secondary, and tertiary legal materials. In this study, the author uses several sources of legal materials, namely:

- a. Primary legal materials, namely legal materials that are authoritative or binding.<sup>33</sup> Primary legal materials consist of laws and regulations, official records or minutes in the making of laws and decisions of the government and related institutions. In this study, the primary legal materials used are:
  1. Law Number 17 of 2023 concerning Health
  2. Government Regulation Number 28 of 2024 concerning Implementation Regulation of Law Number 17 of 2023
- b. Secondary legal materials are legal materials consisting of textbooks written by influential legal experts, legal journals, scholars' opinions, legal cases, jurisprudence, and the results of cutting-edge symposiums related to research topics.<sup>34</sup> Secondary legal materials will later provide

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<sup>31</sup> Nur Solikin, *Introduction to Legal Research Methodology*, Cet-1 (Pasuruan: CV. Qiara Media Publisher, 2021), 60.

<sup>32</sup> Kristiawanto, *Understanding Normative Legal Research* (Prenada Media, 2022), 32.

<sup>33</sup> Marzuki, *Legal Research*, 141.

<sup>34</sup> Mahmud Marzuki, *Legal Research: Revised Edition* (Prenada Media, 2017), 141.

explanations of primary legal sources as support in their research. Based on this, the researcher uses secondary legal materials from books, the results of previous research, draft laws, legal journals, and the opinions of scholars relevant to the issue being studied.

- c. Tertiary legal materials are legal materials that provide instructions or explanations of primary legal materials and secondary legal materials.<sup>35</sup> Some of the resources included in tertiary legal sources are legal dictionaries, encyclopedias, legal bibliographies, newspapers or online and print news and others. This research itself utilizes legal dictionaries, the Great Dictionary of the Indonesian Language (KBBI) encyclopedia and other media news as tertiary legal sources.

#### **4. Methods of Collecting Legal Materials**

The stages of collecting legal materials in this study consist of three main types, namely:

- a. Primary legal material is obtained from legislative studies, which include an analysis of laws, government regulations, and other official legal documents that have a correlation with the issues being discussed.
- b. Secondary legal materials are collected through literature studies, such as books, scientific journals, articles, and other legal papers that serve as an analysis or interpretation of primary legal materials.

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<sup>35</sup> Marzuki, *Legal Research: Revised Edition*.

- c. Tertiary legal materials are obtained from reference sources such as legal dictionaries, legal encyclopedias, and legal bibliographies, which serve as a tool to understand legal terms, basic concepts, and reference lists relevant to the legal topic being studied.<sup>36</sup>

## **5. Legal Material Analysis Techniques**

The legal materials obtained in this study will be described in such a way that they can be presented in a more systematic writing with the aim of answering the problems that can be formulated. Analysis of legal materials is the last step of this research. The analysis method used in this study is qualitative juridical analysis, which is a method in research that can produce analytical descriptive information that is collected to then describe the facts that have existed in this study to then be drawn into a conclusion from general things to special things.<sup>37</sup>

This qualitative juridical analysis is carried out using legal materials derived from laws and regulations, theories, concepts, doctrines and opinions of experts as well as the views of researchers. Of course, it involves several stages, including examination, classification, verification, analysis, and conclusion. Processed materials will be classified and classified systematically and logically.

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<sup>36</sup> Marzuki, 21.

<sup>37</sup> Efendi and Ibrahim, *Legal Research Methods*, 236.

## **H. Writing Systematics**

The systematics in writing this research are basically not much different from the systematics of thesis writing in general. In order to maintain consistency and focus of discussion in one thought, the researcher presents the systematics of writing as an overview of this research. This writing is compiled using the following systematics:

**Chapter I:** This chapter contains an introduction consisting of background, problem formulation, research objectives, previous research, research methods, and also writing systematics. Then the research method is mentioned in several sub-chapters consisting of the type of research, research approach, type of legal material and technique of collecting legal materials.

**Chapter II:** This chapter explains the literature review that is a comparative material in this study with the aim of obtaining valid results. The literature review has content about thoughts and concepts as a theoretical basis in studying and analyzing problems that will later be raised by researchers. In this chapter, the theoretical framework and conceptual framework related to the research topic are also explained.

**Chapter III:** This chapter is the result of research. The results of the research were obtained from deciphering the data and information that had been obtained which had also been processed to then be able to answer the author's problems.

**Chapter IV: Conclusion** This chapter is explained the last part, namely conclusions and suggestions. Conclusions are drawn based on the results of the discussion, while suggestions are taken from recommendations regarding research results.

## CHAPTER II

### LITERATURE REVIEW

#### 1. Legal Utility Theory

Usefulness is one of the goals of applying the law for the benefit of the community so that the law must be able to provide benefits to the community. Jeremy Bentham was a philosopher and jurist, known as the father of utilitarianism with the nickname "*Luther of the legal world*".<sup>38</sup> His thoughts had a great influence on the development of ethical theory, law, and public policy. In the field of law, Bentham put forward the idea that law should be designed to maximize the welfare of society by considering the rule of law in terms of its impact on people's happiness and suffering, and emphasizing the importance of crime prevention through rehabilitation, not just punishment.

Jeremy Bentham leaned on the principle that morality and policy should be measured by how much benefit or utility they generate for society as a whole. Whether a socio-political, economic, and legal policy is good or bad is by looking at whether a certain policy can bring benefits or even cause losses for related parties.<sup>39</sup>

In the context of law, Bentham's theory of usefulness posits that the legal system should be designed to maximize the welfare of society. The development of utilitarianism thought focuses on the principle that an action or policy is considered right if it produces the greatest benefit or happiness

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<sup>38</sup> Latipulhayat, "Treasures: Jeremy Bentham," *Journal of Law* 2, no. 2 (2015): 413, <https://jurnal.unpad.ac.id/pjih/article/view/7342/3375>.

<sup>39</sup> Inggal Ayu Noorsanti Ristina Yudhanti, "The Usefulness of Jeremy Bentham's Law Relevance to Government Policies through Direct Cash Assistance for Village Funds," *Sultan Jurisprudence: Journal of Legal Research* 3, no. 2 (t.t.): 187.



for the greatest number of people. The basic principle of utilitarianism that he formulated was "the greatest happiness for the greatest number". This principle emphasizes that morality and policy should be measured based on how much benefit or utility it produces for society as a whole.

The main goal in the concept of utilitarianism is to maximize collective happiness, so everyone should expect the benefits of the existence of the law. In order to know the extent to which a policy can bring benefits and happiness, Jeremy Bentham formulated seven quantitative variables as a basis for calculating the level of pleasure produced, namely:<sup>40</sup>

1. The intensity of the pleasure
2. Duration of enjoyment given
3. How certain or uncertain is the fulfillment of these pleasures
4. Determination to fulfill these pleasures
5. How consistent the pleasure produced will be followed by similar pleasure
6. There is no possibility that the pleasure given will be followed by the opposite sensation
7. How many people are affected by the sense of pleasure.

The existence of a measure of usefulness avoids law enforcement that causes unrest for the community. Talking about law, we usually refer to laws and regulations or legal products made by the government that are sometimes

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<sup>40</sup> Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, 2001 ed (Ontario: Batoche Books Kitchener, 2001), 30.

inappropriate and not aspirational to people's lives. Based on this, interpreting the theory of legal usefulness is an attribute of society in creating order among society by looking at its usefulness.<sup>41</sup>

## 2. Interpret Theories

Interpretation in KBBI is defined as providing interpretations, opinions, impressions and theoretical views on something.<sup>42</sup> Interpretation is the thought process of finding hidden meaning in a meaning.<sup>43</sup> According to Sudikno Mertokusumo, interpretation theory is one of the methods of legal discovery that provides a complete explanation of the text of the law so that the scope of *kaidabh* in the law can be applied in certain legal events.<sup>44</sup> Therefore, interpretation theory is important to be used as an analysis knife to unlock the meaning implied in a particular text.

In a legal product research, it must be considered first in an interpretive approach to ensure the understanding or purpose of the words in accordance with the intended meaning and content. Thus, judges and legal experts must be able to interpret the true purpose of the provisions of the regulation in such a way that it can be known whether a regulation needs improvement or

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<sup>41</sup> Fetrus and Aturkian Laia, *The Collapse of the Usefulness of Justice Certainty in Law Enforcement in Indonesia* (Sukabumi: CV Jejak, member of IKAPI, 2023), 22.

<sup>42</sup> "The meaning of the word interpretation - Kamus Besar Indonesian (KBBI) Online," accessed January 19, 2025, <https://kbbi.web.id/interpretasi>.

<sup>43</sup> Yours truly, *Theories Interpreted by Paul Ricoeur*, cet-1 (Yogyakarta: LKiS Yogyakarta, 2015), 25.

<sup>44</sup> Mertokusumo shuddered, *Chapters on legal inventions/by Sudikno Mertokusumo and A. Pitlo* (Chitra Aditya Bakti, 1993), 13.

explanation. Where the purpose of the explanation is to realize the function so that the positive law applies.<sup>45</sup>

Legal interpretations for a legal invention have different types, depending on the situation of the legal text being studied. The types of legal interpretation methods used are:<sup>46</sup>

1. Grammatical interpretation is a method by interpreting each word in the law according to the language and the rules of grammar law. This interpretation is carried out by understanding a text in the rule of law through logical interpretation so that legal reasoning is obtained to be applied to a text that is vague or unclear.

2. Teleological/sociological interpretation

This method is used if the meaning of a rule of law is interpreted based on the purpose of making the rule of law and what it is intended to achieve. Therefore, this interpretation is the same as the sociological interpretation because the making of a law that is used as a rule of law must be adjusted to the new social situation.

3. Systematic interpretation is a method of interpretation by looking at a law as a whole. Interpreting laws must not contradict each other, so that the law as a whole is considered a whole system.

4. Historical interpretation is a method by tracing the background of the drafting of a law, so that the intention of the law can be understood.

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<sup>45</sup> Sudikno, *Chapters on legal inventions*, 13.

<sup>46</sup> Ahmad Rifai, *Legal Discovery by Judges: in a Progressive Legal Perspective* Cet. 3 (Jakarta: Sinar Grafika, 2014), 62–72, <https://simpus.mkri.id/opac/detail-opac?id=240>.

5. Comparative interpretation or comparison is an interpretation method that is carried out by comparing several legal rules to seek clarity on the meaning of the provisions of a law.
6. Futuristic interpretation provides an anticipatory interpretation method by using an explanation of the provisions of laws that have not yet been enacted or have not yet had permanent legal force.

### 3. Teori *Maqashid As-Syari'ah*

Maqashid Shari'ah comes from two words, namely maqashid and shari'ah. Shari'ah is linguistically the way to a source of water. In terms of terms, it is a set of divine laws given to mankind to obtain happiness in life both in this world and in the hereafter.<sup>47</sup> In terminology, maqashid sharia is the intended goals and secrets desired by the shari'a in each of its laws to protect the benefit of humans.<sup>48</sup>

A dynamic community life will make human cultural life continue to develop. From this development will emerge new problems that we do not find answers to in the nash-nash. One of the methods of solving it is by ijtihad, as asy-syatibi said that *the* maqashid shari'ah is the basic reference in making laws. The purpose of Allah SWT in lowering the sharia (rule of law) is the goal of benefit and rejecting harm.

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<sup>47</sup> "Translation of the Knowledge of Ushul Fiqih Abdul Wahab Khalaf," *Translation of the Yellow Book* (blog), accessed October 11, 2024, <https://www.alkhoirot.org/2019/04/terjemah-ilmu-ushul-fiqih.html>.

<sup>48</sup> Agung Kurniawan and Hamsah Hudafi, "The Concept of Maqashid Syariah of Imam Ash-Syatibi in the Book of Al-Muwafaqat," *Al-Mabsut : Journal of Islamic and Social Studies* 15, no. 1 (1 April 2021): 34, <https://doi.org/10.56997/almabsut.v15i1.502>.

In this study, the author uses the theory of *maqashid sharia* As-syathibi as a reformer in his time through his work "*Al-muwafaqat*" which divides *maqashid* into two, namely *qashdu al-Syâri* or the purpose of Allah as the maker of shari'ah and (*qashdu al-mukallaf*) the purpose of mukallaf. The purpose of Allah (*qashdu al-Shari*) is divided into four parts, while those related to the purpose of mukallaf (*qashdu al-mukallaf*) are the three fulfillment of the needs of mukallaf.<sup>49</sup> The Purpose of Allah SWT. (*Qashdu Ash-Sharia'*) contains four aspects, namely the initial purpose of the sharia (*maslahat*), the sharia must be understood, the sharia as the law of *taklif*, and the purpose of the sharia that brings humans to the protection of the law.

According to Imam Syatibi, Allah lowered the sharia (rule of law) to maintain its goals in human life, namely the benefit of the world and the hereafter. In short, the revelation of the shari'a is only to bring *mashlahah* and keep *madharat* away from human life. The criteria for the benefit itself are the upright of worldly life for the sake of achieving the hereafter. Syatibi then divided this *maqashid* with the category of mukallaf goals (*Qashdu Mukallaf*) into three important parts, namely *dharuriyyah*, *hajiyyah* and *tahsiniyyah*.

- 1) *Maqashid Dharuriyat* is an unavoidable necessity in life. Human safety in this world and in the hereafter will be threatened if this level of need is not

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<sup>49</sup> "Milesville." *Maqashid Sharia According to Imam Syatibi and the Basis of the Theory of Division*, " *Al-Usrah : Jurnal Al Ahwal As Syakhsiyah* 9, No. 2 (31 October 2022): 8, [HTTPS://day.org/10.30821/al-usrah.v9i2.12335](https://day.org/10.30821/al-usrah.v9i2.12335).

met. According to Imam as-Shatibi, this category consists of five things, namely:<sup>50</sup>

1. Hifdz din (protecting religion) means to protect religious norms from things that pollute them both in terms of faith and charity. Maintaining religion is included in the primary ranking category, where the fulfillment of religion is not achieved, the existence of religion will be threatened. The most basic example is performing obligatory prayers.
2. Hifdz nafs (safeguarding the soul) means protecting the right to life of every person and society as a whole as well as everything that can be life-threatening, such as preventing infectious diseases and punishing those who commit murder.
3. Hifdz aql prevents intellectual defects that can interfere with thinking and creativity because reason is very important in chess.
4. *Hifdz Nashl* maintains generational sustainability by facilitating marriage and avoiding practices that can threaten survival, such as vasectomy and tubectomy.
5. Hifdz Mal guarantees property rights and develops people's economic resources.

In the end, every verse of the law when examined will find the reason for its formation which is none other than to maintain the five points above.

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<sup>50</sup> Kurniawan and Hudafi, "The Concept of Maqashid Syariah of Imam Ash-Syatibi in the Book of Al-Muwafaqat," 35.

- 2) Maqashid Hajiyyah is a matter that is included in the human needs to live a prosperous life and avoid misery. If this maslahah is not maintained, then the level of punishment is a sense of narrowness.
- 3) Maqashid tahsiniyyat is at the last level because it is something better to be there to perfect human welfare. Even if you do not feel misery, the absence of this *maqashid* will cause a feeling of imperfection.

## **CHAPTER III**

### **RESULTS AND DISCUSSION**

#### **A. The Foundation for the Provision of Reproductive Health Devices in the Form of Contraceptives for Adolescents and School Age**

A dynamic society with diverse needs has led to the development of technology in the health sector to treat and prevent indications in the form of symptoms of existing health disorders. In response to this, the government seeks to improve reproductive health in Indonesia by establishing national policies in the form of health services, as stated in article 19 paragraph 1 of Law Number 17 of 2023 concerning Health that "The central government and local governments are responsible for the implementation of individual health efforts and public health efforts."<sup>51</sup>

Sexual phenomena that often occur among adolescents allow an increase in the risk of high reproductive health problems and trigger low reproductive health in Indonesia which will have an impact on the fulfillment of basic human rights. The government through Government Regulation Number 28 of 2024 concerning the implementation of the Health Law seeks to guarantee reproductive health rights, one of which is adolescent reproductive health. As an effort to reduce the risk of reproductive diseases, the implementation of the provision of contraceptives for adolescents and school-age children listed in one of the articles in it will cause challenges and diverse opinions from the

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<sup>51</sup> "Article 19 Paragraph 1 of Law Number 17 of 2023 concerning Health," Pub. L. No. Statute Book of the Republic of Indonesia Number 105 of 2023 and Supplement to Statute Book of the Republic of Indonesia Number 6887 (t.t.).



community. These challenges are caused by concerns about the use of contraceptives without knowledge and responsibility among adolescents or differences in interpretation of the policy. So, the researcher will first explain the provision of contraceptives for adolescents in Indonesia and analyze them.

### **1. Reproductive Health Services in the form of providing contraceptives for adolescents and school age.**

Reproductive health services are a vital aspect in human resource development and improving the nation's quality of life. Included in reproductive health services is the provision of contraceptives for adolescents and school-age which is a strategic component that aims to prevent unwanted pregnancies and reduce the risk of spreading sexually transmitted infections (STIs). Adolescents are at a critical phase of development, where they need adequate guidance and access to information to make informed decisions about their reproductive health.<sup>52</sup>

The government pays special attention to reproductive health, especially for adolescents and school-age to reduce early pregnancy rates and other negative impacts. Basically, the use of contraceptives tends to be more focused on couples of childbearing age (PUS) who are married with medical reasons that allow it so that it can help prevent unwanted pregnancy (KTD),

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<sup>52</sup> Jose RI Batubara, "Adolescent Development," *Sari Pediatricians* 12, no. 1 (23 November 2016): 21, <https://doi.org/10.14238/sp12.1.2010.21-9>.

reduce the risk of abortion, reduce the risk of maternal and infant death, and sexually transmitted diseases.<sup>53</sup>

Unwanted Pregnancy (KTD) often occurs in adolescents who are not physically and mentally ready to become parents have high health and social risks if they experience pregnancy at a young age. This is evidenced by the increase in maternal and infant mortality. Based on data from the Maternal Perinatal Death Notification (MPDN), the Ministry of Health's maternal death registration system, the number of maternal deaths in 2022 reached 4,005 and in 2023 it will increase to 4,129. Meanwhile, infant deaths in 2022 were 20,882 and in 2023 it was recorded at 29,945.<sup>54</sup>

The increase in the number of Sexually Transmitted Diseases (STDs) is also the basis for considering making this policy on the basis of improving the reproductive health of adolescents. According to data from the Ministry of Health, the number of reported HIV patients is 13,279 people out of 1,230,023 people who are tested for HIV and 18% are from the age group of 20-24 years or late adolescents. Meanwhile, the number of reported AIDS cases was 4,188 people and 2% from the age group of 15-19 years and 27% from the age group of 20-29 years or late adolescents.<sup>55</sup>

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<sup>53</sup> Lisda Oktavia Madu Pamangin, "A Comparative Study of Contraceptive Use in Adolescent Couples of Childbearing Age in Jayapura City" 14 (t.t.): 536.

<sup>54</sup> Rokom, "So that Mothers and Babies Are Safe," *Healthy My Country* (blog), January 25, 2024, <https://sehatnegeriku.kemkes.go.id/baca/blog/20240125/3944849/agar-ibu-dan-bayi-selamat/>.

<sup>55</sup> Ministry of Health, *Executive Report on the Development of HIV AIDS and Sexually Transmitted Diseases (PIMS) in 2023*, t.t.

Adolescent sexual behavior also has an impact on the social and economic life of adolescents. Teenage pregnancy often leads to school dropouts and economic hardship, both for young mothers and their families. Adolescents who experience early pregnancy are more vulnerable to facing social stigma and discrimination in the school and community environment. They are often excluded from the social environment and face obstacles in continuing their education.

The above consequences often lead to limited job opportunities in the future, which can ultimately lead to economic dependence on family or spouse. In addition, the increased economic burden due to the existence of dependents without financial readiness often causes difficulties in meeting basic needs, such as food, health, and education. In the long run, this can exacerbate the cycle of intergenerational poverty. This is because pregnancy in adolescence often has negative implications for education, economic welfare, and maternal and child health.<sup>56</sup>

As the rate of early pregnancy and STI cases among adolescents increases, the government and various non-governmental organizations are increasingly aware of the importance of providing comprehensive reproductive health services. This policy is also driven by the need to provide evidence-based education, as well as ensuring that every adolescent has the

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<sup>56</sup> Fatma Indriani et al., "The Impact of Early Marriage Traditions on Women's Reproductive Health: A Literature Review," *JOURNAL OF SCIENCE AND SOCIAL RESEARCH* 6, no. 1 (February 1, 2023): 7, <https://doi.org/10.54314/jssr.v6i1.1150>.

same right to access health information and services.<sup>57</sup> The provision of contraceptives for adolescents and school age has several strategic objectives, namely the prevention of early pregnancy, reproductive health education and the fulfillment of the right to health.<sup>58</sup>

Contraceptives are tools or drugs used to prevent pregnancy because they do not want to increase offspring, by preventing fertilization or the meeting of eggs with sperm cells.<sup>59</sup> Contraceptives, based on their mechanism of action, are divided into two, namely hormonal and non-hormonal methods.<sup>62</sup> Hormonal contraceptives mean contraceptives that contain steroid hormones and will affect a person's reproductive system and physical development. Types of hormonal contraceptives such as pills, injections and implants. While non-hormonal contraceptives are forms of contraception that prevent sperm from entering the vagina to prevent fertilization, such as condoms, IUDs (Intra Uterine Devices), Vasectomy, etc.

The use of contraceptives based on the type can have different side effects. So, if it is provided for adolescents and school-age children, it can affect long-term reproductive health and worry that it will actually bring new

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<sup>57</sup> L. Mahfiana, *Adolescents and reproductive health* (Center for Religion and Sexuality, 2009), 23, <https://books.google.co.id/books?id=IDnzSAAACAAJ>.

<sup>58</sup> Kompas Cyber Media, "Ministry of Health Explains the Purpose of Providing Contraceptives for Adolescents in the Government Regulation on Health," KOMPAS.com, August 5, 2024, <https://nasional.kompas.com/read/2024/08/05/22553621/kemenkes-jelaskan-tujuan-penyediaan-alat-kontrasepsi-untuk-remaja-di-pg>.

<sup>59</sup> Jamila Kasim and Arlina Muchtar, "The Use of IUD Contraception on Sexuality in Couples of Childbearing Age," *Preventive: Journal of Public Health* Vol 14 No 3 (2019): 3, <https://journal.poltekkes-mks.ac.id/ojs2/index.php/mediakesehatan/article/view/1120/776>.

problems. This is also due to the low knowledge of adolescents and children about their reproduction. Here are the types of contraceptives:<sup>60</sup>

1. Intra-Uterine *Contraceptive Devices (IUDs)* that are installed in a woman's vagina, although they can prevent fertilization, are still unable to prevent STIs. In addition, the risk of cervix can also occur if not used correctly. This can make it more difficult for women to experience pregnancy, and even risk infertility later.
2. Implanted contraceptives are installed under the skin of the arm, so there is no protection against Sexually Transmitted Infections (STIs). In addition, implants also result in irregular menstrual patterns due to incoming hormones.
3. Injectable contraceptives whose use is not allowed for women who are not breastfeeding and give birth for less than 3 weeks. In addition, the risk of its use is delayed fertility after discontinuation of use and decreased bone density.
4. Contraceptive pills result in increased exposure to estrogen in the body which can trigger abnormal cell growth that can lead to cancer, depending on age and duration of use. Next is condoms, as a contraceptive tool for men that can prevent pregnancy and also STIs. However, some can experience allergic reactions from latex materials and cause abrasions due to friction.

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<sup>60</sup> Sari Priyanti and Agustin Dwi Syalfina, "Textbook of Reproductive Health and Family Planning," *E-Book of STIKes Majapahit Publisher*, March 15, 2017, 118, <https://ejournal.stikesmajapahit.ac.id/index.php/EBook/article/view/415>.

5. Tubectomy is a method that can stop fertility, except by recanalization surgery. Tubectomy is also at risk in ectopic pregnancy due to fertilization that occurs outside the uterus.
6. The last contraceptive is a vasectomy. Vasectomy carries the risk of minor complications such as postoperative infections.

Education about reproductive health and the proper use of contraceptives as a promotive effort to reduce STIs cases is important, considering that incorrect or incomplete information and knowledge can pose serious health risks. In addition, the provision of contraceptives for adolescents is part of the state's efforts to ensure the right of every citizen to receive fair and quality health services. This is in line with the principles of social justice and human rights enshrined in the constitution.

The provision of contraceptives for adolescents and school age as a strategic response requires the implementation of reproductive health services including the provision of communication, information, and education about reproductive health. The provision of health services regulated in it also emphasizes preventive and promotive efforts such as early detection, treatment, rehabilitation, counseling, and the provision of contraceptives.<sup>61</sup>

Although the policy has been designed with a comprehensive framework, its implementation faces a number of challenges, including limited

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<sup>61</sup> Aldi Prima Putra, "PP 28/2024: Focus on the Reproductive Health of Married Adolescents," Ministry of State Apparatus Empowerment and Bureaucratic Reform, August 8, 2024, <https://menpan.go.id/site/berita-terkini/berita-daerah/pp-28-2024-fokus-pada-kesehatan-reproduksi-remaja-yang-sudah-menikah>.

infrastructure and human resources in remote areas such as lack of coordination between implementing agencies, which has the potential to hinder policy distribution and socialization. In addition, social and cultural challenges such as negative perceptions in society about reproduction and sexuality have led to resistance to these policies.<sup>62</sup>

The provision of contraceptives for adolescents and school age is essentially aimed at protecting adolescents' reproductive health rights. Contraceptives with their function prevent unwanted pregnancy and reduce the risk of sexually transmitted diseases (STDs), which are often a major health problem in sexually active adolescents. This further explains that attention to adolescent reproductive health is an important part of health policy, so policies related to the provision of contraceptives begin to consider age groups.<sup>63</sup>

In general, adolescents are a vulnerable age group in terms of physical and emotional development, and often lack understanding of the consequences of sexual intercourse at a young age and the risks of using contraception. This is illustrated by the increasing number of pregnancies and the transmission of sexually transmitted diseases. Quoted from the results of an interview with the head of the National Population and Family Planning Agency (BKKBN), Hasto Wardoyo explained that in 2020 the number of

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<sup>62</sup> Sri Hardiani et al., "The Relationship between Socio-Cultural Values and Contraceptive Use in Early Marriage Women," *Indonesian Journal of Midwifery (IJM)* 4, no. 1 (30 April 2021): 60, <https://doi.org/10.35473/ijm.v4i1.860>.

<sup>63</sup> Siti Nadia Tarmizi, "Contraceptives Only for Married Couples," August 6, 2024, <https://kemkes.go.id/id/alat-kontrasepsi-hanya-untuk-pasangan-yang-sudah-menikah>.

unwanted pregnancies in Indonesia was quite high, reaching 17.5%. Unplanned pregnancies at a young age can cause various negative impacts, both physically, mentally, socially, and economically, both for the individual adolescent and society as a whole.<sup>64</sup>

The above reality illustrates the magnitude of adolescents' interest in sexual matters. This is natural because of the condition of high levels of reproductive hormones in adolescence, so that concern with the opposite sex affects overall sexual behavior. Premarital sexual behavior among adolescents continues to increase every year. This can be seen from the results of the 2017 SDKI (Indonesian Demographic and Health Survey) that there is an increase in sexual behavior in adolescents, namely women aged 15-19 years by 0.2%. Meanwhile, the number of adolescent girls aged 20-24 increased by 1%. Meanwhile, adolescent boys aged 15-19 years decreased, but adolescent boys aged 20-24 years experienced an increase. This data is illustrated in the table below.<sup>65</sup>

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<sup>64</sup> Ratih Indah Kartikasari, Faizatul Ummah, and Deti Ilma Wahyu, "The Relationship between the Role of Parents and the Incidence of Adolescent Pregnancy in Blimbing Village, Paciran District, Lamongan Regency," *Solar Journal* 14, No. 2 (31 October 2022): 70, [HTTPS://Day.org/10.38040/JSV14I2.433](https://day.org/10.38040/JSV14I2.433).

<sup>65</sup> "Indonesian Demographic and Health Survey 2017.," Preliminary Report of the Indonesian Demographic and Health Survey 2017., 2017.



**Table 2. 1**  
**Comparison of the proportion of premarital sexual behavior of**  
**adolescents in 2012 & 2017**

Age range	Year 2012	Year 2017
Male (15-19 years)	4,5%	3,6 %
Female (15-19 years old)	0.7%	0,9 %
Male (20-24 years old)	3.8%	4%
Female (20-24 years old)	1,6%	2,6 %

Source: results of SDKI (Indonesian Demographic and Health Survey)

2017.

Looking at this phenomenon, contraceptives for adolescents can be an important solution. However, a major challenge in its provision is the lack of adequate sexuality education, which is often under-provided in an educational or family setting. Adolescents who do not have sufficient knowledge about contraceptives are at higher risk of engaging in risky promiscuous behaviors, both in terms of pregnancy and transmission of sexually transmitted diseases. Comprehensive sexual education can reduce teenage pregnancy rates and sexually transmitted disease infections.<sup>66</sup>

Adolescents are vulnerable in terms of physical and emotional development, so they often lack understanding of the consequences of sexual intercourse at a young age. This is because adolescence is still in the stage of

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<sup>66</sup> Mazroatun Nisrin et al., "Sexual Education: An Urgent Need in the Midst of the Development of Technology and Information," *Progressive* 2, no. 1 (May 31, 2024): 6.

physical and psychological development so it requires extra attention in terms of reproduction and knowledge related to contraception so as not to cause long-term negative impacts. The use of contraceptives in adolescents and school-age children is crucial in language because in addition to being in contact with health aspects, it also comes into contact with social, cultural, and religious norms that apply in Indonesia.

The provision of contraceptives for adolescents and school-age should be understood not only as a medical policy, but also as a legal policy that aims to protect adolescent reproductive health. As part of the law's purpose, this policy does provide benefits by supporting the achievement of a better quality of life for adolescents, as well as protecting their right to access safe and affordable reproductive health services. However, giving to adolescents in general can result in problems of free sex or in religion, including adultery among adolescents. Therefore, the provision of contraceptives with proper sexual education and education, the new state can be said to create a healthier, more effective, and productive society, which is in accordance with the principle of legal goals in achieving social welfare.<sup>67</sup>

Understanding the context and purpose of the contraceptive provision article must be interpreted with regard to the specific needs of adolescents. The policy of providing contraceptives to adolescents does not only revolve around providing access to contraceptives, but must also consider adequate

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<sup>67</sup> Oman Sukmana, "The Concept and Design of the Welfare State," *Journal of Sospol*, 2016, " *Sospol* 2, no. 1 (2016): 110, <https://doi.org/10.22219/sospol.v2i1.4759>.

sexual education for adolescents. This is important because without a sufficient understanding, the provision of contraceptives can be at risk of misuse or not providing the desired results. This article should therefore ensure that adolescents have access not only to contraceptives, but also to information that is correct and appropriate for their age.

## **2. The Basis of Thought for the Provision of Contraceptives for Adolescents.**

The policy of providing contraceptives for adolescents and school-age children in Indonesia is based on several fundamental aspects, namely social and cultural aspects, health, and human rights (HAM). A policy that will be carried out by the community must have a legal basis so that there is legal certainty in it. The regulation that regulates reproductive health and more specifically adolescent contraception is Government Regulation No. 28 of 2024 concerning the implementation regulations of the Health Law. This is an implementation regulation that discusses more specifically related to reproductive health, including adolescents.

In fact, this new policy raises the main consideration in its formulation, considering the controversy related to the implementation of this regulation in society. If you look at other broader regulations, adolescent and child health matters are also listed in Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection<sup>68</sup> which emphasizes the importance of providing health protection for children, including in terms of

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<sup>68</sup> "Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection," Pub. L. No. Statute Book of the Republic of Indonesia No. 297 of 2014 and Supplement to Statute Book No. 5606 (t.t.).

reproductive health. In addition, WHO as the global health coordinator also recommends providing access to contraceptives for adolescents as part of efforts to prevent unwanted pregnancies Realize sexual and reproductive health rights.<sup>69</sup>

The provision of contraceptives for adolescents is legally regulated in Article 103 Paragraph 4 Letter e of Government Regulation No. 28 of 2024<sup>70</sup>, which stipulates that reproductive health services include the provision of contraceptives. This regulation aims to increase access to reproductive health services for vulnerable groups, including adolescents. However, this policy also has the potential to provoke a reaction of freedom in terms of sex among teenagers. This is clearly a concern that it will be contrary to child protection as stated in Article 59 of Law Number 23 of 2002 concerning Child Protection<sup>71</sup> that the state is obliged to protect children from all forms of sexual exploitation, which can be the subject of debate related to the provision of contraceptives for school-age children.

In addition, Law No. 16 of 2019 concerning Marriage<sup>72</sup> has stipulated that the minimum age of marriage is 19 years old. If a person under that age is considered not mature enough to marry, then policies that open access to contraception for adolescents and school-age children can be considered

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<sup>69</sup> WHO, "Coming of age: adolescent health," World Health Organization, diakses 21 Maret 2025, <https://www.who.int/news-room/spotlight/coming-of-age-adolescent-health>.

<sup>70</sup> Article 3 paragraph 4 letter e, Government Regulation Number 28 of 2024 concerning Implementation Regulation of Law Number 17 of 2023 concerning Health.

<sup>71</sup> "Law No. 23 of 2002 concerning Child Protection," Pub. L. No. Statute Book of 2002 No. 109 and Supplement to Statute Book No. 4235 (t.t.).

<sup>72</sup> Article 7, "Law No. 16 of 2019 concerning Amendments to Law No. 1 of 1974 concerning Marriage," Pub. L. No. Statute Book of the Republic of Indonesia of 2019 No. 186 and Supplement to Statute Book of the Republic of Indonesia No. 6401 (t.t.).

contrary to the spirit of marriage age protection. Therefore, in its implementation, this policy must have a clear age limit and a strict supervision mechanism so as not to contradict existing laws.

Referring to the social and cultural aspects, there is also a great influence on the acceptance of this policy in the community. Indonesia is a country with strong social and religious values, where sexual relations before marriage are still considered taboo. In some communities, contraception is often associated with free sex, so this policy could face opposition from conservative groups. This is because it is considered to reduce the ethical and moral values of adolescents.<sup>73</sup> Religious views also play a role in shaping people's attitudes towards this policy. The Indonesian Ulema Council (MUI) and other religious organizations have stated that the provision of contraceptives for adolescents has the potential to be contrary to Islamic teachings.<sup>74</sup>

Universally, health is recognized as a fundamental human right with the achievement of the highest level of health as a global social goal that requires cross-sectoral contributions, not only from the health sector but also from various social and economic sectors.<sup>75</sup> A high health index is one of the main indicators that reflects the progress and success of a country's development. A country that wants to improve the quality of life of its citizens must pay great

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<sup>73</sup> Febian Satya Rabani, "Provision of Contraceptives for Adolescents and School Age," *netralnews.com*, September 26, 2024, <https://www.netralnews.com/penyediaan-alat-kontrasepsi-bagi-remaja-dan-usia-sekolah/ZHkrUFIlV0NDd21BeINOCgtMQzFEQT09>.

<sup>74</sup> David, "MUI Asks for Contraceptive Policy for Adolescents to Be Revoked," *SinPo.id*, August 2024, <https://sinpo.id/detail/78409/mui-minta-kebijakan-alat-kontrasepsi-bagi-remaja-dicabut>.

<sup>75</sup> Rico Mardiansyah, "Legal Political Dynamics in the Fulfillment of the Right to Health in Indonesia," *Veritas et Justitia* 4, no. 1 (28 June 2018): 32–33, <https://doi.org/10.25123/vej.v4i1.2918>.

attention to public health as a fundamental element in creating a productive and prosperous society.

The phenomenon of sexually active adolescents is often at high risk for unplanned pregnancies and sexually transmitted infections. These two things can be an obstacle to the achievement of the concept of a welfare state because women who marry at a young age tend to have low levels of education, which results in low participation in the formal economy, which can trigger the cycle of poverty.<sup>76</sup>

Another consequence of early pregnancy is abortion. As is well known, in Indonesia, abortion itself is not allowed, other than on the grounds of medical emergencies that threaten the lives of mothers and children and rape victims. Meanwhile, other reasons beyond that are not allowed, including pregnancy due to adolescent premarital sexual behavior. Through this contraceptive health service approach, the state seeks to realize inclusive and sustainable health services, so that every citizen can enjoy his or her right to decent health.<sup>77</sup>

The provision of contraceptives for adolescents has the main goal of preventing unwanted pregnancies and reducing the number of sexually transmitted infections (STIs). The WHO has affirmed that access to

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<sup>76</sup> Imam Sukadi, Charles Gustaf Rudolf Banoet, and Zakia Amilia, "Legal Protection of Minors Due to Early Marriage Perspective *Maqashid Syariah*," *EGALITA Journal of Gender Equality and Justice* 19, no. 2 (18 November 2024): 107, <https://doi.org/10.18860/egalita.v19i2.29726>.

<sup>77</sup> Muhammad Asrul Maulana and Java Putri Avrillina, "Health as a Human Right: A Philosophical Perspective on Health Law," *Journal of Contemporary Law Studies* 2, no. 1 (February 1, 2024): 50, <https://doi.org/10.47134/lawstudies.v2i1.2075>.

contraception is an important part of reproductive health services that can help adolescents make more responsible decisions.<sup>78</sup>

Studies show that countries that have wider access to contraception for adolescents experience significant declines in teenage pregnancy rates. For example, in the United States, where contraception is widely available to adolescents who have received adequate sexual education, teen pregnancy rates are lower than in countries that restrict access to contraception.<sup>79</sup> Thus, this policy must also be balanced with comprehensive sexual education, because only providing access to contraception without proper education can cause misunderstandings among adolescents.

The implementation of this policy must be supported by a comprehensive reproductive health education program, both in schools and in the family environment. The provision of contraceptives is a preventive strategy that includes physical, mental, and social well-being, not just the absence of disease. Intervention through the provision of contraceptives, when supported by education and counseling programs, can reduce early pregnancy rates and reduce the risk of transmission of sexually transmitted diseases.<sup>80</sup>

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<sup>78</sup> WHO, "Coming of age: adolescent health."

<sup>79</sup> John. S Santelli dkk., "Explaining Recent Declines in Adolescent Pregnancy in the United States: The Contribution of Abstinence and Improved Contraceptive Use," *American Journal of Public Health* 97, No. 1 (January 2007): 155, <https://doi.org/10.2105/AJPH.2006.089169>.

<sup>80</sup> "Adolescent Reproductive Health, a Classic Thing That Is Rarely Disturbed – Development Counseling and Communication Study Program," accessed March 2, 2025, <https://pkp.pasca.ugm.ac.id/2024/04/10/kesehatan-reproduksi-remaja-hal-klasik-yang-jarang-diusik/>.

The provision of contraceptives is not only seen as a technical effort to reduce the number of unwanted pregnancies, but also as a form of respect for individual autonomy. In this case, every adolescent has the right to accurate information and quality reproductive health services to help them make independent and responsible decisions.<sup>81</sup> As a preventive measure designed to prevent the negative impacts that can arise from early pregnancy, a cultural and religious value-based approach can be applied in educational programs to avoid misunderstandings about the purpose of providing contraceptives.<sup>82</sup>

The dynamics of modern society characterized by the advancement of information technology and the flow of globalization have brought significant changes to the mindset and behavior of adolescents.<sup>83</sup> Information about sexuality and reproductive health is now very easily accessible, which sometimes leads to ambiguity and confusion among adolescents. This requires policies that are responsive and adaptive to the changing times, so that the provision of contraceptives must be balanced with a comprehensive sexual education program based on human values.

It is undeniable that the challenges in implementing the policy of providing contraceptives for adolescents cover various aspects, ranging from limited

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<sup>81</sup> Diana Dayaningsih et al., "Health Counseling for Adolescent Women on Adolescent Reproductive Health," *ASPIRATION : Publication of the Results of Community Service and Activities* 1, no. 3 (31 Mei 2023): 7, <https://doi.org/10.61132/aspirasi.v1i3.722>.

<sup>82</sup> Yasinta Dewi Kristianti and Trisna Budy Widjayanti, "The Relationship of Knowledge About Adolescent Reproductive Health with Risky Sexual Behavior in Adolescents, *Health Scientific Journal*, 2021," t.t., 23.

<sup>83</sup> Nisrin et al., "Sexual Education," 49.



resources to cultural resistance that is still inherent in some circles.<sup>84</sup> Therefore, this policy is expected not only to be able to overcome technical problems in the field of reproductive health, but can also be implemented in conjunction with a comprehensive sex education program, where reproductive health literacy is improved through counseling in schools and communities. Inadequate sex education contributes to the spread of misinformation that can be harmful.<sup>85</sup>

The legal basis for the provision of contraceptives for adolescents and school-age children in Government Regulation Number 28 of 2024 concerning the implementation regulations of the Health Law in Indonesia is a crucial and complex issue, especially in terms of reproductive health. This is based on strategic thinking, both in terms of public health and the fulfillment of adolescents' rights to get the right health services. The background of the creation of a service to provide contraceptives for adolescents and school-age children, refers to the reproductive health rights of adolescents and children.<sup>86</sup>

Overall, the foundation of this thinking is rooted in the fact that adolescents and school-age children are a vulnerable group to reproductive health problems, including unplanned pregnancies, sexually transmitted diseases, and risky sexual behaviors that pose serious threats in the future.<sup>87</sup>

The urgency of protecting the reproductive health of children and adolescents opens the eyes that government policies are very necessary to

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<sup>84</sup> Hardiani et al., "The Relationship between Socio-Cultural Values and Contraceptive Use in Early Marriage Women," 60.

<sup>85</sup> Nisrin et al., "Sexual Education," 6.

<sup>86</sup> Mardiansyah, "Legal Political Dynamics in the Fulfillment of the Right to Health in Indonesia," 65.

<sup>87</sup> Sarlito Sarwono dan Sarlito W, *Adolescent Psychology*, vol. 5 (Stikes Nurul Jadid: Rajawali Press, 2011), 8.

achieve welfare. This is because health is the basis for achieving welfare, so that obtaining adequate health services is a basic need as well as the right of every citizen.<sup>88</sup>

The basis of this thinking does not always run smoothly when implemented in society. The main obstacle faced is social stigma and religious norms that are still valid in society, so the emergence of this article will form a mindset of sex legalization in adolescents and school-age children or referred to as adultery.

### **3. Juridical Analysis of Article 103 Paragraph 4 Letter E of Government Regulation Number 28 of 2024 concerning Regulations for the Implementation of the Health Law.**

Government Regulation Number 28 of 2024 as an implementing regulation that supports the objectives of Law Number 17 of 2023 concerning Health by providing a more detailed framework for the implementation of health services in Indonesia.<sup>89</sup> As a follow-up, the existence of this PP is expected to be able to be a solution to various health problems that have not been handled optimally. Some of the main issues that are of concern are the dominance of curative approaches in health services that need to be balanced with promotive and preventive approaches, the distribution and availability of health human resources (HR) that are still uneven, readiness to face health crises such as

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<sup>88</sup> Budi Setiyono, "The Need to Revitalize Health Insurance Policy in Indonesia," *Politics: Journal of Political Science* 9, no. 2 (4 October 2018): 45.

<sup>89</sup> Baroto AW, "Presumed Consent for High-Risk Medical Actions in Emergencies: Perspective of Law Number 17 of 2023," *Journal of Health Law and Ethics*, 2023, 73, <https://doi.org/10.30649/jhek.v3i2.131>.

pandemics, and the need to strengthen Indonesia's independence in the pharmaceutical and medical device sectors.<sup>90</sup>

Efforts in making determinations related to the provision of contraceptives to adolescents in Government Regulation can be interpreted through the Regulation of the Minister of Health No. 21 of 2021 that adolescent health is included in the sexual health service program which is carried out through social skills, communication and education, counseling, examination and treatment, and treatment. The implementation of reproductive health efforts as stipulated in Government Regulation Number 28 of 2024 concerning the Implementation Regulation of the Health Law which was passed with the aim of improving public health services, especially promotive and preventive services.<sup>91</sup>

Every legislation should have a clear goal to achieve common welfare. The author analyzes by interpreting the meaning contained in article 103 paragraph 4 of Government Regulation Number 28 of 2024 concerning Regulations for the Implementation of the Health Law. So that it can be known later that the wide benefits of this regulation for all people, especially adolescents, in overcoming their reproductive health in accordance with the existing legal goals. This is done because in building laws to be in accordance with Indonesia's values and social structure, it requires a critical attitude and open thinking.<sup>92</sup>

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<sup>90</sup> Again Prio and Santoso, *Health Law* (Trans Info Media, Jakarta, 2020), 2.

<sup>91</sup> Salim, "Examining the Polemic of PP Number 28 of 2024, Check out the Controversial Articles." 2024

<sup>92</sup> Imam Sukadi, "(The Powerless of Law in the Process of Law Enforcement in Indonesia)" 7 (2011): 50.

Article 103 Paragraph 4 in Government Regulation No. 28 of 2024 on the implementation of the Health Law<sup>93</sup> states that reproductive health services include early detection of diseases, treatment, rehabilitation, counseling, and the provision of contraceptives. This regulation is part of the government's efforts to improve access to reproductive health services, especially for vulnerable groups such as adolescents and school-age children. However, in its implementation, this provision has given rise to various interpretations and controversies, especially related to the age limit and its potential impact on applicable social and legal norms.

One of the main drawbacks of this article is the absence of a clear age limit for contraceptive recipients. This regulation does not explicitly mention the age group that is entitled to receive contraceptive services, so it can be interpreted that adolescents or even school-age children are also included in the scope of recipients of this service. This has caused debate because Law No. 35 of 2014 on Child Protection<sup>94</sup> clearly defines a child as an individual under the age of 18. If this policy does not provide a strict age limit, it has the potential to cause overlap with the legal provisions that govern child protection. The fundamental question that then arises is whether children under 18 can obtain contraceptives without parental consent, as well as how the state ensures that this policy does not conflict with the principles of child protection that have been set out in other regulations.

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<sup>93</sup> Article 3 paragraph 4 letter e, Government Regulation Number 28 of 2024 concerning Implementation Regulation of Law Number 17 of 2023 concerning Health.

<sup>94</sup> Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

A policy made by the government as a reference for the community will have a big impact on the community. Looking at the purpose of the benefits of a policy, the policy of providing contraceptives will be seen by measuring how much happiness and suffering will have an impact on not only adolescents but also the entire community. Thus, it is necessary to consider and review first through the stages of public involvement, legal basis, goals, success benchmarks and suitability with other policies.<sup>95</sup>

Determining health services in the form of contraceptives aimed at adolescents and school age needs to be based on actual conditions so that the success of the policy can be taken into account, so that the benefits of this policy can be known. The provision of contraceptives for adolescents and school age as stipulated in Article 103 paragraph 4 letter e of Government Regulation Number 28 of 2024 is intended to improve the degree of reproductive health of adolescents. If you look at the phenomenon of juvenile delinquency that causes unwanted pregnancy to the transmission of reproducible disease infections, this policy is a solution to prevent the above impacts. However, there are six indicators used to measure the success of this policy, namely:

1. Looking at the interests that are affected, this policy has an influence on the reproductive health of adolescents. The provision of contraceptives for adolescents and school age is a solution to the risk of impacting

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<sup>95</sup> Inggal Ayu Noorsanti Ristina Yudhanti, "The Usefulness of Jeremy Bentham's Law Relevance to Government Policies through Direct Cash Assistance for Village Funds," *Sultan Jurisprudence: Journal of Legal Research* 3, no. 2 (t.t.): 189.

adolescents. In addition, this policy will affect the government's interests to be able to ensure national health.

2. The desired degree of change from this policy can be seen in the target. This policy is appropriate and provides happiness when targeted at teenagers who want to delay pregnancy because of the education they want to pursue or immature readiness to become a mother. It will tarnish the value of happiness if this policy is targeted at adolescents who are not married and have not yet had the right to have sexual relations. So that measuring at the target targets referred to in this article, the benefits achieved will not be maximized later and even become unfair.
3. The resources that will assist in implementing this policy must be commensurate with the expected target. However, looking at the limited knowledge related to reproductive health and contraceptives in the community, this policy does not provide certainty of equal success.

The interpretation theory approach is also used to interpret the text of the article by considering the broader context and purpose of the law.<sup>96</sup> In this case, the researcher reviews with grammatical and teleological interpretations to explore the considerations underlying the preparation of the article in the form of sociological reasons. This approach allows interpretation to stick not only to the text alone, but also to understand the true intent that the legislator is trying to achieve.

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<sup>96</sup> E. Fernando M. Manullang, "The Misinterpretation of Gustav Radbruch's Idea of the Philosophical Doctrine of Validity in the Formation of Law," *Invite: Legal Journal* 5, no. 2 (30 December 2022): 34, <https://doi.org/10.22437/ujh.5.2.453-480>.

The government views the provision of contraceptives as relevant and urgent, considering data that shows the high rate of teenage pregnancy in Indonesia, as well as the increasing cases of sexually transmitted diseases (STDs), especially HIV/AIDS which attacks this age group. According to data from the Ministry of Health, the number of reported HIV patients is 13,279 people out of 1,230,023 people who are tested for HIV and 18% are from the age group of 20-24 years or late adolescents. Meanwhile, the number of reported AIDS cases was 4,188 people and 2% from the age group of 15-19 years and 27% from the age group of 20-29 years or late adolescents.<sup>97</sup>

Looking at the above phenomenon, reproductive health policies in the form of contraceptives if aimed at adolescents and school-age children should be studied textually to find out the literal meaning in them. Grammatical interpretation is carried out by referring to the literal meaning of the words contained in the article. The terms "provision of contraceptives" and "adolescents" in article 103 of Government Regulation No. 28 of 2024 concerning the Implementation of the Health Law are one of the keywords that require a deeper understanding.

Textually, the word "adolescent" is defined as an individual with an age range of 12-24 years according to the WHO. On the other hand, the Ministry of Health argues that adolescents are in the age range of 10-18 years and school age is under 18 years old.<sup>98</sup> Meanwhile, according to the Population and Family

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<sup>97</sup> Ministry of Health, *Executive Report on the Development of HIV AIDS and Sexually Transmitted Diseases (PIMS) in 2023*.

<sup>98</sup> Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection.

Planning Agency (BKKBN), the age range for teenagers is 10-24 years old and unmarried. Children and adolescents are considered adults (apart from having reached puberty in Islamic law), because they have already been married.

According to civil law, a child is categorized as an immature legal subject and incapable of law, so that in civil matters children in carrying out legal actions are under guardianship/guardianship. However, a child who enters into a marriage even though he is still under 18 years old (the age requirement according to Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage is 19 years old), then the child is automatically considered to be an adult and legally capable, so that he can carry out legal acts for and on his own behalf.<sup>99</sup> The diversity of adolescents and school-age children causes, this article should mention more specifically the age target in question.

Thus, the provision of contraceptives will be known to be used as a facility or only as a provider of education or information about reproductive health and contraceptives. Textually, the provision of contraceptives in this article requires the following:<sup>100</sup>

1. Provision of services that include the provision of contraceptives as part of a series of reproductive health efforts.

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<sup>99</sup> Nazmina Asrimayasha Nugraha, Sonny Dewi Judiasih, and Elis Nurhayati, "The Maturity Status of Children Who Enter Into Underage Marriage in the Making of Marriage Agreements in Notary Practice in Indonesia," *Acta Journal of Notary Law* 4, no. 1 (31 December 2020): 116, <https://doi.org/10.23920/acta.v4i1.518>.

<sup>100</sup> "Adolescent Reproductive Health, a Classic Thing That Is Rarely Disturbed – Development Counseling and Communication Study Program."



2. Conveying that contraceptives are equivalent components to other services such as early detection, treatment, rehabilitation, and counseling within the framework of reproductive health services.

This policy needs to be reviewed from the final goal to be achieved to find out the direction of interpretation based on benefits, prevention of narrow interpretation, and the relationship with the legal system as a whole. By focusing on the final goal, as an effort to identify the main objectives of the law, namely the achievement of reproductive health protection and prevention of health risks among adolescents. Thus, the provision of contraceptives is not only to fulfill administrative obligations, but aims to protect adolescents' reproductive health rights, prevent unwanted pregnancies and reproductive health and encourage education and awareness about reproductive health through integrated services.

In addition, this policy needs to be studied with a teleological interpretation. A method of interpretation that requires that each provision be understood by prioritizing the public interest or looking at it from a sociological perspective. This means that if there is ambiguity and multiple interpretations in the text of the article, then the interpretation chosen is the closest to the creator's goal, which is to provide maximum benefits for adolescents and school-age children and reduce the potential negative impact that can arise due to narrow or deviant interpretations from public health objectives.

One of the main functions of the teleological approach is to prevent interpretations that only prioritize narrow text meanings. Such an interpretation has the potential to ignore the strategic values to be achieved, such as efforts to

prevent early pregnancy, increase access to reproductive health information, and protection for adolescents from health risks. By emphasizing purpose and benefit, the teleological interpretation encourages that each provision be understood as part of an effort that supports overall health policy.

The teleological approach also places the article in the context of a broader legal system. This means that the purpose of providing contraceptives must be in line with the general legal principles underlying national health policy, such as justice, utility, and legal certainty. This ensures that any resulting interpretation not only meets technical objectives, but is also harmonious with the prevailing constitutional principles and social norms.

To begin the teleological interpretation of the provision of contraceptives for adolescents and school-age children in the provisions of article 103 paragraph 4 letter e of Government Regulation No. 28 of 2024 concerning the implementation regulations of the Health Law<sup>101</sup>, it is necessary to look at the sociological reasons for the establishment of this policy. The sociological foundation of this regulation is the purpose of its formation as a health transformation step. The sociological foundation is empirical facts related to the problems and needs of society.<sup>102</sup> This step is needed to build a resilient, independent and inclusive Indonesian health architecture.

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<sup>101</sup> Article 3 paragraph 4 letter e, Government Regulation Number 28 of 2024 concerning Implementation Regulation of Law Number 17 of 2023 concerning Health.

<sup>102</sup> Nafiatul Munawwaroh, "The Meaning of Philosophical, Sociological, and Juridical Foundations," Hukumonline Clinic, June 20, 2024, <https://www.hukumonline.com/klinik/a/arti-landasan-filosofis--sosiologis--dan-yuridis-lt59394de7562ff/>.

In more detail, this regulation regulates it related to the organizer of health efforts, technical aspects of health services, management of medical personnel and health workers, health service facilities, as well as technical health supplies and the resilience of the affirmation of medical devices. The stability of the health sector is a consideration or reason that illustrates that this regulation was formed to achieve a higher degree of health. So in essence, the provision of contraceptives as a form of reproductive health services is the provision of access to information and the contraceptive itself.

Looking at Law Number 17 of 2023 concerning Health as the main basis that establishes the right of every citizen to quality health services, including reproductive health. This law affirms the state's commitment to providing comprehensive health services. In Law Number 17 of 2023 concerning Health, as stated in Article 1 of Law Number 17 of 2023 concerning Health, it states "that every citizen has the right to quality health services, so that it is the basis for protection of reproductive health rights."<sup>103</sup> It is strengthened by Article 5 that "regulates the implementation of comprehensive health services, including preventive efforts through the provision of reproductive health services."<sup>104</sup>

Efforts to improve the degree of reproductive health were then implemented through Government Regulation Number 28 of 2024. The PP details the implementation procedures and operational mechanisms, one of which is the

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<sup>103</sup> Article 1, "Law No. 17 of 2023 concerning Health," Pub. L. No. Statute Book of the Republic of Indonesia No. 105 of 2023 and Supplement to Statute Book of the Republic of Indonesia No. 6887 (t.t.).

<sup>104</sup> Article 5, "Law No. 17 of 2023 concerning Health," Pub. L. No. Statute Book of the Republic of Indonesia No. 105 of 2023 and Supplement to Statute Book of the Republic of Indonesia No. 6887 (t.t.).

provision of contraceptives as part of reproductive health services. Article 103 paragraph 4 letter e specifically stipulates that one of the minimum components in reproductive health services is the provision of contraceptives for adolescents and school-age children. This article emphasizes that contraceptives should be provided as part of efforts to prevent reproductive health risks.

In addition to understanding the article textually, it is also necessary to interpret the article in relation to other laws and regulations relevant to Government Regulation Number 28 of 2024. This is so that articles are not seen in isolation, but as an integral part of the entire legal system. This is because, lower regulations are contrary to higher regulations, so these regulations can be canceled, either in whole or only partially, so as not to cause legal uncertainty and still maintain harmony in the legal system.<sup>105</sup>

In this regard, related regulations such as Law Number 16 of 2019 concerning Marriage and Law Number 52 of 2009 concerning Population and Family Planning also make an important contribution to the formation of a normative framework. The 2019 Marriage Law regulates the legal status of marriage, which has implications for the determination of the target group of reproductive health services, while the Population and Family Planning Law 2009 establishes family planning policies to prevent unwanted pregnancies.

Looking at its conformity with other norms, this Regulation is not in line with other laws and regulations, namely Law No. 16 of 2019 concerning

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<sup>105</sup> Muhammad Yusrizal Adi Syaputra, "Juridical Study of the Hierarchical Affirmation of Laws and Regulations in Indonesia in the Perspective of Stufen Theori," *Mercatoria Journal* 9, no. 2 (7 June 2016): 97, <https://doi.org/10.31289/mercatoria.v9i2.433>.

marriage, where in this Law states in article 7 paragraph (1) that "Marriage is only allowed if a man and a woman have reached the age of 19 (nineteen) years."<sup>106</sup> So that the provision of contraceptives that lead to adolescent sexual behavior and early marriage is not in line with the age of marriage license for men and women is 19 years old. The age of 19 is considered mature in psychological and health aspects to get married and is no longer tied to education in school.<sup>107</sup> The presence of the point of "providing contraception" for teenagers and school age seems to be a solution for people who get married in adolescence/school.

If it is connected to the insynchronization between Government Regulation Number 28 of 2024 and Law Number 16 of 2019 concerning marriage, it can be seen that there is a potential conflict in arrangements related to sexual relations and the provision of contraceptives to adolescents. The Marriage Law clearly states that sexual relations can only be performed by legal couples, i.e. those who have been legally married by religion and officially registered by the state. On the other hand, Article 103 paragraph (4) letter e of Government Regulation No. 28 of 2024 opens up opportunities to provide contraceptives to adolescents, including students, without expressly distinguishing their marital status. This provision can be indirectly interpreted as recognition or tolerance of sexual

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<sup>106</sup> Article 7, Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage.

<sup>107</sup> Mir'atul Firdausi, Tiyan Iswahyuni, and Aufi Imaduddin, "The Age Limit for Marriage According to Law Number 16 of 2019 concerning Marriage in Protecting the Reproductive Health of Adolescents Reviewed from Maqashid Sharia," *The Indonesian Journal of Islamic Law and Civil Law* 5, No. 2 (28 October 2024): 248–64, [HTTPS://due.org/10.51675/egil](https://due.org/10.51675/egil).

relations outside of marriage, which is contrary to the basic principles in the Marriage Law.<sup>108</sup>

In addition, the target of legally positive contraceptives is allowed only for married teenage couples. This can be seen in Law Number 52 concerning Population and Family Planning 2009 which regulates birth arrangements to improve the quality of the family, as stated in article 4 paragraph 2 that "Family development aims to improve the quality of the family so that a sense of security, peace, and hope for a better future can arise in realizing birth welfare and inner happiness."<sup>109</sup> So that the norms contained in it are intended for teenagers in family ties.

Responding to the confusion of this article, some experts also argue such as Djubaedah that the diction in the article will cause a wrong perception if there is no explanation, which is very crucial in society.<sup>110</sup> The government through the Vice President of the Republic of Indonesia in its clarification emphasized that the rule applies to married teenagers.<sup>111</sup> The unclear age limit in this regulation has the potential to cause legal uncertainty, so that it can affect the effective implementation of the policy.

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<sup>108</sup> Editorial, "Aisyiyah Says PP No. 28 of 2024 Is Out of Sync with Law No. 1 of 1974 concerning Marriage," *Information for the Ummah* (blog), August 17, 2024, <https://maklumat.id/aisyiyah-sebut-pp-no-28-tahun-2024-tidak-sinkron-dengan-uu-no-1-tahun-1974-tentang-perkawinan/>.

<sup>109</sup> Article 4 paragraph 2, "Law No. 52 of 2009 concerning Population Development and Family Development," Pub. L. No. Statute Book of the Republic of Indonesia No. 161 of 2009 and Supplement to Statute Book No. 5080 (t.t.).

<sup>110</sup> MUI-Islamic Ulema Council, "PP 28 of 2024 and Problematic Contraceptive Regulations, Here's the MUI Kumham Record."

<sup>111</sup> "Life Cycle, Ministry of Health of the Republic of Indonesia," accessed January 16, 2025, <https://ayosehat.kemkes.go.id/kategori-usia/remaja>.

Government policy through Government Regulation No. 28 of 2024 concerning Health Services, is oriented towards preventing unwanted pregnancies and the spread of sexually transmitted diseases (STDs) among adolescents. These two goals are particularly relevant considering data showing the high rate of teenage pregnancy in Indonesia, as well as the increasing cases of sexually transmitted diseases. While the goals of this policy are good, it is important to consider whether the provision of contraceptives as a single solution is effective enough in the absence of other more comprehensive efforts.

The Director of Reproductive Health Development of BKKBN, revealed that the adolescent birth rate in the average fertility rate of specific age (ASFR) in women aged 15-19 years reached 20.49 per 1,000 women of childbearing age in 2021. And it increased in 2022 to 26.64 per 1,000. This proves that the high rate of teenage pregnancy in Indonesia is a serious health issue.<sup>112</sup> Seeing this increase, the birth of the contraceptive provision policy is expected to serve as an important preventive measure to protect adolescents from the risk of unwanted pregnancy and sexually transmitted disease infections. Article 103 Paragraph 4 letter e can be seen as an indispensable progressive effort to mitigate harmful health risks. Contraceptives, in this case, have the potential to provide direct protection to sexually active adolescents, thereby reducing the likelihood of unwanted pregnancies and the negative impacts they can have, both physically and socially.

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<sup>112</sup> "BKKBN: Birth rate in adolescents aged 15-19 years increases - ANTARA News," accessed February 25, 2025, <https://www.antaranews.com/berita/3631623/bkkbn-angka-kelahiran-pada-remaja-usia-15-19-tahun-alami-kenaikan>.

The objectives of this policy do have an important impression, but it is necessary to reconsider whether the provision of contraceptives as a single solution is effective enough to achieve this goal. As a preventive measure, providing access to contraceptives can indeed reduce the chances of pregnancy and STDs, but this does not guarantee a comprehensive change in adolescent behavior. Other factors such as comprehensive sexual education, increased awareness of the consequences of sexual relations outside of marriage, as well as an understanding of the importance of maintaining reproductive health, also play a very important role.

From a social point of view, the existence of this article must lead to benefits, so that it can be understood whether it will bring broad social benefits or actually cause division. If this article is applied with social morality in mind, the benefits could be greater, because the law can be more accepted by society. On the other hand, if it does not take into account the religious and moral views of the Indonesian people, this article could trigger social tensions, which will obviously reduce the social benefits intended by the law.<sup>113</sup>

Textually, by referring only to the words in it without considering the existing social and moral context, this chapter can be very confusing and controversial. Because the text "provision of contraceptives" in the case of adolescents can be considered to legalize behaviors that are prohibited in religion, such as adultery, which is very contrary to the religious values of the

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<sup>113</sup> Yustinus Surhardi Ruman, "Social Order, Norms and Laws: A Sociological Explanation," *PRIORIS Law Journal* 2, no. 2 (13 Mei 2016): 106, <https://doi.org/10.25105/prio.v2i2.328>.



majority of Indonesian people. So that its application can risk creating tension between positive laws and religious norms and community ethics.<sup>114</sup> Furthermore, this can result in a decrease in the level of public trust in the legal system.

Government Regulation No. 28 of 2024 as a law that applies to society, it is necessary to pay attention to the relationship between law, morals and religion. A person who adheres to religion tends to have good morals and obey the law, because basically every religion teaches goodness and prohibits bad or evil actions against others. The link between religion and morality is very strong, because each religion provides behavioral guidance for its people.<sup>115</sup>

Based on this, it can be concluded that the regulation of the substance of Article 103 paragraph (4) letter e PP no. 28 of 2024 does not achieve benefits. Thus, in the provision of contraceptives for school-age and adolescents, the main consideration is whether the norm is in line with applicable social and religious principles and whether the government's actions are in accordance with the mandate to protect the best interests of schoolchildren and adolescents. In line with this, law professor Satjipto Rahardjo stated that the law should not just be a tool for controlling behavior, but should also reflect the best interests of vulnerable groups such as children and adolescents.<sup>116</sup>

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<sup>114</sup> Romania, 107.

<sup>115</sup> Imam Suprayogo, "Religion Nurtures and Guides the Heart," 2016, <https://uin-malang.ac.id/r/160301/agama-memelihara-dan-memberi-petunjuk-pada-hati.html>.

<sup>116</sup> Satjipto Rahardjo, *Legal Sciences* (Bandung: PT Citra Aditya Bakti, 2000), 65.

In the concept of a welfare state (*welfare state*), Indonesia as a state of law is responsible for the welfare of its people<sup>117</sup>. With the dynamics of adolescent sexual behavior that causes the potential risk of unwanted pregnancy or the spread of sexually transmitted diseases, it will affect a person's education, socioeconomic future, and physical and psychological health. Based on this, as a welfare state for its citizens is a concrete form that requires the active involvement of the state as a step to realize public welfare, in addition to maintaining order and security.<sup>118</sup>

Based on the explanation above, the author argues that this article risks multiple interpretations and opens up opportunities for policy abuse, where contraceptive services can be used inappropriately in accordance with the original purpose, for example as a justification to facilitate free sexual behavior among adolescents. The concern that such ambiguity not only opens up space for distorted interpretations, but also has the potential to erode moral values and moral norms that have been upheld.

Therefore, it is very important to immediately revise Government Regulation No. 28 of 2024, to ensure that the policies implemented are truly in line with the spirit and principles contained in the higher Law, as well as with the moral values that live in Indonesian society. This revision aims to create alignment between public policy and the prevailing legal system, ensuring that existing regulations not only support the improvement of adolescent

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<sup>117</sup> Sukmana, "The Concept and Design of the Welfare State," *Journal of Sospol*, 2016.

<sup>118</sup> Imam Sukadi, Gatot Sapto Heriyawanto, and Mila Rahayu Ningsih, "Legal Protection of Abandoned Children in the Perspective of the Welfare State," *QAWWAM : Journal for Gender Mainstreaming* 14, no. 2 (2020): 30, <https://doi.org/10.20414/qawwam.v14i2.2876>.

reproductive health, but also respect and maintain existing social and cultural sustainability.

## **B. Analysis of Article 103 Paragraph 4 Letter E of Government Regulation**

### **Number 28 of 2024 concerning Implementation Regulations of Law**

### **Number 17 of 2023 concerning Health from the Perspective of *Maqashid***

### ***Syariah Ash-Syatibi***

The rapid development of sharia maqashid makes it one of the standards of Islamic law legislation, so that it is in line with the purpose of Islamic legislation, which is to achieve benefits and eliminate harm (*Dar al-mafasid wa Jalb al-Manafi*). According to the language, maqashid sharia means the purpose of sharia law. Terminologically, *maqashid* shari'ah can be interpreted as the values and meanings that are aimed at and wanted to be realized by the creator of sharia (Allah SWT) which are researched by the scholars of mujtahid from the existing sharia nash-nash.<sup>119</sup>

This proves that every act done by every sensible human being must have a purpose and purpose. Referring to the expression of a figure who reformed ushul fiqh, namely As-syathibi in his book *Al-Muwafaqat*, discussing maqashid shari'ah with the discussion of maslahat as a very important part.<sup>120</sup> So that the shari'a is determined for the benefit of humans in general and personally, both in this world and in the hereafter.

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<sup>119</sup> Auda Jaser, *Fiqh Al-Maqāṣid Ināṭat Al-Ahkām Bi Maqāṣidihā*. Herndon: IIIT, 2007., 2007, 15.

<sup>120</sup> Abd al-Qadir Ibn Hirz Allah, *Dawabit l'tibar al-Maqashid fi Mahal al-Ijtihad wa Athruha al-Fiqhiyyi* (Riyadh: Maktabah al-Rushd., 2007), 179.

Based on this, *maqashid sharia* is used as one of the methods of applying the law to review the extent of *maslahah* and *mudharat* that will have an impact on the existence of a policy issued by the government. So, the researcher will discuss a government policy, namely Government Regulation Number 28 of 2024 concerning Implementation Regulations of Law Number 17 of 2023 concerning Health, especially in terms of the provision of adolescent contraceptives through the perspective of *sharia maqashid*.

Government Regulation No. 28 of 2024 is an implementation regulation that contains further provisions of reproductive health efforts carried out by the government in order to raise the standard of health in Indonesia. One of the written health efforts is related to the reproductive health of adolescents and school-age children or students with the provision of contraceptives. Based on this, the answer to anxiety is whether the effort if aimed at teenagers and children of student age will be in accordance with the principles of *maqashid sharia* or not. Then the researcher will discuss several aspects of the use of contraceptives and analyze them with *sharia maqashid* to achieve the level of goodness and usefulness.

Contraceptives as a form of the government's efforts to overcome reproductive health problems, especially for adolescents and students, are motivated by the high rate of pregnancy and sexual diseases that occur among adolescents.<sup>121</sup> So that the complexity of the problem of adolescence is considered to affect the development process, especially human development in

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<sup>121</sup> Putra, "PP 28/2024," August 8, 2024.

the health sector. This is based on the long-term need for human resources in order to achieve national development in the Republic of Indonesia.<sup>122</sup>

Policies issued by the government should give birth to the benefit or welfare of the people, where an integral part of a legal system is the recognition of human benefits in this world and in the relative hereafter. The current social phenomenon needs to be juxtaposed with the maqashid sharia method to be followed by all elements of society, both Muslim and non-Muslim. This is because there are 3 corresponding characteristics of Islamic law, namely perfect (*takammul*), harmonious (*wasathiyat*) and dynamic (*harakah*).<sup>123</sup>

To achieve the pillars of sharia maqashid, it is necessary to pay attention to the benefits to be achieved by meeting several conditions, namely:<sup>124</sup>

1. Masalahah must be based on reality and not part of a mere fantasy.
2. The benefits to be achieved are logical
3. In line with the general purpose of sharia
4. Supporting the realization of the needs of daruriyat in the community.

In this context, contraceptives intended for general adolescents will meet the requirements of the first and second benefits, that contraceptives are indeed based on reality and are logical, namely by reason of the increase in pregnancy and sexually transmitted diseases in adolescents. In contrast to the next

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<sup>122</sup> Delia Amanda Iroth, "Legal Aspects of Human Resource Development (HR) According to Law No. 13 of 2003 concerning Manpower," *Lex Crime* 6, no. 2 (March 27, 2017): 128, <https://ejournal.unsrat.ac.id/v3/index.php/lexcrimen/article/view/15353>.

<sup>123</sup> Teungku Mohammed Hasbi Ash Shiddieqy, *Philosophy of Islam*, Sultan Syarif Kasim State Islamic University Library, Riau, cet.1 (Jakarta: Bulan Bintang, 1975), 105.

<sup>124</sup> Acmad muzammil Nasrullah, M.Ag., *MAQASHID SYARIAH Concepts, History, and Methods*, Print I (PT. Nusantara Abadi Group Literacy, Malang, 2023), 7.

conditions, "in line with the goals of the sharia" and "support the realization of the needs of daruriyat."The contraceptive policy for adolescents and students seems to allow adultery as long as it does not endanger health, so it is not in line with the purpose of sharia.

Based on this, in making a regulation that will be followed by the community, the sharia does not allow carelessly but with the concrete aim of realizing the public benefit, benefits and also rejecting the fascism. Thus, things that are contrary to these principles can be said to be contrary to Islamic sharia and vice versa.

The use of contraceptives according to Islam is legally allowed, provided that the purpose of family welfare and maternal health is allowed. This means that the use of contraceptives is intended only for those who are married and is not allowed for those who are not married and without any other medical reason. Even though contraception is allowed for married people, it is only in the state of *dharurat* or danger in the event of pregnancy, both from the health aspects of the mother and child and the economic aspect.<sup>125</sup>

Ash-syatibi's thoughts in his book entitled *al-muwafaqat* are one of the benchmarks for policy-making today. The thinking of asy-syatibi in answering the challenge of social change is with an approach to human welfare or known as maqashid sharia. Substantially, the purpose of Maqashid Sharia is for the

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<sup>125</sup> Zamzam Mustofa, Nafiah Nafiah, and Dyna Prasetya Septianingrum, "The Law of the Use of Contraceptives in the Perspective of Islamic Religion," *MA'ALIM: Journal of Islamic Education* 1, no. 02 (13 December 2020): 101, <https://doi.org/10.21154/maalim.v1i02.2625>.

benefit of mankind based on the main source of Islamic law, namely Nash-nash syara' in the form of the Qur'an and hadith.

According to Imam Syatibi, *maslahah* can be accepted if it has three qualities, namely *daruriyyah*, *hajjiyat*, *tahsiniyat*.<sup>126</sup> *Daruriyat* is considered a basic need for human life that must be fulfilled to achieve the goal (*maqashid*) of the 5th sharia (*Kulliyat Al-khamsah*), namely maintaining religion, safeguarding the soul, maintaining reason, safeguarding offspring and safeguarding property. If one of them is not fulfilled, there will be damage both in this world and in the hereafter. Furthermore, *Maqashid hajjiyat* as a secondary need to eliminate hardship from the life of *the mukallah*. While *Maqashid tahsiniyat* is to perfect the two previous *Maqashids*, which include the perfection of customs, customs, and noble morals.<sup>127</sup>

Scholars have answered the dispute that contraceptives are allowed for couples of childbearing age<sup>128</sup>, in the sense that teenagers who are allowed to use contraceptives are those who are married. Thus, the form of legality of contraceptives for adolescents in general through Government Regulation No. 28 of 2024 is considered to cause adultery among adolescents. Therefore, the provision of contraceptives for adolescents and school-age children is a wrong approach to benefits because it will tarnish one of the principles of *kulliyat al-*

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<sup>126</sup> Safira Azzah Riscilia, Sofiatun Nikma, and Salsa Nysya' Uljannah, "MAQĀSHID SHARI'AH AND ITS IMPLICATIONS FOR THE TAFSIR OF MAQĀSHIDĪ," *Al-Ahwal Al-Syakhsiyah, IAI Al-Qolam Maqashid*, November 2023, 52.

<sup>127</sup> Ahmad Al-Raisuni, *Nadariyât al-Maqâshid Inda al-Imâm al-Shâthibi* (Beirut: Muassasah al-Jami'ah, 1992), 116.

<sup>128</sup> Mustofa, Nafiah, and Septianingrum, "The Law of the Use of Contraceptives in the Perspective of Islamic Religion," December 13, 2020, 85.

khamsah, namely hifz ad-din (safeguarding religion) and hifz nasl (safeguarding offspring).

Although this policy was made with the aim of fulfilling adolescent reproductive health services, on the other hand, the existence of direct access to contraceptives will risk the minds of adolescents and school-age children who consider sexuality as something that can be overcome by relying on safety to prevent all sexual risks that will occur. From the explanation above, it can be understood that the upholding of moral life both in terms of religion and in the world, *maslahah* is needed as a measure of the fulfillment of the welfare of each person.<sup>129</sup> Based on this, the description of the limits of contraceptives touches the primary needs (*daruriyyat*) of adolescents, namely:

1. Taking care of religion (*hifz ad-din*)

Maintaining religion is the main goal of the sharia, with devotion to carry out all deeds and obligations and stay away from the prohibitions of Allah SWT. One of the actions of maintaining religion is to maintain one's honor or called *muru'ah*.<sup>130</sup> The approach to sexual behavior for those who are not married will concern the honor and glory of religion. The legality of contraceptives is not a certainty that it will be able to control the sexual life of adolescents and school-age children.

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<sup>129</sup> Zaenudin Mansyur, "Theoretical Implementation *Maqashid* As-Syatibi in contemporary muama," *JURISDICTION* 11, no. 1 (3 June 2020): 83, <https://doi.org/10.18860/j.v11i1.7675>.

<sup>130</sup> La ode Yadi, "Jamaluddin: Maintaining Honor and Self-Esteem According to Islam," Ministry of Religion of North Sulawesi Province, 2021, <https://sultra.kemenag.go.id/berita/read/510781/jamaluddin--menjaga-kehormatan-dan-harga-diri-menurut-islam>.



Free sex or adultery is included in the category of reprehensible, unethical and dishonorable morals as Allah swt says in surah Al-isra' verse 32:<sup>131</sup>

وَلَا تَقْرَبُوا الزَّوْجَىٰ إِنَّهُ كَانَ فَاحِشَةً وَسَاءَ سَبِيلًا

Meaning: And do not approach adultery, for adultery is an abominable deed and a bad way.(Al-Isra': 32)

Adultery that is included in this heinous act has an impact on the damage to the morals of adolescents and will have an impact on the damage of future generations. The most basic thing for each person is to maintain religion as an individual need should be fulfilled through policies that will be used as guidelines for every person in the state. If a rule contains values that violate the nature of maintaining religion, then the rule should not be implemented.

Contraceptives as written in Government Regulation No. 28 of 2024 article 103 paragraph 4 letter e can trigger free sex or adultery among adolescents and schoolchildren because they do not contain a written explanation regarding their application. The thing that triggers controversy among the public is the word "teenager" so it is necessary to first patent the target teenager intended in this article.

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<sup>131</sup> "Al-Qur'an, Syaamil Al-Qur'an Translates Tafsir Per word, terj. Ministry of Religion of the Republic of Indonesia, Al-Isra' verse 32," t.t.

## 2. Taking care of the soul (hifz nafs)

The soul is one of the most precious gifts, where Islam emphasizes the importance of maintaining the safety of the soul, both one's own soul and the souls of others. This is a basic principle and is enshrined in surah al-baqarah verse 195:<sup>132</sup>

وَلَا تُلْقُوا بِأَيْدِيكُمْ إِلَى التَّهْلُكَةِ

Meaning: "Do not plunge yourselves into destruction." (Al-Baqarah: 195)

The implementation of this PP, if it is generally applicable, both married and unmarried teenagers, cannot meet the target of preserving the soul in question because it will facilitate promiscuity that brings other harms such as abortion due to pregnancy out of wedlock, and this action is an act of taking someone's life.<sup>133</sup>

The use of contraceptives does serve to prevent the spread of sexually transmitted diseases as this tool is echoed in its benefits. However, contraceptives also have a negative impact on a person's mental health. University of British Columbia researchers in their study suggested that the use of hormonal contraceptives in adolescents is 1.7 to three times greater than the likelihood of experiencing clinical depression

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<sup>132</sup> Translation team, *Syaamil Al-Qur'an Translation Tafsir Per Word* (Terj. Ministry of Religious Affairs of the Republic of Indonesia, Al-Baqarah : 195, t.t.).

<sup>133</sup> Mustofa, Nafiah, and Septianingrum, "The Law of the Use of Contraceptives in the Perspective of Islamic Religion," December 13, 2020, 101.

in adulthood.<sup>134</sup> These researchers sparked their study that the use of oral contraceptives during adolescence and its possible relationship with women's long-term susceptibility to depression.<sup>135</sup>

Therefore, this impact is not in line with the goals of adolescent reproductive health as stated in Article 49 of Government Regulation No. 28 of 2024 which states that "Adolescent Health Efforts are aimed at preparing adolescents to become healthy, intelligent, qualified, and productive adults."<sup>136</sup>

### 3. Keeping the mind

Contraception in its contribution to the benefit of maintaining the mind is a correct solution if it is intended for married adolescents. Maintaining reason in Government Regulation No. 28 of 2024 if viewed in terms of its importance, it is included in the *dlaruriyyat* ranking, If this provision is not heeded, it will result in the threat of the existence of reason. In addition, maintaining reason in this case is also included in the level of *tahsiniyyat* needs, to avoid fantasizing about something that is not beneficial such as sexual fantasies when sexual activities occur.

In addition to threatening the existence of reason indirectly, there is also the possibility of sexual activity in adolescents in the future. The

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<sup>134</sup> By staff, "Teens Taking Oral Contraceptives Appear to Have Higher Adult-Depression Rates," diakses 15 Januari 2025, <https://www.uspharmacist.com/article/teens-taking-oral-contraceptives-appear-to-have-higher-adultdepression-rates>.

<sup>135</sup> staff.

<sup>136</sup> " Government Regulation Number 28 of 2024 concerning Implementation Regulations of Law Number 17 of 2023 concerning Health | Directorate General of Pharmaceuticals and Medical Devices."

limitations of adolescent and school-age knowledge related to contraception will affect the success of this tool in adolescents, so the possibility of pregnancy and STI transmission still exists. So the risk of unwanted pregnancy can damage the mind and cause excessive thoughts regarding the impact obtained. So, maintaining this common sense can be fulfilled if the PP on the provision of contraceptives is only applied to married people who are mentally and psychologically not able to have children and are worried that it will result in mental disorders.

#### 4. Taking care of offspring

Contraceptives aimed at adolescents in general, open up opportunities for adultery or promiscuous sex that can risk unwanted pregnancy, or further result in abortion. So that the purpose of protecting offspring is neglected and the existence of offspring will be threatened.

For those married couples who have a history of infectious diseases or hereditary diseases that can result in the destruction of their offspring, then this PP is indeed the solution but this PP can also be harmful to offspring if it is generally enacted (for those who are not married) so that it can motivate the increase of promiscuity among teenagers which one of the consequences is to produce children born out of wedlock with the unclear genealogy of their descendants.

In addition, the side effects of using contraceptives should also be a consideration for future reproductive health. Tubectomy and vasectomy contraceptives, for example, are permanent contraceptives and can cause

infertility to be clearly haram in law. There are also side effects of contraception that cause ectopic pregnancy due to the occurrence of fertilization outside the uterus. This can cause death in babies so that they do not meet the principle of caring for offspring.

#### 5. Taking care of the property

Contraception can be a solution for families who are worried about financial problems due to the presence of children. However, this is still a debate among scholars where some scholars argue that Islam prohibits not wanting to have children for fear of poverty, as stated in surah Al-An'aam verse 151:<sup>137</sup>

لَا تَقْتُلُوا أَوْلَادَكُمْ مِنْ إِمْلَاقٍ نَحْنُ نَرْزُقُكُمْ وَإِيَّاهُمْ

Meaning: And do not kill your children because of poverty. We will give you and them sustenance" (Al-An'am : 151)

Classical scholars prioritize the aspect of maintaining religion over four other aspects which include protecting the soul, intellect, descendants and property, so that maintaining religion must be prioritized and if it has been fulfilled, these benefits will also be achieved.<sup>138</sup> The absence of the limit on adolescents referred to in Article 103 paragraph 4 letter e of Government Regulation Number 28 of 2024 concerning the implementation of the Health

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<sup>137</sup> Translation team, *Syaamil Al-Qur'an Translation Tafsir Per Word* (Terj. Ministry of Religious Affairs of the Republic of Indonesia, Al-An'am : 151, t.t.).

<sup>138</sup> Nurul Afifah, "The Essence of Maqashid Syari'ah in Fiqh Curriculum and Learning," *Filter : Journal of Scientific Research* 1, No. 02 (4 October 2017): 187, [HTTPS://day.org/10.32332/tapis.v1i02.872](https://day.org/10.32332/tapis.v1i02.872).

Law, this is not in line with religious rules that absolutely prohibit promiscuity or adultery.

The absolute evidence that explains that Islam does not require promiscuity (adultery) is surah al-isra' verse 32 where Allah SWT. prohibit adultery and give a stern warning about its consequences because adultery has a bad moral, social, and legal impact. In addition, punishment for adultery perpetrators is also regulated in Islamic law as a form of prevention and learning for the community to maintain purity and self-respect.

The principle of *maqashid shari'ah* is that eliminating *mafsadat* brings benefits, so the main discussion in *maqashid al-shari'ah* is the wisdom and illat of the establishment of a law. If in considering a legal product, the government does not consider the magnitude of the consequences of a law, the primary needs of each citizen will be damaged. According to asy-Syathibi every basis of sharia' that is not supported by a certain text, but is in accordance with the spirit of sharia', then the law is valid to be used as a legal footing. However, if there is one or more shari'a spirit that is defective, it is necessary to re-test the things that cause the damage of certain *maslahah*.<sup>139</sup>

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<sup>139</sup> Muhammad Ali and Abd Al-ati, *Al-Maqâshid al-Shar'iyyah wa atharuhâ fî al-fiqh al-Islamiy, Syathibi, al-Muwâfaqât fî Usul al-Shariah, Juz I, Beirut: Dar al-qutub al-Ilmiyyah* (Cairo: Dar alHadith, 2007), 39.

## **CHAPTER IV**

### **COVER**

#### **A. Conclusion**

1. The regulation on the provision of contraceptives for adolescents and school-age children, as stipulated in Article 103 paragraph 4 letter e of Government Regulation No. 28 of 2024 concerning the implementation regulations of the Health Law, contains ambiguity in norms related to the definitions of "adolescents" and "school-age children." This causes multiple interpretations that have the potential to open gaps for policy abuse, as well as erode existing moral values and social norms.
2. From the perspective of Maqashid Sharia Ash-Syatibi, this policy is not fully in line with the principles of the main purpose of the law to protect the benefit of the people, both in the aspects of religion, soul, intellect, descent, and property. Policy implementation currently still faces various challenges, such as public resistance, lack of understanding of reproductive health, and potential interpretations that deviate from religious values and social ethics.

**B. Suggestion**

1. This regulation should provide a clear definition of "adolescents" and "school-age children" and set strict age limits so that the interpretation of the policy does not miss the original intention.
2. It is recommended that further research be conducted to evaluate the impact of policy implementation as a whole and examine practical solutions to balance efforts to prevent reproductive health problems with the protection of moral and social values.



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