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Islamic Law View on Protecting the Rights of Housewives at Risk of Contracting HIV/AIDS

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Abstract:

This article examines the perspective of Islamic law regarding the protection of the rights of housewives at risk of contracting HIV/AIDS from their husbands. Although HIV/AIDS is not a new issue, its impact on families, especially housewives, remains an essential concern in legal and public health contexts. Within the framework of Islamic law, individual rights, including women's rights, are guaranteed and need protection. This research uses normative legal and sociological research methods with a case approach. The results show that Islamic law has a vital role in protecting the rights of housewives who are at risk of contracting HIV/AIDS from their husbands. These rights include the right to know the husband's health status, the right to obtain protection, the right to refuse sexual relations, and the right to get a divorce. Islamic law places great responsibility on husbands to protect the health of their wives and families. Husbands are expected to maintain the welfare of their wives and families, including by taking preventive steps against the transmission of HIV/AIDS. Apart from that, Islamic law also emphasises the importance of fidelity in the husband-wife relationship. Husbands are expected to be faithful to their wives, which is also a preventive measure against the transmission of HIV/AIDS. If a husband fails to fulfil his responsibility to protect his wife from contracting HIV/AIDS, Islamic law gives the wife the right to seek protection, including through legal remedies such as requesting a fatwa from ulama or even filing a divorce petition. This research is expected to help increase public understanding of the rights of housewives at risk of contracting HIV/AIDS, as well as encourage efforts to protect their rights.

Keywords: housewife rights; Islamic law; stigma; discrimination.

Introduction

Human Immunodeficiency Virus atau *Acquired Immuno Deficiency Syndrome* (HIV/AIDS) is an infectious disease problem whose number of sufferers is currently

increasing globally. Social and economic conditions and population mobility influence the increase in transmission. HIV infection causes a decline and weakening of the immune system. This makes the body susceptible to infectious diseases and can lead to the development of AIDS. The term AIDS is used for the most advanced stages of HIV infection. Most people infected with HIV will exhibit symptoms of AIDS within 8 to 10 years if they do not undergo treatment.¹

Likewise, in Indonesia, the number of people living with HIV tends to increase from year to year. The Ministry of Health of the Republic of Indonesia (Kemenkes RI) predicts that by September 2023, the recorded cases of HIV/AIDS will reach more than 500 thousand. It is particularly disheartening that approximately 69.9 per cent of the recorded HIV/AIDS cases involve individuals of productive age, ranging from 25 to 49 years old.² In reality, there are also people with HIV/AIDS (PLWHA or ODHA in Bahasa Indonesia) who are none other than victims, such as wives who were infected by their husbands and/or children whose parents were infected.³ HIV cases affecting housewives also tend to increase every year. Based on data from a spokesperson for the Ministry of Health, the number of housewives infected with HIV reaches 35%. This figure is higher than HIV cases in other groups, such as husbands of sex workers and MSM (men sex with men) groups. This activity has contributed to around 30% of transmission from husbands to wives, leading to an increase of 5,100 new HIV cases among housewives every year.⁴

The data above highlights the significant risk associated with men who have multiple sexual partners, particularly in terms of the impact on their wives. This compounds the vulnerability of women, particularly when they contract HIV/AIDS, potentially from their own husbands.⁵ The existence of socio-cultural and economic vulnerabilities such as tolerating extramarital sexual relations, multiple partners, and women's financial dependence on men has caused the number of PLWHA among housewives to increase. Apart from that, women feel strange when they have to discuss sexuality, including using condoms, because they always trust their husbands.⁶

The consequences of HIV and AIDS affect women's health in their roles as mothers and caregivers as well as their contribution as economic support for the family. If a woman is infected with HIV, the family's economy can suffer, and the quality of children can become poor, which will affect their quality of life in the

¹ Cecep Heriana, Icca Stella Amalia, and Ahmad Ropii, "Faktor Risiko Penularan HIV/AIDS Pada Ibu Rumah Tangga Pasangan Migran Di Kabupaten Kuningan Tahun 2017," *Jurnal Ilmu Kesehatan Bhakti Husada* 6, no. 2 (2017): 42–49, <https://www.neliti.com/publications/295146/>.

² AA Istri Putri Wahyuni, "HIV/AIDS, Fenomena Gunung Es Yang Belum Berakhir," Direktorat Jenderal Pelayanan Kesehatan Kemenkes, Desember 2023, https://yankes.kemkes.go.id/view_artikel/3065/hivaid-fenomena-gunung-es-yang-belum-berakhir.

³ Suhendar Suhendar, Nur Yunus, and Annissa Rezki, "Discrimination and Violations of Human Rights against Patients Living with HIV/Aids (PLWHA) in Indonesia," *ISLAM AND THE AIDS PANDEMIC* 9, no. 5 (May 20, 2022): 64–68, 64 International Journal of Multidisciplinary Research and Development.

⁴ Wahyuni, "HIV/AIDS, Fenomena Gunung Es Yang Belum Berakhir."

⁵ Lenny Octaviany et al., "PENGETAHUAN, SIKAP DAN PENCEGAHAN HIV/AIDS PADA IBU RUMAH TANGGA," *Jurnal Kesehatan Masyarakat* 11, no. 1 (September 11, 2015): 53–58, <https://doi.org/10.15294/kemas.v11i1.3464>.

⁶ Ratih Sukmo W, Agnes Widanti, and Hadi Sulistyanto, "Legal Protection of the Right of Housewives to the Risk of HIV / AIDS in the city of Semarang," *Soepra Jurnal Hukum Kesehatan* 5, no. 2 (2019): 323–39, <https://doi.org/10.24167/shk.v5i2.2563>.



future. Women's vulnerability to HIV transmission can be caused by several factors at different levels, namely the individual level (biological matters, disease, awareness, sexual behaviour), household and community (social status, social instability, economics, culture, stigma and discrimination, racism, homophobia, gender disparities, access to education, exposure to mass media, behaviour and violence in the family), and macro level (environment, migration, public services, policies, access to health services, information, and autonomy).⁷

There is another dimension of stigma attached to HIV that has received less attention from researchers and is often referred to as internal stigma, which describes feelings or perceptions of, or felt stigma. Internal stigma, or perceived stigma, is the shame associated with HIV/AIDS and the fear of discrimination because of the disease. Internal stigma affects healthcare providers and families, who may also feel shame, guilt, or fear. Internal stigma can influence HIV prevention and care for PLWHA. Previous research shows that measuring the internal stigma of PLWHA takes into account the social aspects of these people's willingness to know their status as PLWHA and their community's reaction to AIDS. PLWHA sufferers of stigma may feel more depressed and miserable than those who do not internalise PLWHA stigma.⁸ Apart from that, many religious people also consider the emergence of HIV and AIDS as God's punishment for human sins due to promiscuity.⁹

One of the previous research findings reported that women were not worried about contracting HIV because they thought they were faithful even though they knew their partner was behaving at risk. Another finding was that women who were afraid of contracting HIV did not want to use condoms because their husbands did not like it or were angry if they offered condoms. This made women one of the groups vulnerable to contracting HIV, where they were twice as likely to be infected through sexual intercourse as men.¹⁰ Apart from that, the lack of sources of information obtained or accessed by housewives from health workers, cadres, or the mass media will create a stigma against HIV/AIDS. This half-hearted understanding arises because of the dysfunction of the mass media. News coverage is dominated by the dangers of HIV/AIDS, not by efforts to prevent its spread. This incomplete information causes people to misinterpret how they respond to HIV/AIDS cases. Moreover, this lack of comprehensive mass media coverage causes people to be mentally affected and even discriminate against people with HIV/AIDS.¹¹

⁷ Desak Made Sintha Kurnia Dewi, Luh Putu Lila Wulandari, and D. N. Wirawan, "Determinan Sosial Kerentanan Perempuan Terhadap Penularan IMS dan HIV," *Journal of Public Health Research and Community Health Development* 2, no. 1 (2018): 22–35, <https://doi.org/10.20473/jphrecode.v2i1.16250>.

⁸ Ossie Sosodoro Wisotwardono et al., "Internal Stigma of an HIV-Infected Housewife: A Phenomenological Study," *Jurnal Kesehatan Masyarakat* 13, no. 2 (November 6, 2017): 158–68, <https://doi.org/10.15294/kemas.v13i2.9970>.

⁹ Amusa Saheed Balogun, "Islamic Perspectives on HIV/AIDS and Antiretroviral Treatment: The Case of Nigeria," *African Journal of AIDS Research* 9, no. 4 (December 1, 2010): 459–66, <https://doi.org/10.2989/16085906.2010.546764>.

¹⁰ Dewi, Wulandari, and Wirawan, "Determinan Sosial Kerentanan Perempuan Terhadap Penularan Ims Dan HIV."

¹¹ Herlin Fitriani Kurniawati and Herlin Fitriana Kurniawati, "Characteristics, Source of Information and Knowledge of Housewives about Transmission of HIV and Aids," *Pak. J. Med. Health Sci* 15, no. 2 (2021): 555–58, <https://pjmhsonline.com/2021/feb/555.pdf>.



Law is essential in the implementation of human rights.¹² The government has indeed taken protection to save women and children by issuing a policy regarding the Program for Preventing HIV Transmission from Mother to Child (Program Perlindungan Ibu dan Anak/PPIA). However, this program is very slow in its control efforts, where evidence of HIV transmission is still increasing from year to year. It should be noted that currently, in Indonesia, there is no law that specifically addresses HIV/AIDS holistically and comprehensively. To overcome this, some regulations were made, including Presidential Regulation of the Republic of Indonesia Number 75 of 2006 concerning the Establishment of the National AIDS Commission, which was amended by Presidential Decree of the Republic of Indonesia Number 124 of 2016, followed by Ministerial Regulation Number 20 of 2007 concerning General Guidelines for the Establishment of the National AIDS Commission, the Regulation of the Minister of Health Number 21 of 2013 concerning HIV and AIDS, as well as Decree of the Minister of Manpower concerning Prevention and Control of HIV/AIDS in the Workplace. Moreover, the protection of human rights is contained in the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945) so that women have the right to be protected and respected, as stated in Article 28:¹³ a) Article 28A: Everyone has the right to live and the right to defend his or her life and livelihood; b) Article 28D Paragraph (1): Every person has the right to recognition, guarantees, protection, fair legal certainty, and equal treatment before the law; c) Article 28I Paragraph (2): Every person is free from discriminatory treatment and has the right to receive protection against such discriminatory treatment; d) Article 28J Paragraph (1): Everyone is obliged to respect the human rights of others in an orderly society, nation, and state.

From the perspective of Islamic law, the Qur'an, as a reference principle for Islamic society, basically recognises that men's and women's positions are the same. The most crucial correlation concept regarding male-female relationships and marriage is the effort to build noble character (*akhlaqul karimah*). Therefore, the principle of male-female relations must be pure, honest, and open (social dimension) and not merely a tool and vehicle for satisfying low desires. According to this concept, husband and wife need an attitude of helping each other, supporting each other, protecting each other, and matching each other just like clothes that fit the body. The purpose of our clothes is, at the same time, to adorn and protect the body.¹⁴ All problems should be examined in depth and through collective efforts to produce solutions and provide protection for vulnerable groups, including housewives. The principle of protection needs to be implemented thoroughly.¹⁵ From the background above, this article analyses the rights of housewives who are at risk of contracting

¹² Shereen El Feki et al., "The Global Commission on HIV and the Law: Recommendations for Legal Reform to Promote Sexual and Reproductive Health and Rights," *Reproductive Health Matters* 22, no. 44 (January 1, 2014): 125–36, [https://doi.org/10.1016/S0968-8080\(14\)44807-9](https://doi.org/10.1016/S0968-8080(14)44807-9).

¹³ Nana Ruhyana, "Reform Of Couple Sexual Rights Protection In Case Of Diseases Hiv / Aids In Indonesia," *Legal Reconstruction in Indonesia Based on Human Right*, no. 0 (November 20, 2019), <https://jurnal.unissula.ac.id/index.php/apic/article/view/7851>.

¹⁴ Nanik Trihastuti and Pujiyono, "Rekonstruksi Hukum Perlindungan Dan Penegakan Ham Bagi Ibu Rumah Tangga Terhadap Risiko Tertular HIV/AIDS Dari Suaminya," *Masalah-Masalah Hukum* 43, no. 4 (2014): 514–28, <https://www.neliti.com/publications/152019/>.

¹⁵ Atalya Puspa, "Ibu Rumah Tangga Perlu Dilindungi dari Sifilis dan AIDS," *Media Indonesia*, December 13, 2023, <https://mediaindonesia.com/humaniora/637133/ibu-rumah-tangga-perlu-dilindungi-dari-sifilis-dan-aids>.



HIV/AIDS from their husbands from an Islamic legal perspective. Moreover, this article also describes how Islamic law protects the rights of housewives who are at risk of contracting HIV/AIDS from their husbands.

Method

This article employs a mixed-methods research approach, utilising both normative and empirical legal research methods. Normative legal research focuses on rules or principles in the legal sense, which are conceptualised as norms or rules originating from regulations. Meanwhile, *empirical legal research* is defined as research that examines and analyses the legal behaviour of individuals or communities about the law. Empirical legal research focuses on the legal behaviour of individuals or legal communities.¹⁶ The research specifications used are descriptive-analytical, namely providing a complete and accurate description of the data related to the object of the problem resulting from literature studies from various references used to research, explore, and study the perspective of Islamic law regarding the protection of the rights of domestic workers who are at risk of contracting HIV/AIDS from their husbands. The data obtained was checked for validity to ensure that the data collected could be analysed, interpreted, considered, and conclusions could be drawn from it.¹⁷

Results and Discussion

The rights of Housewives who are at risk of contracting HIV/AIDS from their husbands from an Islamic law perspective

Over half of the global population living with HIV are women.¹⁸ Many of these women, particularly housewives, contract the disease through heterosexual relations, often from their infected husbands.¹⁹ Commonly perceived as caretakers of the home, children, and husband, and often seen as loyal and compliant in sexual matters,²⁰ housewives are particularly vulnerable to HIV/AIDS transmission. This vulnerability positions them as frequent victims of the pandemic. This is quite worrying because they generally get infected by their husbands who commit social deviations, even though they are loyal to one partner and apply good societal norms and morals.²¹ Some of the rights of women who are at risk of contracting HIV/AIDS by their husbands are: first, Right to Know the Husband's Health Status. This is one of the most important rights for wives in the context of protection from HIV/AIDS

¹⁶ Deassy J. A. Hehanussa et al., *Metode Penelitian Hukum* (Bandung: Widina Media Utama, 2023), <https://repository.penerbitwidina.com/publications/559439/>.

¹⁷ Sudirman Sudirman et al., "Examining the Complexity of Child Marriage as Sexual Violence in Digital Era," *Legality: Jurnal Ilmiah Hukum* 31, no. 2 (September 30, 2023): 310–28, <https://doi.org/10.22219/ljih.v31i2.28881>.

¹⁸ Siwan Anderson, "Legal Origins and Female HIV," *American Economic Review* 108, no. 6 (June 2018): 1407–39, <https://doi.org/10.1257/aer.20151047>.

¹⁹ Md Zawawi Abu Bakar, Rajwani Md. Zain, and Wan Abd Rahman Khudzri Wan Abdullah, "The Rights of Wives Living with HIV/AIDS According to the Perspective of Islamic Family Law," *Advances in Natural and Applied Sciences* 7, no. 4(S) (2013): 388–92, http://www.aensiweb.com/old/anas_special_2013.html.

²⁰ Jenny Munro, "West Papuan 'Housewives' with HIV: Gender, Marriage, and Inequality in Indonesia," *Asian Studies Review* 48, no. 1 (January 2, 2024): 121–39, <https://doi.org/10.1080/10357823.2023.2188580>.

²¹ Jasmine Wanasti Fadhilah et al., "Kerentanan Ibu Rumah Tangga Di Indonesia Terhadap Hiv/Aids : Literature Review," *PREPOTIF: JURNAL KESEHATAN MASYARAKAT* 6, no. 3 (2022): 1484–95, <https://doi.org/10.31004/prepotif.v6i3.4640>.



transmission in Islamic law. For married couples, if one of them is known to be positively infected with HIV/AIDS, they should be open so as not to infect their family, especially their partner. Because if it is not open and the result is that the partner is also known to be infected, this will increase the rate of HIV/AIDS transmission. Moreover, conditions like this can be worse if the wife is found to be positive for contracting HIV/AIDS during pregnancy, where the HIV can be transmitted to the fetus through the placenta.²²

In Islam, there are principles of transparency and honesty in husband-wife relationships. The husband has a moral and religious obligation to talk openly about his condition, including if he has certain diseases, such as HIV/AIDS. For those who are HIV positive, the Indonesian Ulema Council (MUI), in its fatwa, recommends that married people are "obligated" to inform their partners about their HIV-positive status. Furthermore, for Indonesian citizens in general, the MUI recommends maintaining morals, returning to faith, increasing piety, and avoiding sin and bad behaviour. In addition, MUI recommends that all HIV-positive people be guided to repent.²³

Knowing the husband's health status allows married couples to make joint decisions about the actions they need to take to protect their health. This includes preventive measures such as condom use or regular HIV testing. By knowing the husband's health status, the wife can be more alert to take appropriate action to protect herself and her family members from HIV/AIDS transmission. This includes precautions such as avoiding unprotected sexual intercourse and seeking medical treatment if necessary. Knowledge about the husband's health can also help the wife make wise decisions about their relationship. This may include steps such as marriage counselling or filing for divorce if the risk of contracting HIV/AIDS cannot be minimised. Special education regarding HIV and the importance of HIV testing must be given to housewives. This will ultimately contribute to their awareness of undergoing HIV testing themselves. Additionally, increased counselling services should be offered by health facilities to motivate housewives to undergo HIV testing, reduce HIV stigma, and empower their role as mothers.²⁴

However, HIV/AIDS is a sensitive ethical issue in the management of health information because it relates to the right to confidentiality and the right to privacy. As stated in the Hippocratic Oath, doctors with limited roles must protect patient confidentiality. Protection of patient privacy can demonstrate the priority of patient rights in medical care. Regarding the transmission of HIV/AIDS, the principal ethical obligation of medical professionals is to protect patient privacy and uphold the patient's right to confidentiality of HIV/AIDS patient medical records. Breach of confidentiality is considered a violation of the code of ethics. Decree of the Minister

²² Sukmo W, Widanti, and Sulistyanto, "Legal Protection of the Right of Housewives to the Risk of HIV / AIDS in the city of Semarang."

²³ Ahmad Shams Madyan, "The Re-Production of Discourse, the Exercise of Power, and the Creation of Piety in the Issue of HIV/AIDS and Islam in Indonesia," *Religió Jurnal Studi Agama-Agama* 3, no. 2 (September 2, 2013), <https://doi.org/10.15642/religio>.

²⁴ Yeni Fuspita, Sri Yona, and Agung Waluyo, "HIV testing of housewives with HIV in Lampung, Indonesia: A qualitative study," *Enfermería Clínica* 29 (September 1, 2019): 879–84, <https://doi.org/10.1016/j.enfcli.2019.04.133>; Yevhen Leheza et al., "The Human Right to an Environment Safe for Life and Health: Legal Regulation, Contemporary Challenges and Comparative Perspectives," *Syariah: Jurnal Hukum Dan Pemikiran* 23, no. 2 (2023): 138–50, <https://doi.org/10.18592/sjhp.v23i2.12257>.



of Manpower Article 6 No.Kep. 68/MEN/IV/2004 concerning Prevention and Control of HIV/AIDS in the Workplace states that information obtained from counselling, HIV testing, treatment, and other activities must be kept confidential as stated in the medical record.

In managing health information, hospitals as places of medical services have several obligations stated in the code of ethics, including protecting all medical/non-medical data, fulfilling patient rights, and providing adequate information to patients about their illnesses. Confidentiality of medical records is also stated in Article 47 Paragraph (2) of Law Number 29 of 2004 concerning Medical Practice. Although this regulation only states that doctors, dentists, and heads of medical services are obliged to maintain the privacy of patient data, Government Regulation Number 10 of 1996 concerning the Obligation of Confidentiality of Medical Data states that all health service providers and those who are still majoring in Health must also maintain patient confidentiality. This provision aims to protect patients from all dangers resulting from medical record violations. However, what if the patient's illness can cause harm to other people, especially his wife? This critical evaluation raises the question: Do patients have the right to hide their health status from their families, especially their partners who may be at risk of contracting sexually transmitted diseases?

Furthermore, if the patient is unwilling to disclose his or her health status to the family or if regulations stating that medical records must be kept confidential are a reason for not disclosing the patient's illness, are these regulations still applied to uphold the patient's rights even though their illness can be transmitted to their partner? It cannot be denied that human rights must be fulfilled. An important element of human rights is a demand from the right holder to the right holder or obligation holder whose fulfilment is voluntary and can also be forced. Thus, it is unfair to force the fulfilment of rights even though this violates other people's rights, such as the rights of a wife.²⁵

Furthermore, regulations and codes of ethics regarding the obligation of health service providers to hide patient medical records from other people, including their partners, must be evaluated from a human rights perspective. Protecting a patient's rights by hiding his or her health status may be irrelevant if the action violates the rights of others, considering the importance of fulfilling the rights of his wife and children. Just because individuals have the right to express opinions and actions does not mean they have the right to engage in activities that threaten others. When exploring generosity, a balance must be struck between acting in the individual client's best interests versus the welfare of others and society as a whole. Therefore, disclosing important information regarding a husband's illness is permitted because it is closely related to the welfare of his wife and children. If maintaining the confidentiality of medical information is related to the public interest, then the rights of patients who wish to conceal that information are also associated with the rights of other people who consider confidentiality part of their interests. The party disclosing the information should be exempt from compensation to protect the public interest. In this sense, public interests include public security, violence prevention,

²⁵ Nanik Trihastuti et al., "The Deterrent Effect in the Case of HIV/AIDS Spreading: A Study in the Progressive Legal Perspective," *Journal of Legal, Ethical and Regulatory Issues* 24, no. 3S (July 28, 2021): 1-751, <https://www.abacademies.org/abstract/the-deterrent-effect-in-the-case-of-hiv-aids-spreading-a-study-in-the-progressive-legal-perspective-11832.html>.



morality and health protection, and rights protection. Thus, confidentiality as part of individual rights is not absolute.²⁶

Second, in the purview of the Right to Protection, women living with HIV are very vulnerable to the negative impacts of the HIV epidemic because living with HIV has many interrelated problems, such as psychological challenges, stigma, and discrimination, which are reflected in rejection, social exclusion, and isolation in families, communities, health facilities, and workplaces. Psychological challenges, including stress, anxiety, depression, sadness, and shame, are common negative impacts faced by women living with HIV after their HIV diagnosis. Factors that trigger psychological stress in women are advanced HIV infection, weak physical condition, and fear of violating the confidentiality of their HIV status, which could cause shame for their families. Other stressors contributing to these psychological challenges are women's fear of transmitting HIV to their unborn babies, concerns about their children's future, especially in the event of premature death, and a lack of necessary resources to support children and their families without the added stress of an HIV diagnosis. Similarly, lack of social support from others, experiences of social rejection and social isolation, perceived stigma, and poor economic conditions were also reported as determinants of depression, fear, and worry among women living with HIV.²⁷ Housewives who were diagnosed with HIV as a result of infection from their husbands reported emotional trauma experienced by people facing fatal or terminal illnesses.²⁸

Therefore, housewives have the right to receive protection from the transmission of HIV/AIDS and its various impacts on their husbands. The right to protection includes efforts to protect housewives from the risk of HIV/AIDS transmission from their husbands. Husbands have a moral and religious responsibility not to endanger the health of their wives and families. This includes avoiding behaviours that risk transmitting the disease and taking necessary precautions. Protection also includes emotional and psychological aspects. Therefore, husbands are expected to provide emotional and psychological support to their wives and a safe and supportive atmosphere for the family. This is based on the words of Allah SWT in Surah An-Nisa verse 34:

"Men are the leaders/protectors of women because Allah has preferred some of them (men) over others (women), and because they (men) have spent part of their wealth" (QS. An-Nisaa'/4: 34).

Additionally, compared to men, they are also less likely to have the resources to access HIV prevention and treatment services. Women must (1) be able to make decisions regarding reproductive health without coercion; (2) receive prenatal, delivery, and postnatal health care and treatment; and (3) have the means and information to prevent perinatal transmission. They should be given access to necessary sexual health information, including information about sexuality and HIV

²⁶ Trihastuti et al.

²⁷ Nelsensius Klau Fauk et al., "HIV-Related Challenges and Women's Self-Response: A Qualitative Study with Women Living with HIV in Indonesia," *PLoS ONE* 17, no. 10 (October 10, 2022): e0275390, <https://doi.org/10.1371/journal.pone.0275390>.

²⁸ Zulkarnain Zulkarnain et al., "Psychological Well-Being of Housewives Living with HIV/AIDS: Stigma and Forgiveness," *HIV & AIDS Review. International Journal of HIV-Related Problems* 19, no. 1 (2020): 24–29, <https://doi.org/10.5114/hivar.2020.93158>.



transmission.²⁹ The right to protection also includes access to appropriate medical care and health services that are sensitive to HIV/AIDS issues. Husbands are expected to ensure their wives can access the prevention, testing, treatment, and support services they need to protect themselves from the disease. Husbands must treat their wives fairly and not expose them to unnecessary or harmful risks to their health.

Third, regarding the Right to Refuse Sexual Intercourse, several studies show that sexual negotiation is also an essential part of HIV/AIDS transmission. Women's ability to engage in sexual negotiations in marriage or long-term relationships should be enhanced by social structural factors, such as education, self-confidence, and knowledge of their HIV status. In addition, the length of the marital relationship has a significant influence on sexual negotiations. Sexual negotiation skills enable a wife or married woman to communicate about safe sex, initiate safe sex, offer barrier methods, and refuse unprotected sex with her husband. Furthermore, sexual negotiations may also illustrate how women in serodiscordant relationships play an active role in managing their HIV-negative status. However, there are several barriers to HIV/AIDS prevention behaviour among people living with HIV serodiscordant partners.³⁰ In Islam, wives have the right to refuse sexual relations if this could threaten their health or safety, including in the context of HIV/AIDS transmission. This is based on Islamic teachings that are full of guidance to avoid things that could endanger oneself or others, including being careful about potentially infectious diseases. The Prophet Muhammad said: "You must not endanger yourself, and you must not endanger others." (HR. Ibnu Majah no. 2341, Thabrani no. 11806)

Fourth, in the context of the Right to Get a Divorce, If the husband is proven to have neglected his responsibility to protect his wife from HIV/AIDS transmission or unfaithful behaviour that increases the risk of infection, the wife can file a divorce petition. Thus, in the context of a Muslim wife with an HIV-negative status in a serodiscordant relationship, the wife has the right to obtain a divorce if she feels her marriage can no longer be maintained due to the risk of contracting HIV/AIDS. This is based on the principle that a wife should not be forced to remain married to a husband who is at risk of infecting her with HIV/AIDS so that the wife can file for divorce at the religious court.

How Islamic law protects the rights of Housewives who are at risk of contracting HIV/AIDS from their husbands

In Islam, the family plays an important role and is the foundation of society. Family in Islam maintains moral protection and provides emotional stability, love, and kindness, as well as social and economic security.³¹ The Prophet Muhammad SAW said, "The believer with the most perfect faith is the one with the best morals

²⁹ Lance Gable, Lawrence O. Gostin, and James G. Hodge, "HIV/AIDS, Reproductive and Sexual Health, and the Law," *American Journal of Public Health* 98, no. 10 (October 2008): 1779–86, <https://doi.org/10.2105/AJPH.2008.138669>.

³⁰ Agnes Yeni Lufiana Novita, Praneed Songwathana, and Pajongsil Perngmark, "A Grounded Theory Study of How Muslim Wives Adapt to Their Relationships with Husbands Who Are HIV-Positive," *Pacific Rim International Journal of Nursing Research* 24, no. 2 (2020): 187–201, https://www.nur.psu.ac.th/researchdb/file_warasarn/15308journal2.pdf.

³¹ Dr Amir Ghajarieh, "The Risk of HIV/AIDS in Multiple and Concurrent Sexual Relationships and Islamic Teachings," *Advances in Social Sciences Research Journal* 1, no. 5 (January 1, 2014): 1–7, <https://doi.org/10.14738/assrj.15.342>.



and the best of you is the one who is kindest to his wife." (HR. At-Tirmidzi, 3/466; Ahmad, 2/250 dan Ibnu Hibban, 9/483). From the worrying facts in society, it is known that most HIV infections among housewives are from husbands who have HIV due to the behaviour of husbands who are also in relationships with other partners.³² Housewives who suffer from HIV/AIDS due to infection from their husbands are then faced with internal problems because the virus continues to attack their bodies and external issues such as taking care of husbands and children infected with HIV/AIDS, stigma and discrimination, maintaining family integrity and even responsibility for home economic problems when husbands die.³³ Contradictory to the above, Islamic law places a great responsibility on husbands to protect the health of their wives and families. Husbands are expected to maintain the welfare of their wives and families, including by taking preventive steps against the transmission of HIV/AIDS. Apart from that, Islamic law also emphasizes the importance of fidelity in the husband-wife relationship. Husbands are expected to be faithful to their wives, which is also a preventive measure against the transmission of HIV/AIDS.

In the study of Islamic law, deviant sexual acts such as adultery have been regulated in the Qur'an and Sunnah.³⁴ All these actions fall into *the hudud*, namely actions whose punishment has been determined in the Qur'an and Sunnah.³⁵ In the sense that all these acts are included in the criminal category with heavy penalties, it is just that this hudud provision has not been accommodated in the legal system in Indonesia other than in Aceh Province, even though many experts and researchers have suggested that it be accommodated in the draft Criminal Code.³⁶ In the study of Islamic law, it is known that the Shari'a prohibits these actions because they have a purpose. Among these goals are to maintain the sanctity of the institution of marriage, maintain bloodlines, protect the foundations of society, and prevent Muslims from suffering harm because every prohibition will hurt the person who commits it and his or her family. For example, the bad thing about a child is that a child born due to adultery will have a broken line with his biological father, so the child will be prevented from receiving an inheritance from his father. If the child is a

³² Hanna Tabita Hasianna Silitonga, Hebert Adrianto, and Minarni Wartiningih, "Profiles of Housewives with HIV-AIDS in Surabaya," *Review of Primary Care Practice and Education (RPCPE)* 4, no. 1 (2021): 10–17, <https://dspace.uc.ac.id/handle/123456789/3496>.

³³ Muchlis Achsan Udji Sofro and Ema Hidayanti, "A Social Support for Housewives with HIV/AIDS through a Peer Support Group," *Psikohumaniora: Jurnal Penelitian Psikologi* 4, no. 1 (April 30, 2019): 77–94, <https://doi.org/10.21580/pjpp.v4i1.3378>.

³⁴ Mhd Rasidin et al., "The Mapping Verses and Application of the Linguistic Approach and Ushul Fiqh Toward the Law of Adultery," *El-Mashlahah* 14, no. 1 (March 25, 2024): 21–42, <https://doi.org/10.23971/el-mashlahah.v14i1.7354>.

³⁵ Arfriani Maifizar, "Wilayatul Hisbah's (WH) Strategy to Enforce the Law against Khalwat Case in Ujung Karang West Aceh Regency," *Ijtihad: Jurnal Wacana Hukum Islam Dan Kemanusiaan* 22, no. 1 (July 15, 2022): 37–52, <https://doi.org/10.18326/ijtihad.v22i1.37-52>; Sakhowi Sakhowi, "Taqnīn Method of Qānūn Jināyah and Problems of Its Implementation in Aceh, Indonesia," *Journal of Islamic Law* 3, no. 2 (August 31, 2022): 193–211, <https://doi.org/10.24260/jil.v3i2.817>; Mulizar Mulizar, Asmuni Asmuni, and Dhiauddin Tanjung, "Maqashid Sharia Perspective of Legal Sanction for Khalwat Actors in Aceh," *Al-Istinbath: Jurnal Hukum Islam* 7, no. 1 May (May 23, 2022): 161–82, <https://doi.org/10.29240/jhi.v7i1.3587>.

³⁶ Muzakkir Muzakkir, "Dawn of Justice: Evaluating the Alignment of Women and Children in Aceh's Qanun Jinayat," *Al-Ahkam* 32, no. 2 (October 30, 2022): 131–52, <https://doi.org/10.21580/ahkam.2022.32.2.12130>; Mursyid Djawas et al., "The Position of Non-Muslims in the Implementation of Islamic Law in Aceh, Indonesia," *AHKAM: Jurnal Ilmu Syariah* 23, no. 1 (June 19, 2023), <https://journal.uinjkt.ac.id/index.php/ahkam/article/view/32127>.



girl, then the father cannot be the guardian to marry her off. The consequences of this law are also regulated in the regulations regarding marriage and give rise to separate conflicts regarding children's rights, such as the right to obtain a birth certificate, custody (education), and affection. The dire consequences for the perpetrator include being infected with infectious and deadly diseases such as HIV-AIDS.³⁷

It has been reported that the cause of HIV/AIDS between 80% - 90% is adultery, which in its broadest sense, according to Islamic teachings, is a heinous act that is forbidden and condemned by Allah SWT. Not only the perpetrator but also all parties involved in adulterous activities are subject to heavy penalties.³⁸ Islam prohibits premarital relations, but based on Islamic teachings, a legal marriage can perfect a person's faith. Several verses in the Qur'an set out the prohibition and punishment of premarital or extramarital relationships.³⁹ One of the whole verses said: "And do not approach adultery, for indeed adultery is an abominable act and the worst path (taken by a person)." (QS. Al-Israa/17:32).⁴⁰ Thus, religion should indeed influence HIV/AIDS prevention behaviour. Apart from that, the results of the MUI National Muzakarah on HIV/AIDS concluded that HIV/AIDS is mainly caused by sexual behaviour, which is prohibited by Islam, as mentioned above. Therefore, the most effective measures to prevent this include prohibiting adultery and related activities, such as pornography and pornographic actions.⁴¹

In Islam, marriage is a religious duty and, as a consequence, a moral protection because the family is formed through marriage.⁴² Therefore, although divorce is permitted in Islam, divorce is most hated by Allah.⁴³ HIV/AIDS can be used as a reason to demand divorce by one of the partners. On the other hand, married couples where one or both suffer from HIV/AIDS may also agree to continue their marriage by using condoms during sexual intercourse to reduce the risk of transmitting the disease. However, it may not be 100% effective. This is based on the following rules:

³⁷ Urwatul Wusqa and Muchlis Bahar, "Pendekatan Hukum Islam Bagi Penerima Obat Gratis ARV Di RSUP M. Djamil Padang Dalam Mencegah Penularan HIV-AIDS," *Jurnal Hukum Islam* 17, no. 1 (2019): 79–98, <https://e-journal.uingusdur.ac.id/jhi/article/view/6953>.

³⁸ Moh Bahardin, "Tinjauan Hukum Islam Terhadap Penderita Hiv/aids Dan Upaya Pencegahannya," *Asas: Jurnal Hukum dan Ekonomi Islam* 2, no. 2 (July 14, 2010): 177483, <https://doi.org/10.24042/asas.v2i2.1630>.

³⁹ Ghajarieh, "The Risk of HIV/AIDS in Multiple and Concurrent Sexual Relationships and Islamic Teachings."

⁴⁰ Muhammad Chairul Huda et al., "Nonmarital Sex Rituals on Mount Kemukus (Study of Legal Culture and Islamic Law Perspective)," *Samarah: Jurnal Hukum Keluarga Dan Hukum Islam* 6, no. 1 (June 27, 2022): 289–309, <https://doi.org/10.22373/sjhk.v6i1.9130>; Yahaya Ibrahim Abikan, "Examining the Admissibility or Otherwise of Evidence Generated from Closed-Circuit Television (CCTV) and Deoxyribonucleic Acid (DNA) Test as Means of Proof of Zina Under Islamic Law," *Al-Manahij: Jurnal Kajian Hukum Islam* 17, no. 1 (May 5, 2023): 83–96, <https://doi.org/10.24090/mnh.v17i1.8172>.

⁴¹ Rizqa Febry Ayu, "Iddah Wanita Hamil Karena Zina Menurut Hukum Islam dan Hukum Positif," *El-Usrah: Jurnal Hukum Keluarga* 4, no. 1 (June 30, 2021): 216–43, <https://doi.org/10.22373/ujhk.v4i1.10097>.

⁴² Siti Nurjanah et al., "Al-Mubâdalah Fî Mafhûmi Fiqhi al-Mar'ah al-Mu'âshirah Bî Indûnisiyâ," *AL-IHKAM: Jurnal Hukum & Pranata Sosial* 17, no. 1 (July 11, 2022): 189–215, <https://doi.org/10.19105/al-lhkam.v17i1.6140>.

⁴³ Agnes Yeni Lufiana Novita and Praneed Songwathana, "Understanding Stigma and Coping Strategies among HIV-Negative Muslim Wives in Serodiscordant Relationships in a Javanese Community, Indonesia," *Belitung Nursing Journal* 7, no. 5 (October 28, 2021): 409–17, <https://doi.org/10.33546/bnj.1600>.



"If there are several benefits that collide, then the greater (higher) benefit must take precedence. And if there are several *mafsadah* (dangers, damage) that collide, then the lightest *mafsadah* is chosen."

This rule explains that the greater benefit takes priority if several benefits cannot be combined (achieved or done all at once). Because in (matters that contain) greater benefits, there is additional goodness, and Allah SWT loves it. However, if some of these benefits can be collected and all can be obtained, then that is more prioritised. On the other hand, if there are several *mafsadat* (bad things) that one of them is forced to take, then the one with the lightest *mafsadat* is chosen. Meanwhile, if all of these *mafsadat* can be avoided, that is what is hoped for.⁴⁴ Another rule states that Muslims must fulfil the conditions they have agreed to, except conditions that prohibit something halal or allow something that is haram. This noble rule is by the hadith *lafadz* narrated from Abu Hurairah Radhiyallahu anhu; Rasulullah Sallallahu 'alaihi wa sallam said: "And Muslims must fulfil the conditions they have agreed to except conditions that prohibit something that is halal or make lawful something that is haram." (HR. Ahmad 2/366, Abu Dâwud no. 3594). If a husband fails to fulfil his responsibility to protect his wife from contracting HIV/AIDS, Islamic law gives the wife the right to seek protection, including through legal remedies such as asking for a fatwa from the ulama or even filing a divorce petition. Thus, Islamic law provides a strong legal framework to protect the rights of housewives who are at risk of contracting HIV/AIDS from their husbands by placing the primary responsibility on husbands to ensure the welfare and protection of wives and families.

Conclusion

From an Islamic legal perspective, the rights of wives who are at risk of contracting HIV/AIDS from their husbands are recognised and protected. These rights include: 1). right to know the husband's health status; 2). right to protection; 3). right to refuse sexual intercourse; and 4). right to get a divorce. Transparency and honesty in husband-wife relationships are highly emphasised in Islam, so husbands have a moral and religious obligation to inform their wives about their health status, including if they are infected with HIV/AIDS. Women who are at risk of contracting HIV also have the right to receive protection from the risks and negative impacts of this disease. In addition, the wife has the right to refuse sexual relations if it endangers her health or safety, including in the context of HIV/AIDS transmission, which is highly emphasised in Islam. If the husband does not fulfil his responsibility to protect his wife from HIV/AIDS transmission, the wife has the right to seek protection and file a divorce petition. Overall, Islamic law places great responsibility on the husband to protect the health of his wife and family. Through a strong legal framework, the rights of housewives who are at risk of contracting HIV/AIDS from their husbands are recognised and protected in Islam.

⁴⁴ Desip Trinanda et al., "Maṣlahah and Justice in the Formulation of the Law: A Critic on the Formulation of Job Creation Law," *JURIS (Jurnal Ilmiah Syariah)* 21, no. 1 (June 9, 2022): 53–66, <https://doi.org/10.31958/juris.v21i1.4718>; Rahmat Hidayat et al., "Review of Maqāsid Al-Syarī'ah Concerning the Fulfillment of Child Rights Post-Divorce in Budi Aji Village, Simpang Pematang District, Mesuji Regency," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 22, no. 2 (December 31, 2022): 213–28, <https://doi.org/10.30631/alrisalah.v22i2.1254>.



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