بِسْمِ اللهِ الرَّحْمٰنِ الرَّحِيْمِ

OUTCOME OF THE RELIGIOUS CONSULTATION AT THE SECOND CONGRESS OF INDONESIAN WOMEN ISLAMIC SCHOLARS (KUPI)

No. 08/MK-KUPI-2/XI/2022

CONCERNING

PROTECTION OF WOMEN FROM HARMFUL, MEDICALLY UNJUSTIFIED FEMALE GENITAL MUTILATION (FGM)

1. DESCRIPTION

The male and female sexual organs have different anatomical structures and functions. Women experience week-long menstruation in pain (*adzâ*), pregnancy that lasts about nine months, giving birth that takes hours or days, postnatal bleeding over weeks or months, the exhausting (*kurhan)* task of breastfeeding a baby for 2 (two) years, suffering multiplied pain and exhaustion in never ending succession, time and again *(wahnan alâ wahnin).* The strain of labour (*adzâ, kurhan* and even *wahnan alâ wahnin*) while performing this uniquely female role can take its toll even when the female reproductive organs are in ideal condition. On the other hand, all men do is ejaculate sperm in a matter of minutes, an action that brings them pleasure. These differences in reproductive function result in significant differences in the practices of cutting and/or mutilation of the genitals of the two sexes. In men, the removal of the foreskin enhances the reproductive function. In women, on the other hand, the same procedure can have harmful and even dangerous impact.

The practice of harmful, medically unjustified female genital mutilation (FGM), especially when performed on the clitoris, may cause extensive damage to neural and vascular tissues and lead to immediate and long-term complications (Fadli, 2020). Immediate complications may involve excruciating pain, heavy bleeding, swelling of genital tissues, fever, infection, problems with urination, problems with healing of wounds, damage to tissues surrounding the genitalia, shock and even death. Long-term complications may include damage to the genital tissues (chronic pain in the clitoris and vulva), chronic infection of the genitalia, problems with the reproductive system (chronic pelvic pain), problems with urination (painful urination, recurrent urinary tract infection), vaginal problems (itching, vaginal discharge, bacterial vaginosis and other infections), scarring and keloids, sexual problems (pain and diminished sexual satisfaction), increased risk of birth complications (difficult labour and excessive bleeding) and even stillbirth, the need for repeat surgery (especially when infibulation has been performed) and psychological problems

(depression, anxiety, post-traumatic stress disorder, etc.) (Mulati, 2019).

The practice of harmful, medically unjustified female genital mutilation (FGM) persists even today. However, given the female reproductive functions outlined above, this practice is highly likely to lead to drastically increased pain and/or weakness, while the effort to protect women from the dangers of medically unjustified FGM continues to be hampered by numerous constraints. Therefore, the harm that emerges after female genital mutilation (FGM) cannot be allowed to continue and claim even more victims.

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Harmful, medically unjustified FGM can also be found in procedures performed for fashion, such as piercings and tattoos (Ministry of Women's Empowerment and Protection (KPPPA), 2019), and also procedures that stem from interpretation of religion, culture or a combination of the two. In Indonesia, the cultural practices at risk of involving elements of harmful, medically unjustified FGM include *nyepitan* or *capitan* (Banten), *suci* (West Lombok), *mandi lemon* or *mencubit* or *cubit kodok* (Gorontalo), *mansunna* (West Sulawesi), *basunat* or *besunat* (Dumai and South Kalimantan), *rasulan* (Indramayu), *makkatte'* (Bugis) or *kattang* (Makassar) and *sunat* (West Java, Jambi, Riau, Bangka Belitung and East Kalimantan) (Komnas Perempuan/National Commission on Violence against Women and PSKK UGM/Centre for Population and Policy Studies, University of Gajah Mada, 2017). Female circumcision practices are also susceptible to inflicting elements of harmful, medically unjustified FGM.

A mother talked about her experience at the age of 7 in Kalimantan, when she was circumcised with a *sembilu* (a thin blade of bamboo) that resulted in heavy bleeding. The agonising pain she endured left her with psychological trauma. Ever since, she has been unable to use household gadgets or anything made of bamboo (Online Halaqah [Quranic study group], "Female Genital Mutilation in a

Theological and Cultural Review," Alimat, 14 November 2020). In Dumai, Riau, a midwife who was circumcised as a small child suffered severe physical trauma. She is fearful when her husband asks her to have sex because she always feels pain and has never experienced sexual pleasure (Komnas Perempuan and PSKK UGM, 2017). In Lebak, Banten, a one-year-old girl was circumcised by a traditional birth attendant (*paraji*). She also experienced severe bleeding in her clitoris and was immediately taken to a midwife's practice, where they were unable to stem the bleeding and so she was taken to a community health centre. The baby died the following day (National Commission on Violence against Women, 2017 and Siti Fauziyah, 2017). Dr Hady Maulanza, an obstetrician-gynaecologist from Aceh who practises in Java, recounted the case of a patient who complained of inability to have sexual intercourse. Upon examination, it was found that the patient's genital area was closed, with the labia (vulvar lips) sutured with red thread. According to doctors, this condition can cause infection that had spread as far as the uterus (Halaqah Online #Series 6, Prevention of Female Genital Mutilation (FGM), Indonesian Female Religious Scholars (KUPI) Network, 30 August 2021).

Many other women in different regions have also undergone harmful, medically unjustified FGM. A Basic Healthcare Research (Riskesdas) in 2013 (the latest research to include female circumcision) found that 51.2% of girls aged 0-11 years had been circumcised. The highest proportion was found in Gorontalo Province (83.7%) and the lowest in East Nusa Tenggara (2.7%). Findings from other research indicate that at least 13.4 million Indonesian girls aged 11 and under have undergone harmful, medically unjustified FGM. These numbers mean that in 2016, Indonesia ranked as the world's third largest country in practising harmful, medically unjustified FGM (ugm.ac.id, 2020). Further research discovered that among 12,800 households in 33 provinces, 55% of women aged 15-49 had undergone female circumcision. This was divided into 33.7% of women who had circumcisions performed symbolically and 21.3% who had undergone cutting and/or mutilation (National Survey of Women's Life

Experiences (SPHPN), 2021)

The above research did not explore the methods employed in female circumcision, but research by Komnas Perempuan and PSKK UGM in the seven provinces with the highest incidence of female circumcision identified five categories of the methods used: 1) piercing, cutting, scraping, and burning the genital area; 2) removing part or all of the clitoral glans and/or the surrounding skin fold; 3) cutting off part of the clitoris and the surrounding skin fold; 4) scratching or picking at the urethra (urinary tract); and 5) symbolic (without mutilation). Four of these five categories have elements of mutilation and even excision, and statistically account for 98.8% (Komnas Perempuan and PSKK UGM, 2017).

In Indonesia, harmful female genital mutilation is generally performed on girls aged 0-11 years. Therefore, despite the high figures, women are generally not aware of the impact in adulthood. Research aimed at establishing the impact of female circumcision demonstrated that among the women willing to have photographs taken of themselves, some had undergone the complete removal of their clitoris (Habsyah, 2009).

The absence of a standard operating procedure (SOP) means that a wide variety of practices are employed in harmful, medically unjustified FGM, including in female circumcision. These include, for example, rubbing, scratching or cutting with instruments such as scissors, cotton wool, tweezers, needles and coins with holes in them (Kalyanamitra, 2021); rubbing the female sexual organs with leaves of a coarse texture, scraping with dried palm fronds (*dotta*), cutting with a razor blade to the point of bleeding, rubbing with cotton wool or turmeric, and by placing a chicken inside a sarong and bringing it close to peck at the sexual organ, then smearing the blood from the chicken on the forehead of the girl being circumcised (Maryam, 2022); cutting or scraping the clitoris (Nurdiana, 2010); applying turmeric and egg to the girl's genitalia and by using a small needle or other object to damage the vaginal area (Lestari, 2021).

The absence of an SOP also means that FGM, including harmful, medically unjustified female circumcision, is not a medical intervention even though performed by a person with medical qualifications (malpractice). However, some studies show that harmful, medically unjustified FGM and female circumcision in particular are still widely carried out by medical personnel. In urban areas, female circumcision is generally performed by a midwife (Indonesian Ministry of Health, 2018). Medical personnel carry out about 66.4% of FGM in urban areas, compared to about 25.8% in rural areas (Herdiyani and Terome, 2021). In 14.6% of cases, female circumcisions are performed by doctors while midwives account for 61% (Sisca, August 2021).

Those who circumcise women are not only traditional birth attendants and circumcisers, but also other healthcare workers (Komnas Perempuan and PSKK UGM, 2017; and Rofiq, 2019). Furthermore, research has revealed that healthcare workers (midwives/nurses) learn how to perform female circumcision from more senior colleagues (Komnas Perempuan and PSKK UGM, 2017). It is not only medical personnel who are involved; medically unjustified FGM including female circumcision is performed by non-medically trained practitioners known by a variety of names such as *parajji* and *sanro*, as well as traditional birth attendants whose skills have been handed down over generations.

This malpractice occurs because of the absence of legislation expressly prohibiting these practices. In 2006, the Director-General of Public Health at the Indonesian Ministry of Health issued Circular Letter HK 00.07.1.31047 concerning the Prohibition of Healthcare Workers from Medicalising Female Circumcision. Subsequently in 2010, the Indonesian Minister of Health issued Regulation No. 1636/MENKES/PER/XI/2010 concerning Female Circumcision, which stipulates the procedure for performing female circumcision. In 2014, the Indonesian Minister of Health issued Regulation No. 6 of 2014 concerning Revocation of Minister of Health Regulation No. 1636/MENKES/PER/XI/2010 concerning Female Circumcision

and authorised the Sharia Council of the Ministry of Health to issue a fatwa on female circumcision.

The above narrative portrays how FGM is harmful and even dangerous in both the short and long term, causing physical and psychological harm to women; it is not recognised in the medical profession and therefore has no standard operating procedure. Even so, the practice is still widespread with medical personnel also involved. In light of the above issues, a number of questions *(as'ilah)* have been formulated as follows:

a. What is prescribed in religious law about the practice of harmful, medically unjustified female genital mutilation (FGM)?

b. Who are the competent parties for preventing harmful, medically unjustified female genital mutilation (FGM)?

c. What is prescribed in religious law about religious leaders, traditional leaders, medical personnel and family members exercising their authority to protect women from the harm of medically unjustified female genital mutilation (FGM)?

2. *ADILLAH* (LEGAL BASIS)

a. Passages from the Holy Quran

1) Honour of the children of Adam [source text in Arabic script:]

وَلَقَدْ كَرَّمْنَا بَنِيٓ ءَادَمَ وَحَمَلْنَٰهُمْ فِى ٱلْبَرِّ وَٱلْبَحْرِ وَرَزَقْنَٰهُم مِّنَ ٱلطَّيِّبَٰتِ
وَفَضَّلْنَٰهُمْ عَلَىٰ كَثِيرٍ مِّمَّنْ خَلَقْنَا تَفْضِيلًا

"We have honoured the sons of Adam; provided them with transport on land and sea; given them for sustenance things good and pure; and conferred on them special favours, above a great part of Our creation." (Surah 17 al-Isra: 70)

2) Prohibition on causing harm [source text in Arabic script:]

وَالَّذِيْنَ يُؤْذُوْنَ الْمُؤْمِنِيْنَ وَالْمُؤْمِنٰتِ بِغَيْرِ مَا اكْتَسَبُوْا فَقَدِ احْتَمَلُوْا
بُهْتَانًا وَّاِثْمًا مُّبِيْنًا

"And those who annoy believing men and women undeservedly, bear (on themselves) a calumny and a glaring sin." (Surah 33 Al-Ahzab: 58).

3) Prohibition on leaving behind a helpless generation [source text in Arabic script:]

وَلْيَخْشَ الَّذِيْنَ لَوْ تَرَكُوْا مِنْ خَلْفِهِمْ ذُرِّيَّةً ضِعٰفًا خَافُوْا عَلَيْهِمْ ۖ فَلْيَتَّقُوا
اللّٰهَ وَلْيَقُوْلُوْا قَوْلًا سَدِيْدًا

"Let those (disposing of an estate) have the same fear in their minds as they would have for their own if they had left a helpless family behind: let them fear God and speak words of appropriate (comfort)." (Surah 4 An-Nisa: 9).

4) Prohibition of making one's own hands contribute to destruction [source text in Arabic script:]

وَلَا تُلْقُوْا بِاَيْدِيْكُمْ اِلَى التَّهْلُكَةِ ۛ وَاَحْسِنُوْا ۛ اِنَّ اللّٰهَ يُحِبُّ الْمُحْسِنِيْنَ

"Make not your own hands contribute to your destruction but do good; for God loveth those who do good." (Surah 2 Al-Baqarah: 195).

5) Prohibition on deprivation of rights and working mischief [source text in Arabic script:]

وَلَا تَبْخَسُوا النَّاسَ اَشْيَآءَهُمْ وَلَا تَعْثَوْا فِى الْاَرْضِ مُفْسِدِيْنَ

"And withhold not things justly due to men, nor do evil in the land, working mischief." (Surah 26 Ash-Shu'ara: 183).

6) Instruction to treat women with dignity [source text in Arabic script:]

يَاأَيُّهَا الَّذِينَ آمَنُوا لَا يَحِلُّ لَكُمْ أَنْ تَرِثُوا النِّسَاءَ كَرْهًا وَلَا تَعْضُلُوهُنَّ لِتَذْهَبُوا بِبَعْضِ مَا آتَيْتُمُوهُنَّ إِلَّا أَنْ يَأْتِينَ بِفَاحِشَةٍ مُبَيِّنَةٍ وَعَاشِرُوهُنَّ بِالْمَعْرُوفِ فَإِنْ كَرِهْتُمُوهُنَّ فَعَسَى أَنْ تَكْرَهُوا شَيْئًا وَيَجْعَلَ اللَّهُ فِيهِ خَيْرًا كَثِيرًا

O ye who believe! Ye are forbidden to inherit women against their will. Nor should ye treat them with harshness that ye may take away part of the dower ye have given them except where they have been guilty of open lewdness; On the contrary live with them on a footing of kindness and equity. If ye take a dislike to them it may be that ye dislike a thing and God brings about through it a great deal of good." (Surah 4 An-Nisa: 19).

7) Instruction to show empathy to a wife suffering pain because of menstruation [source text in Arabic script:]

وَيَسْأَلُونَكَ عَنِ الْمَحِيضِ ۖ قُلْ هُوَ أَذًى ۙ فَاعْتَزِلُوا النِّسَاءَ فِي الْمَحِيضِ ۙ وَلَا تَقْرَبُوهُنَّ حَتَّىٰ يَطْهُرْنَ ۖ فَإِذَا تَطَهَّرْنَ فَأْتُوهُنَّ مِنْ حَيْثُ أَمَرَكُمُ اللَّهُ ۚ إِنَّ اللَّهَ يُحِبُّ التَّوَّابِينَ وَيُحِبُّ الْمُتَطَهِّرِينَ

"They ask thee concerning women's courses. Say: They are a hurt and a pollution; so keep away from women in their courses and do not approach them until they are clean. But when they have purified themselves ye may approach them in any manner time or place ordained for you by God. For God loves those who turn to Him constantly and He loves those who keep themselves pure and clean." Surah 2 Al-Baqarah: 222).

8) Instruction to care for, safeguard and protect the sexual organs [source text in Arabic script:]

إِنَّ الْمُسْلِمِيْنَ وَالْمُسْلِمٰتِ وَالْمُؤْمِنِيْنَ وَالْمُؤْمِنٰتِ وَالْقٰنِتِيْنَ وَالْقٰنِتٰتِ
وَالصّٰدِقِيْنَ وَالصّٰدِقٰتِ وَالصّٰبِرِيْنَ وَالصّٰبِرٰتِ وَالْخٰشِعِيْنَ وَالْخٰشِعٰتِ
وَالْمُتَصَدِّقِيْنَ وَالْمُتَصَدِّقٰتِ وَالصَّآئِمِيْنَ وَالصّٰٓئِمٰتِ وَالْحٰفِظِيْنَ فُرُوْجَهُمْ
وَالْحٰفِظٰتِ وَالذّٰكِرِيْنَ اللّٰهَ كَثِيْرًا وَّالذّٰكِرٰتِ اَعَدَّ اللّٰهُ لَهُمْ مَّغْفِرَةً وَّاَجْرًا
عَظِيْمًا

"For Muslim men and women,—for believing men and women, for devout men and women, for true men and women, for men and women who are patient and constant, for men and women who humble themselves, for men and women who give in charity, for men and women who fast (and deny themselves), for men and women who guard their chastity, and for men and women who engage much in God's praise,—for them has God prepared forgiveness and great reward." (Surah 33 Al-Ahzab: 35).

9) Instruction to show gratitude to women for their reproductive role involving travail upon travail [source text in Arabic script:]

وَوَصَّيْنَا الْاِنْسَانَ بِوَالِدَيْهِ ۚ حَمَلَتْهُ اُمُّهٗ وَهْنًا عَلٰى وَهْنٍ وَّفِصٰلُهٗ فِيْ عَامَيْنِ
اَنِ اشْكُرْ لِيْ وَلِوَالِدَيْكَ ۗ اِلَيَّ الْمَصِيْرُ

"And We have enjoined on man (to be good) to his parents: In travail upon travail did his mother bear him, and in years twain was his weaning: (hear the command), 'Show gratitude to Me and to thy parents: to Me is (thy final) goal'." (Surah 31 Luqman: 14). [source text in Arabic script:]

وَوَصَّيْنَا الْاِنْسَانَ بِوَالِدَيْهِ اِحْسَانًا ۗ حَمَلَتْهُ اُمُّهٗ كُرْهًا وَّوَضَعَتْهُ كُرْهًا ۗ
وَحَمْلُهٗ وَفِصٰلُهٗ ثَلٰثُوْنَ شَهْرًا ۗ حَتّٰٓى اِذَا بَلَغَ اَشُدَّهٗ وَبَلَغَ اَرْبَعِيْنَ سَنَةً ۙ قَالَ
رَبِّ اَوْزِعْنِيْٓ اَنْ اَشْكُرَ نِعْمَتَكَ الَّتِيْٓ اَنْعَمْتَ عَلَيَّ وَعَلٰى وَالِدَيَّ وَاَنْ اَعْمَلَ
صَالِحًا تَرْضٰىهُ وَاَصْلِحْ لِيْ فِيْ ذُرِّيَّتِيْ ۚ اِنِّيْ تُبْتُ اِلَيْكَ وَاِنِّيْ مِنَ الْمُسْلِمِيْنَ

We have enjoined on man kindness to his parents. In pain did his mother bear him, and in pain did she give him birth. The carrying of the (child) to his weaning is (a period of) thirty months. At length, when he reaches the age of full strength and attains forty years, he says "O my Lord! Grant me that I may be grateful for Thy favour which Thou hast bestowed upon me, and upon both my parents, and that I may work righteousness such as Thou mayest approve; and be gracious to me in my issue. Truly have I turned to Thee and truly do I bow (to Thee) in Islam." (Surah 46 Al-Ahqaf: 15).

10) Instruction to protect oneself and one's family [source text in Arabic script:]

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ قُوٓاْ أَنفُسَكُمۡ وَأَهۡلِيكُمۡ نَارٗا

"O ye who believe! Save yourselves and your Families from a fire whose fuel is men and stones." (Surah 66 At-Tahrim: 6).

11) Instruction for men and women to help, safeguard and protect one another [source text in Arabic script:]

وَٱلۡمُؤۡمِنُونَ وَٱلۡمُؤۡمِنَٰتُ بَعۡضُهُمۡ أَوۡلِيَآءُ بَعۡضٖۚ يَأۡمُرُونَ بِٱلۡمَعۡرُوفِ وَيَنۡهَوۡنَ عَنِ ٱلۡمُنكَرِ وَيُقِيمُونَ ٱلصَّلَوٰةَ وَيُؤۡتُونَ ٱلزَّكَوٰةَ وَيُطِيعُونَ ٱللَّهَ وَرَسُولَهُۥٓۚ

The Believers, men and women, are protectors, one of another: they enjoin what is just, and forbid what is evil: they observe regular prayers, practice regular charity, and obey God and His Apostle. On them will God pour His mercy: for God is exalted in power, wise." (Surah 2 At-Tawbah): 71).

12) Instruction to consult with persons who have knowledge. [source text in Arabic script:]

فَسۡـَٔلُوٓاْ أَهۡلَ ٱلذِّكۡرِ إِن كُنتُمۡ لَا تَعۡلَمُونَ

"If ye realise this not, ask of those who possess the message." (Surah 16 An-Nahl: 43).

13) Instruction to be just to all [source text in Arabic script:]

وَلَا يَجْرِمَنَّكُمْ شَنَآنُ قَوْمٍ اَنْ صَدُّوْكُمْ عَنِ الْمَسْجِدِ الْحَرَامِ اَنْ تَعْتَدُوْا ۘ وَتَعَاوَنُوْا عَلَى الْبِرِّ وَالتَّقْوٰى ۖ وَلَا تَعَاوَنُوْا عَلَى الْاِثْمِ وَالْعُدْوَانِ ۚ وَاتَّقُوا اللّٰهَ ۗ اِنَّ اللّٰهَ شَدِيْدُ الْعِقَابِ

Let not the hatred of some people in (once) shutting you out of the Sacred Mosque lead you to transgression (and hostility on your part). Help ye one another in righteousness and piety but help ye not one another in sin and rancour: fear God: for God is strict in punishment." (Surah 5 Al-Mai'dah: 2).

14) Instruction to exercise authority with justice [source text in Arabic script:]

۞ اِنَّ اللّٰهَ يَاْمُرُكُمْ اَنْ تُؤَدُّوا الْاَمٰنٰتِ اِلٰٓى اَهْلِهَا ۙ وَاِذَا حَكَمْتُمْ بَيْنَ النَّاسِ اَنْ تَحْكُمُوْا بِالْعَدْلِ ۗ اِنَّ اللّٰهَ نِعِمَّا يَعِظُكُمْ بِهٖ ۗ اِنَّ اللّٰهَ كَانَ سَمِيْعًاۢ بَصِيْرًا

"Allah doth command you to render back your trusts to those to whom they are due; and when ye judge between man and man that ye judge with justice: verily how excellent is the teaching which He giveth you! For God is He who heareth and seeth all things." (Surah 4 An-Nisa: 58).

15) Instruction to be the best of peoples [source text in Arabic script:]

كُنْتُمْ خَيْرَ اُمَّةٍ اُخْرِجَتْ لِلنَّاسِ تَاْمُرُوْنَ بِالْمَعْرُوْفِ وَتَنْهَوْنَ عَنِ الْمُنْكَرِ وَتُؤْمِنُوْنَ بِاللّٰهِ ۗ وَلَوْ اٰمَنَ اَهْلُ الْكِتٰبِ لَكَانَ خَيْرًا لَّهُمْ ۗ مِنْهُمُ الْمُؤْمِنُوْنَ وَاَكْثَرُهُمُ الْفٰسِقُوْنَ

"Ye are the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah. If only the People of the Book had faith, it were best for them: among them are some who have faith, but most of them are perverted transgressors." (Surah 3 Ali Imran: 110).

b. *Passages from the hadiths*

1) Prohibition against endangering oneself and others [source text in Arabic script:]

عَنْ يَحْيَى الْمَازِنِيِّ أَنَّ رَسُولَ اللهِ صلى الله عليه وسلم- قَالَ: «لاَ ضَرَرَ وَلاَ ضِرَارَ».

"The Prophet (peace be upon him) said: "It is prohibited to endanger oneself and put others in danger." (Muwatta Malik No. 1435; Sunan Ibn Majah Nos. 2430 and 2431; Musnad Ahmad Nos. 2912 and 2322).

2) Instruction to treat women kindly at all times [source text in Arabic script:]

عَنْ عَمْرِو بْنِ الأَحْوَصِ رَسُولِ اللهِ صلى الله عليه وسلم أنه قَالَ: اسْتَوْصُوا بِالنِّسَاءِ خَيْرًا فَإِنَّمَا هُنَّ عِنْدَكُمْ عَوَانٍ لَيْسَ تَمْلِكُونَ مِنْهُنَّ شَيْئًا غَيْرَ ذَلِكَ

"The Prophet (peace be upon him) said: "Remind one another to always treat women kindly, for they are often treated as though they were captives, even though you have no right over them except to do them good." (Sunan Ibn Majah No. 1924)

3) Instruction to protect girls and bring them up properly [source text in Arabic script:]

عَنِ عَائِشَةَ رضي الله عنها قَالَتْ: قال النَّبِيُّ صلى الله عليه وسلم مَنْ يَلِي مِنْ هَذِهِ الْبَنَاتِ شَيْئًا فَأَحْسَنَ إِلَيْهِنَّ كُنَّ لَهُ سِتْرًا مِنَ النَّارِ

"The Prophet (peace be upon him) said: "Whoever protects these daughters and brings them up properly they shall be a shield to them (who cared for them) from the fires of hell." (Sahin al-Buchari No. 6061).

4) To cherish young children is to possess character worthy of a prophet [source text in Arabic script:]

عَنِ أَنَسِ بْنَ مَالِكٍ رضي الله عنه قال: قَالَ النَّبِيُّ صلى الله عليه وسلم
لَيْسَ مِنَّا مَنْ لَمْ يَرْحَمْ صَغِيرَنَا وَيُوَقِّرْ كَبِيرَنَا

"The Prophet (peace be upon him) said: "He does not cherish children and does not respect the elderly is not one of us." (Sunan al-Tirmidhi No. 2043).

5) Prohibition on causing harm to humankind [source text in Arabic script:]

عَنْ ثَوْبَانَ عَنِ النَّبِيِّ صلى الله عليه وسلم قَالَ لاَ تُؤْذُوا عِبَادَ اللهِ وَلاَ
تُعَيِّرُوهُمْ وَلاَ تَطْلُبُوا عَوْرَاتِهِمْ

"The Prophet (peace be upon him) said: "Do not hurt the servants of Allah (human beings), or insult them, or seek their harm." (Musnad Ahmad No. 22837).

6) Instruction for all parties to perform their responsibilities [source text in Arabic script:

عَنْ عَبْدِ اللهِ بْنِ عُمَرَ رَضِيَ اللَّهُ عَنْهُمَا. أَنَّهُ سَمِعَ رَسُولَ اللهِ صَلَّى اللهُ
عَلَيْهِ وَسَلَّمَ يَقُولُ: كُلُّكُمْ رَاعٍ وَمَسْئُولٌ عَنْ رَعِيَّتِهِ. فَالْإِمَامُ رَاعٍ. وَهُوَ
مَسْئُولٌ عَنْ رَعِيَّتِهِ. وَالرَّجُلُ فِي أَهْلِهِ رَاعٍ. وَهُوَ مَسْئُولٌ عَنْ رَعِيَّتِهِ.
وَالْمَرْأَةُ فِي بَيْتِ زَوْجِهَا رَاعِيَةٌ. وَهِيَ مَسْئُولَةٌ عَنْ رَعِيَّتِهَا

"The Prophet (peace be upon him) said: "Every one of you is a leader and bears responsibility for his leadership. An imam is a leader and is responsible for his leadership; a man is the head of his household and is responsible for his leadership; and a woman is the head of her husband's household and is responsible for her leadership. (Sahih al-Buchari Nos. 901, 2448, 2594, 2597 and 5255).

7) Support for compassionate leaders who bring about good instead of harm [source text in Arabic script:]

عَنْ عَائِشَةَ رضي الله عنها سَمِعْتُ رَسُولَ اللهِ صلى الله عليه وسلم يَقُولُ: اللَّهُمَّ مَنْ وَلِيَ مِنْ أَمْرِ أُمَّتِي شَيْئًا فَشَقَّ عَلَيْهِمْ فَاشْقُقْ عَلَيْهِ وَمَنْ وَلِيَ مِنْ أَمْرِ أُمَّتِي شَيْئًا فَرَفَقَ بِهِمْ فَارْفُقْ بِهِ

"The Prophet (peace be upon him) said: O Allah, whoever is entrusted with the affairs of my people and causes them hardship, will make things difficult for himself; and if he makes things easy for them (their affairs), then he will make things easy for himself too (Sahih Muslim No. 4826).

8) Prohibition against betrayal [source text in Arabic script:]

عَنْ أَبِي هُرَيْرَةَ عَنِ النَّبِيِّ صَلَّى اللهُ عَلَيْهِ وَسَلَّمَ قَالَ: آيَةُ الْمُنَافِقِ ثَلَاثٌ: إِذَا حَدَّثَ كَذَبَ. وَإِذَا وَعَدَ أَخْلَفَ. وَإِذَا اؤْتُمِنَ خَانَ

"The Prophet (peace be upon him) said: "There are three signs of a hypocrite: when he speaks, he lies; when he makes a promise, he breaks it; and when entrusted with a duty, he betrays that trust." (Sahih al-Buchari No. 33).

c. Sayings of the Scholars

1) The objective of Islamic Sharia (*maqâshid asy-syarî'ah*) is the protection of life, mind, property, religion and family, including the reproductive organs [source text in Arabic script:]

أن حفظ النفس والعقل والبضع والمال. مقصود في الشرع

"Indeed, the protection of life, the mind, the reproductive organs and property is the purpose of Sharia law." (Al-Ghazali, 1971: 160).

فَقَدَ اتَّفَقَتِ الْأُمَّةُ -بَلْ سَائِرُ الْمِلَلِ- عَلَى أَنَّ الشَّرِيعَةَ وُضِعَتْ لِلْمُحَافَظَةِ عَلَى الضَّرُورِيَّاتِ الْخَمْسِ -وَهِيَ: الدِّينُ. وَالنَّفْسُ. وَالنَّسْلُ. وَالْمَالُ. وَالْعَقْلُ

"The faithful have agreed—indeed, all people of religion—that Sharia law is established to protect five fundamental things: religion, life, lineage, property and reason." (Asy-Syathibi, 2012: Vol. 1, p. 31).

2) Islamic legal principles require the elimination of danger, harm and pain [source text in Arabic script:]

الضرر يزال

"Danger must be eliminated." (As-Suyuthi, 1983: 83)

درء المفاسد أولى من جلب المصالح

"Prevention of harm must take precedence over the pursuit of gain." (As-Suyuthi, 1983: Vol. 1, p. 87).

الضرر لا يزال بالضرر

"One danger must not be eliminated by inviting another." (As-Suyuthi, 1983: Vol. 1, 86).

3) An assured benefit cannot be abandoned for something only assumed [source text in Arabic script:]

الْيَقِين لَا يُزَال بِالشَّكِّ

"What is convincing cannot be ruled out by doubts." (As-Suyuthi, 1983: Vol. 1, p. 7).

4) Legal presumption of permissibility relating to reproductive organs is forbidden (*haram*) [source text in Arabic script:]

الأصل في الأبضاع التحريم

"Legal presumption of permissibility relating to reproductive organs is forbidden (*haram*)." (As-Suyuthi, 1983: Vol. 1, p. 161).

5) Actions not compatible with the common good are not part of Islamic law and are unenforceable [source text in Arabic script:]

فَإِنَّ الشَّرِيعَةَ مَبْنَاهَا وَأَسَاسُهَا عَلَى الْحِكَمِ وَمَصَالِحِ الْعِبَادِ فِي الْمَعَاشِ وَالْمَعَادِ. وَهِيَ عَدْلٌ كُلُّهَا. وَرَحْمَةٌ كُلُّهَا. وَمَصَالِحُ كُلُّهَا. وَحِكْمَةٌ كُلُّهَا فَكُلُّ مَسْأَلَةٍ خَرَجَتْ عَنْ الْعَدْلِ إِلَى الْجَوْرِ. وَعَنْ الرَّحْمَةِ إِلَى ضِدِّهَا. وَعَنْ الْمَصْلَحَةِ إِلَى الْمَفْسَدَةِ. وَعَنْ الْحِكْمَةِ إِلَى الْبَعْثِ فَلَيْسَتْ مِنْ الشَّرِيعَةِ وَإِنْ أُدْخِلَتْ فِيهَا بِالتَّأْوِيلِ

Indeed, the foundation and basis of Sharia law are wisdom and the common good of humanity in this world and the hereafter. All the teachings of Sharia incorporate justice, mercy, the common good and wisdom. Any legal formulation that deviates from justice in favour of injustice, from mercy in favour of its opposite, from public interest in favour of harm, or from wisdom in favour of futility, is not part of the Sharia, even if various interpretations are sought to be incorporated into it. (Ibn Qayyim al-Jauziyah, 1432 H: Vol. 3. p. 14). [source text in Arabic script:]

فإن فات قطعا فالأصح لا يعتبر

"Based on the most authentic opinion, if the purpose of the Sharia cannot be clearly identified, then the legal ruling cannot stand." (Al-Anshari, 1999: 129).

6) Prohibition against inflicting bodily injury on a living creature [source text in Arabic script:]

ان حكم الشرع فى الختان لا يخضع لنص منقول وإنما يخضع فى الذكر والأنثى لقاعدة شرعية عامة وهي أن ايلام الحي لا يجوز شرعا إلا لمصالح تعود عليه وتربو على الألم الذي يلحقه

"The Sharia law concerning circumcision is not based on arguments directly from revealed sources (*naqli*). Male and female circumcision is based on the general principle of Sharia that inflicting bodily injury on a living creature is only permitted if there is a benefit to be derived from it and/or the benefit outweighs the pain suffered." (Shaltut, Al-Fatawah, 333).

7) The Prophet Muhammad (peace be upon him) did not circumcise his daughters [source text in Arabic script:]

لم يعلم عنه صلى الله عليه وسلم أنه ختن بناته رضي الله عنهن.
ولا نقل عنه أحد من أهل العلم قاطبة. فإن ختان البنات لم يكن
مشتهرا في قريش. وهذا بخلاف أهل المدينة من الأنصار

Nothing is known from the Prophet Muhammad to suggest that he had his daughters circumcised, and none of the scholars have narrated such a tradition; indeed, female circumcision was unknown among the Quraysh, unlike the Ansar in Medina." (Muwafi, n.d.: 74). [source text in Arabic script:]

فلم يرد عن النبي صلى الله عليه وسلم أنه ختن بناته مع انتشاره في
المدينة. وهو أسوتنا يبين المسلك القويم في تلك القضية كما إنه لم
يرد نص صريح يأمر المسلمين بأن يختنوا بناتهم.

"There is no record indicating that the Prophet had his daughters circumcised, even though female circumcision was common in Medina. He gave an example demonstrating the best way to deal with this issue. Nor is there any clear record that the Prophet instructed Muslims to circumcise their daughters." (Jum'ah, 2009: 99).

8) The hadith sources on female circumcision are weak and lack authority [source text in Arabic script:]

ليس فى الختان خبر يرجع إليه. ولا سنة تتبع

"There is not a single hadith that can be cited as a reference for female circumcision, nor is there a single hadith that can be followed." (Ibnu Hajar al-'Asqallani, 1998: Vol. 4, p. 83). [source text in Arabic script:]

وحديث ختان المرأة رُوي من أوجُهٍ كثيرة. وكلها ضعيفةٌ معلولةٌ مخدوشةٌ لا يصح الاحتجاج به] اهـ

"Hadiths concerning female circumcision have been narrated through numerous chains of transmission, but all are weak, contain flaws and are not suitable as a basis for argument." (Syams al-Haq Abady, n.d.: Vol. 14, p. 126). [source text in Arabic script:]

"The hadiths that command female circumcision are all weak

أحاديث الأمر بختان المرأة ضعيفة لم يصح منها شئ.

(*dla'îf*); not one of them is authentic and reliable (*sahih*)." (Sabiq, 1987: Vol. 1, p. 37).

9) Female circumcision has no sound basis in Sharia law, ethics or medicine [source text in Arabic script:]

والواقع أن المسألة فى جانبيها الايجابي والسلبي ترجع إلى الخلق والبيئة وإحسان التربية وحسم المراقبة . ومن هنا يتبين أن ختان الأنثى ليس ما لدينا يدعو إليه وإلى تحتمه لا شرعا ولا خلقا ولا طبا

"The reality is that the issue of positive and negative behaviour in women traces back to good character, environment, upbringing and supervision (not determined by whether or not they have been circumcised). On that basis, it is clear that there is no justification to support female circumcision, whether in terms of Sharia law or from an ethical or medical perspective. (Syaltut, 1995: 333).

10) Female circumcision is not a religious issue, but merely a custom and tradition [source text in Arabic script:]

إن قضية ختان الأنثى ليست قضية دينية تعبدية فى أصلها وإنما هي قضية طبية عادية أي من قبيل موروث العادات.

"The issue of female circumcision is not an obligatory religious issue (*ta'abbudi*), but rather one of medical tradition passed down from one generation to the next." (Jum' ah, 2009: 91).

11) The forbidden nature of harmful female circumcision

إنه لا يوجد نص في القرآن الكريم. تحدث عن ختان الاناث. موضحا أن ختان الاناث عادة سيئة. وحرام شرعا.

"The Islamic Research Academy (Majma al-Buhuts al-Islami) stated that it has not found any passages in the Quran mentioning female circumcision; it affirms that female circumcision is an evil tradition and forbidden (*haram*) under sharia law." (al-Jundi, 2017).

يكون ختان الاناث أو خفاضها بالطريقة التي يجري بها الآن. وبغير مسوغ يوجبه: أمرا غير مأذون به بل محظورا شرعا. وداخلا في (تغيير خلق الله) الذي من عمل الشيطان. وليس هناك إذن من الله.

"Female circumcision, or *khifadl* (clitorectomy or clitoral hoodectomy), as it is currently practised, is not permitted in the absence of a valid reason; indeed, it is prohibited under Islamic law." It falls within the category of the works of the devil (modifying the creation of Allah), which is not in any way permitted by Allah." (Yusuf al-Qaradawi in Abu Surur and Rajab, 2013: 47).

12) "Harmful female circumcision is forbidden under religious law (*haram*)." (Risalah Bogor [Bogor Report], 2018).

13) "The practice of instructing and performing FGM is strictly

prohibited by religion except where deemed in the best interest in certain cases based on medical judgement." (Taushiyah Bogor (Bogor Sermon), 2021).

14) "Female circumcision must not be performed to an excessive degree, such as by cutting or mutilation of the clitoris (incision and excision), thereby causing injury (*dlarar*)." (Fatwa of the Indonesian Council of Islamic Scholars (MUI) No. 9A, 2008 concerning Prohibition of Female Circumcision).

15) "Religious law on circumcision for women varies according to the condition of a woman's genitalia. It is based on the condition of the individual woman after a person with expertise has determined whether it would be necessary. If a woman thinks that she needs to undergo circumcision and this is approved by a person with expertise, then it is a mark of respect (*makrûmah*), as mentioned in the hadith of Umm 'Atiyyah, which some scholars consider to be reasonably sound. If it is found that there is no necessity to perform circumcision, it should not be performed on her." (Twenty-ninth Meeting of the Perlis State Fatwa Committee, Malaysia, 2017, on Religious Law concerning Circumcision of Girls).

16) Those who perform female circumcision can be punished for a criminal act [source text in Arabic script:]

ختان الاناث مُحرَّمٌ شرعًا ومُجرَّمٌ قانونًا فلا يجوز لأولياء الأمور الاقدام على ختان بناتهم لثبوت ضرره الطبِّي والنفسي الجسيم بشهادة الأطباء. وكذلك يحرُم الاقدام على ممارسته من الطبيب أو الاعانة عليه إلَّا في حالات الضرورة المرضية التي حَدَّدها القانون

"According to Sharia law, female circumcision is forbidden and according to national legislation, it is a crime. Therefore, parents and guardians may not circumcise their daughters because of the risk of medical and psychological harm that has been established in testimony by medical personnel. Furthermore, it is forbidden

for medical personnel to perform or assistance in female circumcision procedures except in emergencies or in cases of illness where permitted by law." ('Allam, 2007, Darul Ifta Mishriyyah). [source text in Arabic script:]

تحريم ختان الاناث في هذا العصر هو القول الصواب الذي يتفق مع مقاصد الشرع ومصالح الخلق. وبالتالي فإن محاربة هذه العادة هو تطبيق أمين لمراد الله تعالى في خلقه. وبالاضافة إلى أن ممارسة هذه العادة مخالفة للشريعة الاسلامية فهي مخالفة كذلك للقانون. والسعي في القضاء عليها نوع من الأمر بالمعروف والنهي عن المنكر

"The prohibition of female circumcision in the present day is the correct view and is consistent with the objectives of Sharia law (*maqâshid asy-syarî'ah*) and the well-being of all creatures. At the same time, eradicating this tradition is a form of protection in accordance with the will of Allah for his creatures. In addition, the preservation of this tradition of also contrary to Sharia law and national legislation, and therefore the effort to bring an end to this practice are a manifestation of enjoining what is good and forbidding what is evil." (al-Munazhamah al-'Alamiyyah li-Khirrijji al-Azhar, 2014). [source text in Arabic script:]

الختان الذى يمارس الآن يلحق الضرر بالمرأة جسديا ونفسيا. ولذا يجب الامتناع عنه إمتثالا لقيمة عليا من قيم الاسلام. وهى عدم الحاق الضرر بالانسان كما قال الرسول صلى الله عليه وسلم: "لاضرر ولا ضرار" بل يعد عدوانا يوجب العقاب

"The female circumcision practised today poses risks to both the physical and psychological well-being of women. For this reason, it must be prevented as a matter of the noble virtues of Islam that prohibit placing anyone in danger, as the Prophet Muhammad (peace be upon him) said: 'Do not cause harm to yourself or to

others.' It can also be categorised as an offence for which the perpetrator must be punished." (World Conference of Scholars in Cairo, 2006).

17) The government obligation is to ensure the well-being of its citizens [source text in Arabic script:]

تصرف الامام على الرعية منوط بالمصلحة

"The actions of a leader towards the people must be based on the common good." (As-Suyuthi, 1983: Vol.1, p. 121).

d. The Indonesian Constitution (1945)

1) Article 28A: "Every person shall have the right to live and to defend his/her life and existence."
2) Article 28B: "Every child shall have the right to live, to grow and to develop, and shall have the right to protection from violence and discrimination."
3) Article 28G paragraph 1: "Every person shall have the right to protection of his/herself, family, honour, dignity, and property, and shall have the right to feel secure against and receive protection from the threat of fear to do or not do something that is a human right."
4) Article 28G paragraph 2: "Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country."
5) Article 28I paragraph 1: "The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law."

3. *ISTIDLÂL* (ANALYSIS)

FGM (female genital mutilation) is a procedure for cutting the female sexual organ, whether in part or in whole, or in any form whatever, that mutilates the female sexual organ for non-medical

reasons. Although the definition of FGM only refers to actions for non-medical reasons, the Religious Consultation of the Congress of Indonesian Female Religious Scholars maintains use of the term "medically unjustified FGM."

Furthermore, in view of the threat of harm in FGM procedures, the KUPI Religious Consultation uses the term 'harmful, medically unjustified FGM'. This is to raise awareness that the many procedures for female genital mutilation under varied names are also dangerous, and take place without medical justification.

The anatomy and functions of the male sexual organ differ from those of the female sexual organ. The male sexual organ is closed and has a foreskin, comprising skin that can be removed without cutting into the flesh. It serves as a passageway for urine, pre-ejaculation fluid and semen. The removal of the foreskin that takes place in male circumcision can enhance this function. For this reason, even if performed without medical justification, male circumcision can improve the quality of health. It is therefore recognised in the medical profession and the standard operating procedure for it is also taught in medical, midwifery and nursing schools.

In contrast, the female sexual organ is exposed, all skin is attached to the flesh, and there is no part of the skin that can be removed without cutting into the flesh. The clitoris that is at risk of excision during FGM is equivalent to the glans of the penis. However, the clitoral hood (the skin fold covering the clitoris), that is considered equivalent to the male foreskin, is actually different. The cutting of the foreskin on the male sexual organ does not have any detrimental effect, much rather the opposite, because the foreskin impedes the process of ritual purification (*thahârah*). On the other hand, the clitoral hood must be safeguarded so that it is able to protect the sensitive gland of the clitoris from constant and intermittent friction in day-to-day life, given that the clitoris has the most nerve endings of any organ in the female body.

Because the clitoral hood is thin and sits directly over the clitoris,

removal often results in cutting of the clitoris itself, which is extremely dangerous. Any mutilation not to mention cutting of the clitoral hood and the clitoris, which frequently happens in FGM, carries a high risk of severing important nerve fibres in the female sexual organ, thus endangering and possibly impairing its function.

The female sexual organ serves as a passageway for semen, pre-ejaculation fluid, menstrual blood, blood from childbirth, postnatal blood, intermenstrual bleeding and even as the birth canal for babies. To perform these various functions, Allah has equipped it with nerve fibres and blood cells.

FGM is harmful because it can cause nerve fibres and blood cells to be damaged, severed and even lost, resulting in severe bleeding and even death. Even if there is no severe bleeding and it does not result in death, these reproductive functions will be impaired for the rest of the woman's life.

Director of Family Health, Indonesian Ministry of Health (2019), Dr. Erna Mulati, Msc., CMFM, has reiterated that the harmful impacts of FGM consist of:

1) Short-term impacts: Medically unjustified FGM is normally performed without anaesthetic, causing girls to experience excruciating pain. Given their multi-functional role, including the delivery of babies, the external female reproductive organs are rich in nerve tissue and blood vessels, meaning that FGM can cause severe bleeding. Without the proper treatment, any incision to the female sexual organs, whether minor or severe, can lead to infection, tissue swelling and difficulty urinating;
2) Long-term impacts: Any mutilation and especially cutting of the sensitive structure of the genitalia, such as the clitoral glans and parts of the labia minora, can lead to impaired sexual response and satisfaction as well as the formation of scar tissue in the vulva (the area of skin surrounding the urethra and vagina, including the clitoris and labia), which can cause pain especially during sexual intercourse. Physical trauma from the excruciating pain

may also bring psychological trauma and cause mental health problems.

Concurring with the above explanation, the gynaecologist Dr. Fadli, Sp.OG (2021) stated that FGM brings about physical disorders such as severe bleeding, infection, pain when urinating, swelling of the genital tissues, haemorrhaging, risk of sexual dysfunction involving pain during sexual intercourse (dyspareunia), diminished sexual satisfaction, impaired sexual desire and arousal, and reduced frequency of orgasm. It may even be fatal.

The harmful impact and dangers of medically unjustified FGM as explained above are exacerbated by the fact that the procedure is not recognised in the health profession and therefore no SOP for it is taught in the world of medicine. This means that medically unjustified FGM, whether performed by medical personnel or not, is not governed by any standard and is therefore performed in many different ways. The procedures performed by traditional birth attendants or other lay practitioners are not always performed symbolically, in a way that does not involve incision and/or excision. Likewise, the procedures carried out by doctors, midwives and other medical personnel do not always involve cutting and/or mutilation. Accordingly, there is no standard for FGM, whether performed by medical personnel or lay practitioners, and it is highly likely that it will be performed with mutilation and/or cutting because it takes after the procedure for male circumcision.

The reproductive cycle that women will experience is complex: menstruation lasting for a week and accompanied by pain (*adzâ*); pregnancy lasting for months; childbirth with a duration of hours or days; the postpartum period that lasts for weeks and even up to two months; and breastfeeding with a duration of two years. The Holy Qur'an refers to these successive phases of pregnancy, giving birth and breastfeeding as an exhausting experience *(kurhan),* indeed with exhaustion or pain many times over *(wahnan alâ wahnin)*. This inversely correlates with the male reproductive role, in which all men

do is ejaculate sperm in a matter of minutes or even seconds, an action that brings them pleasure.

The starkly contrasting differences in the anatomy and functions of the male and female reproductive organs and their reproductive experiences also impact their health and social lives. The impact of male circumcision strongly contracts with the impact sustained by women from circumcision, and especially from harmful, medically unjustified FGM. For men, circumcision brings benefits; for women, however, it has a detrimental effect on the female reproductive system, with the result that menstruation, pregnancy, childbirth, the postpartum period and breastfeeding—experiences that are systematically intertwined—can become increasingly painful, distressing and exhausting.

FGM practices are not only dangerous and fraught with risk. The reproductive experience for women is already painful and exhausting in itself, and FGM makes it all far more painful. This clearly contravenes Allah's command to honour humankind (Surah 17 Al-Isra: 70), and violates the prohibition on causing pain (Surah 33 Al-Ahzab: 58), Allah's warning not to leave behind a helpless generation (Surah 4 An-Nisa: 9), the prohibition against bringing ruin upon oneself (Surah 2 Al-Baqarah: 195), and the prohibition on withholding things justly due and doing evil (Surah 26: Ash-Shu'ara: 183), while also violating Allah's command for every person to guard, protect and care for their sexual organs (Surah 33 Al-Ahzab: 35).

Harmful FGM practices can be detrimental to the experience that women have in their reproductive role and also violate Allah's command to treat women with kindness and equity (Surah 4 An-Nisa: 19), and by ignoring Allah's command to show empathy for the pain that women suffer from menstruation (Surah 2 Al-Baqarah: 222), and not performing Allah's instruction to show gratitude to women for their reproductive role involving travail upon travail (Surah 31 Luqman: 14).

Harmful FGM also violates the instruction left by the Prophet Muhammad (peace be upon him) to always do good to women (Sunan Ibn Majah No. 1924), to nurture and protect infant girls from all dangers (Sahih al-Buchari No. 6061), the command to always cherish young children (Sunan Turmudzi No. 2043), and the general injunction not to harm humankind (Musnad Ahmad No. 22837).

Harmful, medically unjustified FGM is also contrary to the instruction of the Prophet Muhammad (peace be upon him) to eliminate all danger to oneself and other persons (Muwatta Malik No. 1435; Sunan Ibn Majah Nos. 2430 and 2431; Musnad Ahmad Nos. 2912 and 2322), because that aggravates the pain involved in the female reproductive function.

To turn a blind eye to the harmful impact not to mention dangers of medically unjustified FGM also contravenes the aim of Islam's Sharia law (*maqâshid syarî'ah*), particularly in the preservation of life, (*hifdh an-nafs*) because this practice can cause prolonged psychological trauma and even severe and possibly fatal bleeding; also in the preservation of reason (*hifdh al-'aqli*), because to condone the practice is to oppose scientifically proven knowledge; in the preservation of dignity (*hifdh al-'irdl*), because the procedure damages female sexual organs that are vital to human reproduction (*hifdh al-budl'*); and in the preservation of offspring (*hifdh an-nasl*), because the practice can potentially and has even been proven to damage to the female reproductive system, which comprises a vital organ for bearing offspring.

Harmful, medically unjustified FGM also contravenes the principle in Islamic jurisprudence (*fiqh*) that danger must be eliminated ([Arabic script[). On the other hand, it is not possible to address concerns over uncontrolled female sexual desire by resorting to medically unjustified FGM that actually endangers women (one danger cannot be overcome by inviting another danger, ([Arabic script]). Moreover, these concerns are merely speculative, while the dangers of FGM are beyond doubt, so that (something that is

convincing cannot be overruled by something only assumed [Arabic script]).

Even if FGM is believed to provide benefits despite its harmful effects, prevention of the more tangible harmful impact must take priority over reaping of benefits ([Arabic script]). The fact is that the benefits of FGM are still hypothetical, having not been proven in actuality, and are not in any way supported by medical science.

In Al-Fatawia, Mahmut Shaltut reiterates that inflicting physical injury on a living creature is only permissible if it is for the benefit of that creature. This is not what happens in harmful, medically unjustified FGM. The underlying motive for FGM, which is to control female sexual desire and thus ensure proper behaviour, is also unfounded. The fact is that whether a women behaves properly or not is determined more by good moral character, environment, education and guidance. There is clearly no justification to support female circumcision, whether in terms of Sharia or from an ethical or medical perspective. This view is reinforced by Sheikh Ali Jum'ah, the Grand Mufti of Egypt from 2003 to 2013, who stated that female circumcision is not matter of a worshipful nature (*ta'abbudi*, having the value of worship) but merely a medical tradition handed down from generation to generation. Ahmad Al-Tayyeb, the Grand Imam of al-Azhar in Egypt, has even emphasised that female circumcision is a harmful tradition.

The stance adopted by Al-Azhar University in Cairo, a leading authority for Muslims worldwide, officially declares that female circumcision is harmful to women, that it is detrimental to their marital lives, that it is not part of the religion but merely a traditional custom, and that no argument exists to support it whether from the Quran or the hadiths. Therefore it may be prohibited (*maḥdhûr*) and anyone who performs may be punished for a crime from the perspective of Islamic law (Jaridah Shaut al-Azhar, 18 July 2020).

Female circumcision is an ancient tradition, one dating back to long before the Prophet Muhammad (peace be upon him) was sent. It

existed even before the Prophet Jesus (peace be upon him) was sent to Christians, and before the Prophet Moses (peace be upon him) was sent to the Jewish people. In fact, it existed in the region now called the Middle East as far back as around 4,000 BC. According to other opinions, female circumcision was performed almost 2,000 years before Islam. The majority of scholars agree that the practice of female circumcision has its origin in ancient traditions (*al-atsar al-qadîmah*) passed down from generation to generation over very long periods of time in various parts of the world, well before the advent of Islam (Abu Surur and Rajab, 2017).

The arguments employed to legitimise the benefits of harmful, medically unjustified female circumcision also lack merit. The verse on the need to follow the religious convictions (*millah*) of Ibrahim (peace be upon him) is related to the tauhid and haj pilgrimage, and has nothing to do with female circumcision. Moreover, in the view of Ibnu Mundzir, quoted by Ibnu Hajar al-Asqalani in *at-Talkhîs al-Kabîr* (A Comprehensive Summary of al-Rafi'i al-Kabîr), none of the hadiths on female circumcision have a reliable chain of transmission. This is also the opinion of Sayyid Sabiq in *Fiqh as-Sunnah* (Jurisprudence Derived from the Teachings and Practices of the Prophet Muhammad (peace be upon him)).

According to Asy-Syaukani in *Nayl al-Authâr* (Commentary on Muntaqa al-Akhbar), the hadith concerning the traditional circumcision practitioner Ummu Athiyah, when analysed by chain of transmission, is weak. This is because al-Bukhari, Ibn 'Adiy and ath-Thabrani, as cited by Imam Asy-Syaukani, deemed that the narrator of the hadith, Za'idah ibn Abi ar-Raqad, is not one whose hadiths may be accepted (*munkar al-hadîts*). In addition, no-one narrated this hadith from Anas other than Tsabit, and no-one narrated it from Tsabit other than Za'idah, and there was no narration from Za'idah other than received by Muhammad ibn Salam.

As for the text itself, this hadith contains a message for phased reduction in female circumcision, which had long been practised in Medina. This is indicated by the absence of any narration on the

circumcision of the Prophet's wives and daughters, as noted by al-Muwafi in *Khitân al-Inâts bayn al-Masyrû'iyyah wal Hadhr* (Distinction between Scientific and Juridical Ambiguity) and Ali Jum'ah in *al-Bayân li mâ Yusyghil al-Adzhan* (An Explanation of What Disturbs the Mind). According to Syams al-Haq Abady in *Aun al-Ma'bûd* (Explanation of Sunan Abi Dawud), the hadiths about female circumcision were narrated through many channels, but all their chains of transmission were weak, flawed and had problems (*dla'îfah, ma'lûlah* and *makhdûsyah*) and therefore are invalid for use as sources of religious law.

In *Fiqh as-Sunnah*, Sayyid Sabiq also stated categorically that the status of all hadiths prescribing female circumcision was weak (*dla'îf*). Yusuf Al-Qaradhawi also claims that the absence of well-known hadiths on female circumcision indicates that this practice is not prescribed in Sharia law. Supposing that female circumcision were prescribed in Sharia law, it would be practised in every Muslim family.

Among the hadiths concerning fitrah, or the innate natural disposition of human beings, two of them are often associated with female circumcision. The first claims that circumcision is part of the five fitrah − circumcision, shaving public hair, shaving the moustache, trimming nails and shaving underarm hair. The second does not mention circumcision as part of the ten fitrah − shaving the moustache, growing a thick beard, using a *siwak* wooden toothpick, rinsing out the nasal passages with water, cutting the nails, washing between the fingers, shaving underarm hair, shaving pubic hair, cleansing after defecation and rinsing the mouth.

According to Lufti Fathullah in *Fiqh Khitan Perempuan* (Islamic jurisprudence concerning female circumcision), the fitrah has three meanings: origin, religion and customs. Besides circumcision, other actions also mentioned as fitrah indicate that in these two hadiths, fitrah refers only to social customs. Therefore, the hadiths about fitrah are not authoritative enough to serve as a basis for incorporating female circumcision into Islamic law.

Al-Baihaqi states in the As-Sunan al-Kubra that the hadith describing female circumcision as a mark of respect (*makrûmah*) has a weak chain of transmission (*dla'îf*), as also claimed by Asy-Syaukani in Nayl al-Authar. This is based on the reasoning that the narrator called Hajjaj ibn Arta'ah is regarded by critics of the hadiths such as Ibn Abi Hatim in al-'Ilal and Ibn 'Abd al-Barr in at-Tamhid, who both saw the Hajjah as a person who cannot be cited as an authority (*lâ yuhtajju bih*). Similarly, Ibn Hajar and adz-Dzahabi regard Hajjah as an honest person, but who made many mistakes and resorted to misrepresentation and concealment (*shadûq katsîr al-khatha' wa at-tadlîs*).

According to al-Qaradhawi in *Fatawa Mu'ashirah*, in that hadith, *makrûmah* is something perceived to be good according to tradition; in fact no text exists in Sharia to make it obligatory or recommended. In al-Fatawa, Mahmud Syaltut concurs, emphasising that female circumcision is only a tradition that is perceived to be good (*makrûmah*) by a society in a particular time and place, something that is not always relevant in other times and places. This progression is reflected in differences in the views of scholars on religious law regarding female circumcision. Advancements in modern medical science have demonstrated that female circumcision without justification is dangerous, and can therefore no longer be perceived as good (*makrûmah*). In view of these advancements in medicine, the Malaysian state of Perlis issued a fatwa declaring that female circumcision can only be perceived to be good (*makrûmah*) when it is medically justified.

Muhammad Syahat al-Jundi, a member of the Islamic Research Academy (Majma al-Buhuts al-Islami), reiterates his organisation's position that female circumcision is not commanded by Islamic law and its validity is not established either in the Quran or the hadiths. Sheik Ali Jum'ah, the former Grand Mufti of Egypt (2003-2013), declared in al-Bayan Li Ma Yuisyglulu al-Adzhan that female circumcision is not a religious matter of a worshipful nature (*ta'abbudi*, to be performed like worship), but merely a medical

tradition handed down from generation to generation in keeping with the available knowledge in those times.

In view of the detrimental, even dangerous impact of harmful, medically unjustified female circumcision and the weakness of the underlying arguments for promoting it, a number of Islamic organisations and institutions have adopted an unequivocal stance as follows:

1. *Egyptian Dar Al-Ifta (2007):* Female circumcision is forbidden under Islamic law. Female circumcision is not a religious requirement, but merely a social tradition. Female circumcision has nothing to do with curbing sexual desire, whether in the short or long term;
2. Fatwa of the Indonesian Council of Islamic Scholars (MUI) (2008): Female circumcision may not be performed to an excessive degree, such as by cutting or mutilation of the clitoris (incision and excision), thereby causing injury (*dlarar*) (MUI Fatwa No. 9A, 2008 concerning Prohibition of Female Circumcision);
3. The Islamic Research Academy (Majma al-Buhuts al-Islami) (2017): no passages have been found in the Quran that speak of female circumcision, emphasising that female circumcision is a bad tradition and forbidden (*haram*) under Sharia law;
4. Perlis State Fatwa (2017): Religious law on circumcision for women varies according to the condition of a woman's genitalia. It is based on the condition of the individual woman after a person with expertise has determined whether it would be necessary. If a woman thinks that she needs to undergo circumcision and this is approved by a person with expertise, then it is a mark of respect (*makrûmah*), as mentioned in the hadith of Umm 'Atiyyah, which some scholars consider to be reasonably sound. If it is found that there is no necessity to perform circumcision, it should not be performed on her;
5. *Risalah Bogor* [Bogor Report] (2018)*:* Harmful female circumcision

is forbidden under religious law (*haram*);

6. Official Stance, University of Al-Azhar, Cairo (2020): To prohibit female circumcision and punish those who practice it under criminal law, given that circumcision is harmful to a woman and adversely impacts her marital life. Al-Azhar also believes that female circumcision is not prescribed in Islamic law; instead, it is merely a traditional custom and must be subordinate to the principles of Islamic law that reject all forms of harm, pain and injury;
7. *Taushiyah Bogor* (Bogor Sermon) (2021): The practice of requiring and performing FGM is strictly prohibited by religion except where deemed in the best interest in certain cases based on medical judgement.

The Egyptian government has also responded to the view that harmful, medically unjustified female circumcision is religiously forbidden by passing legislation to criminalise female circumcision for the sake of the well-being of women. This is consistent with the principle of Islamic jurisprudence (*fiqh*) stating that a leader's policies towards the people must be based on the public interest ([Arabic script]).

The World Conference of Islamic Scholars held in Cairo in 2006 affirmed that female circumcision as currently practised poses a danger to both the physical and psychological well-being of women. It must therefore be prevented as a matter of the noble virtues of Islam that prohibit placing anyone in danger. This procedure can also be categorised as a serious offence for which the perpetrator must be punished.

Concurring with the above decision, the Egyptian Dar Il-Ifta has declared on its official website that female circumcision is forbidden by Sharia law (*haram*) and is a crime under national law. Parents and guardians are not permitted to circumcise their daughters because of the risk of medical and psychological harm that has been established in testimony by medical personnel. Furthermore, it is forbidden for

medical personnel to perform or assist in female circumcision procedures except in emergencies or in cases of illness where permitted by law.

On the basis of this fatwa, the Egyptian government promulgated Act No. 126 of 2016 concerning Aggravated Punishments for Perpetrators of Female Circumcision, which among others stipulates punishment as follows:

1. Imprisonment of 5 to 7 years for anyone performing excision of the outer parts of the female genitalia, whether in whole or in part, or by scraping resulting in medically unjustified mutilation of the organ;
2. If the procedure causes permanent disability or death, the punishment will be increased to 3 until 15 years;
3. Imprisonment of 1 to 3 years for anyone who asks for FGM and as a result, women have undergone FGM by the methods described above.

Harmful, medically unjustified FGM also contravenes the mandate of the Indonesian Constitution relating to the right of every person to life and preservation of life (Article 28A), the right to survival, growth and development, and to be free from violence and discrimination (Article 28B), the right to protection of one's person, family, honour and dignity (Article 28G (1)), and the right to freedom from torture and inhumane and degrading treatment (Articles 28G (2) and 28I (1)). Similarly, the practice contravenes Act No. 39 of 1999 concerning Human Rights, which states that any action causing severe pain or suffering, whether physical or mental, falls within the category of torture (Article 1(4)) and must therefore be avoided; acts of consent that cause pain or suffering to a person are also violations of human rights (Articles 2 and 3(3)). The act also prescribes the right to life, freedom from torture, and freedom from degradation of human dignity (Articles 4 and 33(1)), and the right to obtain protection from acts that endanger one's person (Article 64).

In view of the harmful impact and dangers of medically

unjustified FGM, all parties, including oneself, all family members, community leaders, traditional leaders, religious leaders, NGO activists, the government and the media, bear responsibility to take action in prevention of FGM (Surah 3 Ali Imran: 110). This is consistent with the Quranic passage (Surah 9 at-Tawbah: 71) in which all individuals, men and women, must help one another in enjoining what is good and protecting one another from all kinds of evil. Families have a highly significant role in safeguarding the honour of their members and protecting them (Surah 66 at-Tahrim: 6; Surah 33 Al-Ahzab: 58; Surah 2 Al-Baqarah: 195).

If anyone is uninformed about the importance of preventing FGM and the dangers it poses, they should consult those who possess knowledge (Surah 16 An-Nahl: 43), in this case medical personnel. All parties bear responsibility to take action in prevention of medically unjustified FGM because in essence, every individual is a leader who will be held accountable for their leadership (Sahih al-Buchari No. 901). Anyone entrusted with managing the affairs of other persons is also expected to bring about good and resolve all difficulties (Sahih Muslim No. 4826).

Likewise, given that governments are entities entrusted with carrying out the mandate of the people, they must also design and implement policies in the interest of the people in keeping with the principles of Islamic jurisprudence (*fiqh*) ([Arabic script]). In addition, governments must exercise their powers in a humane way (Surah 4 An-Nisa: 58) and not deprive people of their rights, including the right of women to reproductive health (Surah 26 Ash-Shu'ara: 183). Furthermore. Act Number 5 of 1998 concerning Ratification of the Convention Against Torture and Cruel, Inhuman or Degrading Treatment, Elucidation IV Chapter I (Articles 1-16) affirms the role of every nation in preventing inhuman or degrading treatment within their legal jurisdiction.

4. RELIGIOUS ATTITUDES AND VIEWS

With reference to the legal principles (*adillah*) and analysis

(*istidlâl*) as explained above, the Religious Consultation at the Second Religious Congress of Indonesian Women Islamic Scholars (KUPI) responded to questions in a discussion forum (*tashawwur*) by adopting the following stance and views:

a. Religious law concerning the act of harmful, medically unjustified female genital mutilation (FGM) stipulates that it is forbidden (*haram*);

b. All parties, in particular members of a family, community leaders, traditional leaders, religious leaders, NGOs, the government and the media, bear responsibility for preventing harmful, medically unjustified female genital mutilation (FGM);

c. Families, religious leaders, traditional leaders, medical personnel and media have a legal duty to exercise their authority in protecting women from the dangers of medically unjustified female genital mutilation (FGM).

5. RECOMMENDATIONS

1. Individuals:
    1) Educate themselves and their communities on the harmful impact and dangers of medically unjustified FGM, using information from trusted sources;
    2) Participate actively in the prevention of harmful, medically unjustified FGM practices in keeping with their individual professional capacity and authority;

2. Families:
    1) Educate family members on the detrimental and harmful impacts of medically unjustified FGM;
    2) Not perform harmful, medically unjustified FGM within one's family environment;
    3) For families celebrating the birth of a baby girl, the first

menstruation and other milestones in a woman's life, to use these occasions to provide education on reproductive health and offer prayers for safety without performing any FGM;

4) Participate in prevention of harmful, medically unjustified FGM in the community.

3. Local communities:
   1) Not perform harmful, medically unjustified FGM ;
   2) Not ask medical personnel, and especially not lay practitioners, to provide services for medically unjustified FGM;
   3) Conduct awareness raising on the harmful impact and dangers of medically unjustified FGM;
   4) Not turn a blind eye to harmful, medically unjustified FGM when it occurs, but take actions including protection for girls at risk of becoming victims;
   5) Advocate for community leaders to help promote awareness of the religious stance and views of KUPI on protecting women from the dangers of medically unjustified FGM;
   6) Not stigmatise women and girls who do not undergo the procedure.

4. Medical Personnel;
   1) Conduct awareness raising and education about the harmful impact and dangers of FGM from a health perspective;
   2) Not perform any procedures that may be harmful to female genitalia, even if without mutilation and cutting;
   3) Not recommend, offer, provide or turn a blind eye to much less profit from harmful, medically unjustified FGM practices;

5. Islamic Scholars or Religious Leaders:
    1) Educate the public in religious sermons about the importance of the Islamic injunction to avoid all harm, including the harm of medically unjustified FGM;
    2) Conduct awareness raising on the harmful impact and dangers of medically unjustified FGM from an Islamic perspective;
    3) Actively participate in protecting the faithful from the dangers of medically unjustified FGM, with particular focus on infants and girls at risk of becoming victim;
    4) Work in synergy with the government and inter-community imams in taking preventive action against harmful, medically unjustified FGM.

6. The Government of Indonesia:
    1) Raise public awareness on the dangers of medically unjustified FGM as appropriate to its powers and functions, including in pre-marriage counselling for couples at the KUA (Religious Affairs Office);
    2) Develop policies for prevention of harmful, medically unjustified FGM and relevant legislation together with members of the legislature;
    3) Take actions to ensure that medical personnel do not engage in malpractice by providing services involving medically unjustified FGM.
    4) Revoke licences to practice for medical personnel who provide services involving medically unjustified FGM.

7. Civil society and community organisations:
    1) Conduct awareness raising on the harmful impact and dangers of medically unjustified FGM;

2) Not turn a blind eye to harmful, medically unjustified FGM where it happens;
3) Provide protection to women and girls at risk of becoming victims of FGM;
4) Work in synergy with the government in taking preventive action against harmful, medically unjustified FGM.

8. Educational Institutions:
   1) Conduct research on FGM and the differences between male and female circumcision as a basis for review of curricula and extension services;
   2) Conduct awareness raising within educational institutions on the harmful impact and dangers of medically unjustified FGM;
   3) Ensure that training on the harmful impact and dangers of medically unjustified FGM is included in the educational curricula for medicine, midwifery and nursing.
   4) Integrate learning about the harmful impact and dangers of medically unjustified FGM in the curriculum for multi-level reproductive health education.

9. The Media:
   1) Provide journalists with information on the harmful impact and dangers of medically unjustified FGM;
   2) Not frame news reporting on FGM in a positive light;
   3) Conduct public awareness raising and education on the dangers of medically unjustified FGM in both the print and electronic media.

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