



PROVISION OF CONTRACEPTIVE DEVICES FOR SCHOOL-AGED CHILDREN AND ADOLESCENTS: A COMPARISON OF MAQASID AL-SYARIAH AND POSITIVE LAW

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Abstract

This study aims to examine the criticism of Maqashid al-Syariah and Positive Law against Article 103 paragraph 4 of Government Regulation No. 28 of 2024. This is a qualitative study. The research design is a literature review. The findings of this study indicate that the regulation on the provision of contraceptives for school-age children and adolescents without clearly specifying the qualifications of recipients is only applicable to those who are married. This is considered contrary to the Child Protection Law and Maqasid al-Syariah. The novelty of this study is demonstrated in its critique of Maqasid al-Syariah and Positive Law, which are brought together in the certainty and usefulness of law, which prohibits the promotion of contraceptives to children, with the threat of a criminal fine.

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Keywords: Article 103 Paragraph 4 of Government Regulation Number 28 of 2024, Maqashid Sharia, Positive Law

A. Introduction

This phenomenon of teenage pregnancy does not occur without various factors, one of which is early marriage. Globally, the number of girls who marry as children reaches 12 million per year, while the number of boys who marry before the age of 18 reaches 115 million. ("Child Marriage - UNICEF DATA," n.d.; Sholihah, 2025)

It is undeniable that school-aged children and adolescents are exposed to sexual activity. The 2017 Indonesian Demographic and Health Survey (IDHS), for example, revealed that around 2% of female adolescents aged 15-24 and 8% of male adolescents of the same age admitted to having had sexual intercourse before marriage, and 11% of them experienced unwanted pregnancies. Among those who had engaged in premarital sexual intercourse, 59% of females and 74% of males reported that they first had sexual intercourse between the ages of 15 and 19. (Perempuan, n.d.)

With various forms of sexual activity involving children and adolescent girls occurring in society, girls are increasingly at higher risk of becoming pregnant. (Sholihah, 2025)

Teenage pregnancy often carries serious health risks, such as anemia, hypertension, and premature birth. Children born to teenage mothers are also more prone to complications and have higher health risks. This has a significant impact on the health of the younger generation and exacerbates maternal and infant mortality rates in Indonesia. (Pratiwi, Triani, Sundawa, & Mutaqqin, 2025)

In addition, another reproductive health issue that is equally important is sexually transmitted infections (STIs). STIs are a significant global health problem. These diseases are transmitted through unsafe sexual intercourse and can have serious consequences for individual and community health. With increasing sexual activity and a lack of knowledge about safe sex practices, cases of STIs continue to rise in various parts of the world. (Anisa Putri Utami, Kaeksi, Wahyuningsih, & Arini, 2025)

STIs are infections caused by gonorrhea, syphilis, fungi, herpes/HIV viruses, or parasites (lice). STIs can affect both men and women. STIs can cause serious reproductive tract infections. If left untreated, infections can spread, cause prolonged pain, infertility, and even death. Teenage girls need to be aware that the risk of contracting STIs is higher than for boys because the female reproductive system is more vulnerable, and symptoms often go unnoticed in the early stages, allowing the disease to progress to a more severe stage.(Anisa Putri Utami et al., 2025)

STIs are common in society, including gonorrhea, syphilis, chlamydia, condyloma, bacterial vaginosis, and others. Gonorrhea is caused by the bacterium *Neisseria gonorrhoeae*. In men, it is known as gonorrhea, with symptoms including thick, yellowish discharge from the genital area and lower abdominal pain. In women, it often has no symptoms. Possible complications include pelvic inflammation in women, infertility in both women and men, eye infections in newborns that can cause blindness, ectopic pregnancy (outside the uterus), and increased risk of HIV transmission. Syphilis is caused by the bacterium *Treponema pallidum*. Symptoms include a single, raised, painless sore, red bumps or patches on the body that disappear on their own, and often swollen lymph nodes. Chlamydia is caused by the bacterium *Chlamydia trachomatis*. This infection is often chronic, as 70% of women initially experience no symptoms and therefore do not seek medical attention. Symptoms include thin, white or yellow vaginal discharge, pain in the lower abdomen, and bleeding after sexual intercourse in women. Complications often occur alongside gonorrhea, pelvic inflammatory disease, infertility due to blockage of the fallopian tubes, ectopic pregnancy, eye infections, and pneumonia in newborns, and it also increases the risk of HIV transmission.(Anisa Putri Utami et al., 2025)

Sexually transmitted infections (STIs) are a growing global health problem, including in Indonesia. The highest prevalence of STIs occurs among adolescents and young adults due to risky sexual behavior. This needs to be addressed seriously given the long-term impact of STIs.(Dewi & Kurniasih, 2023)

One of the regulations that can protect the reproductive health rights of children and adolescents is Government Regulation No. 28 of 2024 on the Implementation Regulations of Law No. 17 of 2023 on Health, which accommodates reproductive health efforts for school-age children and adolescents. Reproductive health efforts generally aim to maintain and improve the reproductive system, functions, and processes in both males and females. During the school-age and adolescent stages, reproductive health efforts are carried out at a minimum through the provision of communication, information, and education, as well as reproductive health services. According to Article 103(4) of the aforementioned Ministerial Regulation, reproductive health services are provided, among other things, through the provision of contraceptives.

As a form of anticipation and concern for this issue, the Indonesian government issued Government Regulation No. 28 of 2024, which is an implementation of Law No. 17 of 2023 concerning Health. In one of its articles, Article 103 paragraph (4) point "e," it states that reproductive health services for school-age children and adolescents include the provision of contraceptives.(Pratiwi et al., 2025)

The policy on the provision of contraceptives for school-age children and adolescents, as mentioned above, does not provide clarification on the qualifications of school-age children and adolescents who are specifically eligible to receive contraceptives.(Sholihah, 2025) The ambiguity of these regulations could spark controversy among the public, as it could lead to misuse of the equipment.

Various methods of contraception are available, one of which is condoms as a short-term contraceptive device. Based on data, condom use in Indonesia is quite high, with more than 175 million units distributed in 2016.(Sholihah, 2025) Condoms are widely available in various places, both through online stores and offline stores such as minimarkets, supermarkets, and pharmacies. However, the ease of access to condoms also raises concerns about their misuse, especially by teenagers and unmarried individuals. Therefore, policies regarding the procurement and distribution of contraceptives require serious

attention from the government, both at the national and local levels.(Adilah, Mutahar, & Purnamasari, 2017)

Based on this reality, government policy on the provision of contraceptives must consider the balance between reproductive health, social norms, and applicable laws. On one hand, the availability of contraceptives can help reduce the risk of unintended pregnancies and sexually transmitted infections, particularly among adolescents. However, on the other hand, unrestricted access without adequate education may raise concerns about misuse and conflict with societal moral and cultural values. Therefore, clear regulations and strict monitoring mechanisms are necessary in the implementation of these policies.

Therefore, in mediating the pros and cons of providing contraceptives to school-age children and adolescents, the law as a form of social control is considered proportional in minimizing such conflicts or debates. In Indonesia, legislation (positive law) is also used as the primary source of law. Even the legal regulations in Indonesia are structured in a hierarchical and tiered manner. Almost all levels of government are granted the authority to create legal regulations. No aspect of state administration or societal behavior is exempt from positive law. As a result, many experts describe Indonesia as a “country of laws.”(Hadi, 2018)

The need for legislation is a logical consequence of a state governed by the rule of law, where there is a demand to act in accordance with the principle of legality. Legislation is the answer to this demand. However, positive law also has many weaknesses, including ambiguity, vagueness, inconsistency, incompleteness, and other problems.(Hadi, 2018)

Given this situation, the question arises: where does the living law lie? For this reason, in addition to legislation as the primary source of law, Indonesia also recognizes the living law as one of its sources of law.(Hadi, 2018)

With the majority of the population in Indonesia being Muslim, Islamic law is considered as part of Living Law, which is closely related to the percentage of the Muslim population. Maqasid al-Syari'ah was

chosen as the perspective because of its role in applying Islamic law to appropriate legal objects.(Amin, 2022)

Based on this, researchers consider it necessary to conduct further study in a research entitled “Provision of Contraceptives for School-Age Children and Adolescents: A Comparison of Maqasid Al-Syariah and Positive Law.”

The novelty of this study can be seen through a literature review, namely the results of previous relevant studies. Based on the findings, among the studies highlighting regulations on the provision of contraceptives for school-age children and adolescents, Frida Amalia et al. emphasized the urgency of establishing local regulations on the purchase of condoms in Samarinda Seberang with a review of Maqashid Syariah.(Amalia, Hervina, & Maryah, 2023) Zamzam Mustofa et al. focus more on the law regarding the use of contraceptives from an Islamic perspective.(Mustofa, Nafiah, & Septianingrum, 2020) Meanwhile, Hafsia Khairun Nisa Mokodompit focuses on examining factors that contribute to condom misuse behaviour.(Mokodompit, 2022) On the other hand, Putri Mayang Sari et al. highlight Government Regulation No. 28 of 2024 concerning the Provision of Contraceptives for Students and Adolescents within the framework of the principle of *maslahah mursalah*.(Aisyah Rahmaini Fahma, Evi Yulia Fitri, 2024) Elda Dwi Pratiwi et al. are more specific in highlighting the latest provisions on the provision of contraceptives for adolescents and students from the perspective of Pancasila legal philosophy.(Pratiwi et al., 2025) Meanwhile, Mieke Yunita Viryadi focuses more on examining the validity of these policy norms and the efforts needed to revitalize these normative provisions based on aspects of legal protection.(Viryadi, 2024) Asfa Asfiaish Sholihah focuses more on highlighting the considerations underlying the policy while assessing whether the provision of contraceptives for school-age children and adolescents is in line with the principle of benefit as a legal objective.(Sholihah, 2025) Sarah Mermelstein, MD, and Katie Plax, MD, focus on studying contraceptive use among adolescents, particularly in the United States.(Mermelstein & Plax, 2016) Meanwhile, Nicole Todd and Amanda

Black focus more on contraception for teenagers abroad. (Todd & Black, 2020)

The main differences between the nine studies lie in their respective focuses: Frida Amalia et al. focused on the urgency of establishing regional regulations on the purchase of condoms in Samarinda Seberang with a review of Maqashid Syariah, while Zamzam Mustofa et al. on the legal aspects of contraceptive use from an Islamic religious perspective, while Hafsia Khairun Nisa Mokodompit examines the factors contributing to condom misuse, and Putri Mayang Sari et al. focus on Government Regulation No. 28 of 2024 on the Provision of Contraceptive Devices for Students and Adolescents within the Framework of the Principle of Maslahah Mursalah, Elda Dwi Pratiwi et al. on the latest regulations regarding the provision of contraceptives for adolescents and students from a Pancasila legal philosophy perspective, Mieke Yunita Viryadi on the validity of the policy norms and efforts needed to revitalize normative provisions based on legal protection, Asfa Asfiais Sholihah on the considerations behind the policy and the consistency of providing contraceptives for school-age children and adolescents with the principle of public interest as the legal objective, Sarah Mermelstein, MD, and Katie Plax, MD, on the use of contraceptives for adolescents, particularly in the United States, and Nicole Todd and Amanda Black on contraceptives for adolescents abroad. Thus, the nine form a complementary framework on the Provision of Contraceptives for School-Age Children and Adolescents: A Comparison of Maqasid Al-Syariah and Positive Law, from upstream (policy) to downstream (technical implementation).

The fundamental difference between the four previous studies and this study is that this study specifically focuses on the provision of contraceptives for school-age children and adolescents: a comparison between Maqasid Al-Syariah and positive law. Building on this novel approach, the findings of this study can contribute to the regulation of contraceptive access for school-age adolescents and teenagers: Based on the Maqasid Al-Syariah and Positive Law.

Based on the background of the problem that has been presented, the fundamental question that forms the core of the issue is: How should contraceptive devices be provided for school-age children and adolescents? A comparison between the objectives of Sharia law and positive law. To ensure that this study and research are more focused, the following sub-questions have been formulated based on the core question: First, how does the critique of Maqasid Syariah address Article 103 Paragraph 4 of Government Regulation No. 28 of 2024? Second, how does the critique of positive law address Article 103 Paragraph 4 of Government Regulation No. 28 of 2024?

This study is a qualitative research with a legal and normative Sharia approach. The research design is library research. This research design was chosen because the object of study is positive legal regulations that are analyzed normatively and examined from the perspective of Maqasid al-Syari'ah. In this context, data was obtained from various legal literature, scientific journals, legislative documents, Islamic study sources, particularly those related to the provision of contraceptives for school-age children and adolescents, Maqasid al-Syari'ah, and positive law.

B. Discussion

1. Article 103 paragraph 4 of Government Regulation No. 28 of 2024

Article 103 Paragraph 4 of Government Regulation No. 28 of 2024 regulates reproductive health services for school-age children and adolescents. One of the points that has drawn attention is letter e, which states that such services include the provision of contraceptives. In detail, this is further elaborated in Article 103(1), which states: "Efforts to maintain reproductive health for school-age children and adolescents must include, at a minimum, the provision of communication, information, and education, as well as reproductive health services." This article explains that in efforts to maintain reproductive health among adolescents in Indonesia, several measures are implemented, including:

- a. Communication (communication in this case is aimed at providing information and education about contraception

to prospective users. The goal is for users to understand their needs, choose the appropriate contraceptive method, and participate in existing programs effectively).

- b. Information and education (information related to contraception can be obtained from health agencies aimed at improving public knowledge and attitudes about contraception, so that they can choose the appropriate method according to their needs and health).

Then, paragraph (4) states that “Reproductive health services for students and adolescents shall consist of at least early detection of diseases or screening, treatment, rehabilitation, counseling, and provision of contraceptives.” The reproductive health services referred to in paragraph 4 above are:

- a. Early detection or screening, which is a health examination conducted to detect diseases and health conditions before signs or symptoms appear.
- b. Treatment, which is when adolescents have contracted a sexually transmitted disease, they can visit the nearest health facility for treatment.
- c. Rehabilitation, the provision of rehabilitation services by the government during the healing process.
- d. Counseling, which is the process of information exchange and interaction between prospective users of contraception and counseling officers to help them choose the best solution. Contraceptive counseling can help them choose the type of contraception that is appropriate for their health condition and prevent risky pregnancies. Counselors also explain clearly about contraception.
- e. And finally, the provision of contraceptives. Contraceptives are devices or methods used to prevent pregnancy. The primary goal is to control birth by inhibiting the fertilization process or preventing the implantation of a fertilized egg in the uterus. Contraceptive devices can be

mechanical devices, hormonal medications, or specific medical procedures.¹

This policy has sparked controversy among various groups. Several organizations and community leaders believe that providing contraceptives in schools could encourage premarital sex among teenagers, which is contrary to local moral and cultural values. Responding to the controversy, Vice President Ma'ruf Amin clarified that the regulation is intended for married teenagers. He emphasized that the wording of the regulation must be clear so as not to cause multiple interpretations among the public. In Article 103, paragraph 4, point e, the term "provision of contraceptives" is still ambiguous and can be misinterpreted by the Indonesian public. and even worse when this regulation is not explained in more detail regarding how the provision of contraceptives will be implemented on the ground in writing, it could be misused by our society with the interpretation that it legalizes free sex to prevent the spread of sexually transmitted diseases through the provision of these contraceptives. Additionally, when viewed textually, this regulation may not align with other laws and regulations, where our country limits the marriage age to under 19 years old, an age considered mature in terms of psychological and health aspects for marriage, and at this age, individuals are no longer bound by school education, however, the inclusion of the provision "providing contraceptives for teenagers/students" seems to offer a solution for those who marry at a young age or while still in school.²

Its implementation has raised concerns among the public because the wording of the article could be misinterpreted as granting unrestricted access to contraceptives for school-age children and adolescents. Furthermore, there is no further explanation regarding the qualifications of children and adolescents who are the target of contraceptive services. Such an interpretation has implications for the normalization of premarital sexual behavior among adolescents. Therefore, it is important to understand the rationale behind the policy

¹ Putri Mayang Sari, Aisyah Rahmaini Fahma, Evi Yulia Fitri, 'Analisis PP No. 28 tahun 2024 Tentang Penyediaan Alat Kontrasepsi Bagi Pelajar dan Remaja Menurut Masalah Mursalah', *Jurnal Wasatiyah: Jurnal Hukum*, Vol. 5 (2024).

² Putri Mayang Sari, Aisyah Rahmaini Fahma, Evi Yulia Fitri, 'Analisis PP No. 28 tahun 2024 Tentang Penyediaan Alat Kontrasepsi Bagi Pelajar dan Remaja Menurut Masalah Mursalah', *Jurnal Wasatiyah: Jurnal Hukum*, Vol. 5 (2024).

of providing contraceptives to children and adolescents.(Sholihah, 2025)

Indonesia continues to strive to reduce high maternal and infant mortality rates. Given the high prevalence of child marriage, this policy aims to reduce maternal and infant mortality caused by high-risk pregnancies among adolescent couples involved in early marriage. From the perspective of human rights fulfillment and the significant positive impact of this policy, it essentially reflects the aspect of legal utility.(Sholihah, 2025)

2. Criticism of Maqasid al-Syariah on Article 103 Paragraph 4 of Government Regulation Number 28 of 2024

The core of the theory of maqashid al-syari'ah is to achieve good while avoiding evil, or to seek benefits and reject harm. The term that corresponds to the core of maqashid al-syari'ah is *maslahat*, because the establishment of law in Islam must be based on *maslahat*. Maqashid al-Shari'ah is an integrated concept within the value system encompassing the vision and mission of Islam. The objectives of Shari'ah encompass three dimensions of maqashid. The maqashid in question include three main aspects: *dharuriyat*, *hajiyyat*, and *tahsinat*. This classification is based on the level of need and priority. The order of priority becomes evident when the *maslahat* of each level compete for position. Conceptually, *dharuriyat* occupies the first position, followed by *hajiyyat*, and finally *tahsinat*. (Bakry, 2019)

Maslahat as the substance of Maqāṣid al- Syarī'ah can be divided according to its review. When viewed from the aspect of its influence on human life, *maslahat* can be divided into three levels:(Shidiq, 2009).

- a. *Ḍarūriyyāt*/primary, which are primary interests, human life is highly dependent on them in terms of both this world and the hereafter. If they are abandoned, they will lead to destruction and ruin. This level is the highest among other interests. These primary interests in Islam are protected from two aspects: first, realization, and second, preservation. For example, the first aspect is the protection of religion by realizing all religious obligations, and the second is the preservation of religion by fighting and carrying out *jihad* against those who oppose Islam.

- b. Ḥājiyāt/secondary, which are secondary benefits, needs that do not destroy life if neglected, but serve to facilitate and not complicate or restrict functions, and are needed by humans to make life easier and eliminate difficulties and restrictions.
- c. Taḥsīniyāt/Tertiary, which are benefits that are a requirement of muru'ah (morality), with the aim of goodness and nobility. Neglecting these aspects does not cause difficulties or constraints in life. These benefits are tertiary needs, necessary to improve the quality of human life.

The use of contraceptives among school-age adolescents from the perspective of Maqāṣid al-Syarī'ah is an issue that requires in-depth study because it concerns the fundamental principles of Islamic law, which aim to protect five main things: religion (ḥifẓ al-dīn), life (ḥifẓ al-nafs), intellect (ḥifẓ al-'aql), lineage (ḥifẓ al-nasl), and property (ḥifẓ al-māl). In this context, the use of contraception must be viewed not only as a technical measure, but also as part of a broader moral, social, and spiritual responsibility.

Daruriyyah al-Khamsah	Positive Effects	Negative Effects
ḥifẓ al-dīn (maintaining religion),		1. The use of contraceptives by adolescents can be considered sensitive because it is related to extramarital relationships, which are clearly prohibited in Islam. (Hanifah, Nurwati, & Santoso, 2022) 2. If access to contraception is not accompanied by adequate moral and religious education, this may lead to the perception that behavior that violates

		religious norms is permissible.(Putri, 2025)
ḥifẓ al-nafs (nurturing the soul) dan ḥifẓ al-'aql (maintain reason)	The use of contraception can be seen as an effort to protect the physical and mental health of adolescents. Unintended pregnancy at a young age can lead to psychological stress, health risks for mothers and children, and the possibility of dangerous abortion,(Hanum, 2015) Domestic violence often occurs due to economic hardship.(Hastuti, Juwita, & Yunitasari, 2021) Curbing the spread of HIV/AIDS (Lalan & Adam, 2025)	
ḥifẓ al-nasl (maintain offspring),	1. Prevention of pregnancy leading to attempted abortion, social stigma due to being considered a problematic group, lack of support from the community,(Hastuti et al., 2021)	The prevalence of early marriage contributes to increased maternal and child mortality rates, poverty, and potentially higher divorce rates.(Rahman, Karyati, & Megayati, 2024; Salwa, Parahdina, & Al Ghiffary, 2024)

	2. Provision of contraceptives and efforts to achieve the target reduction in the Maternal Mortality Rate (MMR). Maternal Mortality Rate (MMR) and infant mortality rate.(Sholihah, 2025)	
ḥifẓ al-māl (maintain assets)	-	Unplanned pregnancy in adolescence has economic impacts, such as difficulty finding employment, making it difficult to meet basic needs, economic difficulties in raising children and meeting daily needs because they are still dependent on their parents and are not yet able to live independently. (Hastuti et al., 2021; Sholihah, 2025)

If access to contraception is not accompanied by adequate moral and religious education, this may lead to the perception that behavior that violates religious norms is permissible.(Putri, 2025) Therefore, this approach must be carried out carefully, ensuring that the message conveyed to adolescents remains rooted in religious values. Education on the importance of maintaining self-respect, avoiding adultery, and building awareness of sexual responsibility is essential in preserving religion. The provision of contraceptives must be clarified as being only for those who are married. This is to avoid it being understood as legalizing free sex. Although this regulation aims to reduce the number of pregnancies outside of marriage and increase awareness about reproductive health, this policy has sparked controversy. On the one

hand, this policy is considered a progressive step to protect the health of adolescents. However, on the other hand, there are concerns that providing access to contraception may encourage promiscuous behaviour among adolescents, and conflict with the religious and cultural values held by most Indonesians.(Ananto & Afifah, 2024).

In these circumstances, contraception can be considered a necessary preventive measure to avoid greater harm to life and safety. However, this approach must be combined with efforts to build self-awareness among adolescents so that they are able to manage their emotions and sexual urges in a healthy manner.

In the context of *hifz al-‘aql* (preserving reason), contraception should not be considered a single solution, but rather part of broader reproductive health education. Adolescents need to be given a comprehensive understanding of their bodies, the risks of sexual behavior, and its impact on their long-term lives. Religion- and morality-based education should be prioritized to ensure that adolescents' reason remains intact. They must not be exposed to adult content that could potentially violate moral norms, leading to moral degradation or decadence.

In terms of *hifz al-nasl* (preserving offspring), teenage pregnancy can have adverse effects on the next generation, both in terms of physical health and family stability. Teenagers who become pregnant outside of marriage often face social stigma, lack of emotional support, and economic difficulties that affect the well-being of the child born. In such situations, the use of contraception can be one way to prevent such outcomes. However, this must be balanced with more comprehensive preventive approaches, such as fostering awareness of sexual responsibility and family values.

From the perspective of *hifz al-māl* (preserving wealth), unplanned pregnancy in adolescence can be a significant economic burden, both for individuals and their families. The costs of pregnancy care, childbirth, and child-rearing can be a major challenge, especially for adolescents who are still dependent on their parents or do not yet have an income. By preventing unwanted pregnancies through contraception, the potential economic losses can be minimized.

3. Positive Legal Criticism of Article 103 Paragraph 4 of Government Regulation No. 28 of 2024

The availability of condoms in Indonesia is regulated by laws that legalize their sale and provide basic guidelines for the purpose of allowing the free sale of contraceptives. In Indonesia, regulations supporting the sale of condoms include Law No. 52 of 2009 on Population Development and National Development. Article 24(1) of Law Number 52 of 2009 on Population Development and Family Planning, and Article 27 of Law Number 52 of 2009 on Population Development and Family Planning.(Undang-undang Dasar, 2009) Article 18 Paragraph (1) of the Minister of Health Regulation Number 97 of 2014 concerning Health Services Before Pregnancy, During Pregnancy, Childbirth, and After Childbirth, the Provision of Contraceptive Services, and Sexual Health Services.(Peraturan Menteri Kesehatan Republik Indonesia Nomor 97 Tahun 2014 Tentang Pelayanan Kesehatan Masa Sebelum Hamil, Masa Hamil, Persalinan, Melahirkan. Kontrasepsi. Kesehatan Seksual, Pelayanan Kesehatan, n.d.)

So far, regulations governing the distribution of contraceptives have been legalized as stipulated in the above-mentioned law. However, the position of consumers has not been fully regulated in terms of who is allowed to use contraceptives and what specific requirements must be met in order for a consumer to obtain contraceptives that are being sold. Due to the frequent misuse of condoms, this has created opportunities for free sex or premarital sex, especially among adults and even teenagers and minors. Regulations regarding the sale of condoms in Indonesia are still not specifically written about the sale, purchase, and distribution of condoms that are freely available. The widespread and free distribution of contraceptives has had a significant impact on society. This affects all age groups, from children to the elderly. This has two impacts: positive and negative. The positive impact is when the consumers of contraceptives are individuals who are legally permitted to use them. The negative impact occurs when the consumers are children who are not legally permitted to use them.³

The policy on providing contraceptives for school-aged children and adolescents, in addition to having positive aspects as mentioned

³ (Adam, 2024)

above, can also open up negative gaps in various aspects. The policy on the provision of contraceptives for school-age children and adolescents, as stipulated in Article 103(4)(e) of the Health Regulation, does not clearly define which adolescents are eligible to access such contraceptive services, thereby increasing the risk of irresponsible use of contraceptives. Article 98 of the Health Regulation emphasizes the importance of implementing reproductive health efforts while respecting noble values that do not degrade human dignity and align with religious norms. However, Article 103(4)(e) has the potential to be interpreted as legalizing access to contraceptives for adolescents, including those who are unmarried. Rather than serving as a protective measure for children and adolescents, this policy could backfire and pave the way for practices that threaten the future of adolescents. As a result, until the government establishes further mechanisms to regulate this policy, adolescents will continue to face the risk of irresponsible use of contraceptives. (Sholihah, 2025) Regulations on the provision of contraceptives for school-age children and adolescents are considered inconsistent with the lack of clear criteria for recipients of such devices. This is clearly biased because it supports permissive attitudes toward deviant behavior among school-age children and adolescents, such as promiscuity. (Viryadi, 2024) Without qualifications, contraceptive devices are only available to married couples. This is considered contrary to the Child Protection Law.

Government Regulation (PP) No. 28 of 2024 concerning the Implementation of Law No. 17 of 2023 on Health also regulates the provision of contraceptives for school children and adolescents.⁴ The regulation does not explain in detail how contraceptives can be provided. However, the Head of the Communication and Public Service Bureau of the Indonesian Ministry of Health, Dr. Siti Nadia Tarmizi, emphasized that contraceptive services are not defined for all adolescents, but specifically for those who are married under certain conditions, to delay pregnancy. The provision of contraceptives for students and adolescents is outlined in Article 103, Paragraph 4. This

⁴ Pemerintah Pusat, 'Peraturan Pemerintah (PP) Nomor 28 Tahun 2024 Tentang Peraturan Pelaksanaan Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan'.

provision begins by highlighting the importance of providing reproductive health education among students and adolescents, including knowledge about the reproductive system, its functions, and the reproductive process. In addition to maintaining reproductive health, school-age children and adolescents are also encouraged to receive education about risky sexual behavior and its consequences. Furthermore, children are deemed important to understand the importance of family planning, as well as the ability to protect themselves from sexual acts or refuse such invitations, as stated in paragraph 2.(K, 2024) Legally, providing contraceptives to minors may violate Article 408 of Law No. 1 of 2023, which prohibits the promotion of contraceptives to children, with the threat of criminal fines.⁵

In the Criminal Code, criminal acts related to the use of contraception are stipulated in Article 534 of the Criminal Code, which states: "Any person who openly displays any means of preventing pregnancy, or who, without being asked, openly offers, or who, without being asked, distributes written material indicating that such means or intermediary are available, shall be punished with imprisonment for a maximum of two months or a fine of up to Rp. 3,000 (three thousand rupiah)." This criminal offense originally stems from the Dutch Criminal Code (Article 240 Bis paragraph 2 SR), which prohibits the display of contraceptives or abortion tools to minors under the age of 16 (Criminal Code 1911). However, since 1936, the age limit has been changed to 18 years. This includes the prohibition on displaying such means, offering them in public, or disseminating them in writing where such means can be purchased (Article 451 ter SR).**Ajeng gandini kamila, supriyadi widodo eddyono, Anti Kontrasepsi? Problematikanya Dalam Rancangan KUHP (Institute for Criminal Justice Reform Jl. Attahiriyah No. 29, Pejaten Barat, Pasar Minggu, Jakarta Selatan, 12510, 2017).** It is understandable that regulations on the provision of contraceptives for school-age children and adolescents are not in line with Article 534 of the Criminal Code.

The National Commission on Violence Against Women (Komnas Perempuan) commends the comprehensive and integrated efforts to

⁵ (Presiden Republik Indonesia, 2023).

regulate reproductive and sexual health for both men and women through Government Regulation (GR) No. 28 of 2024, the Implementing Regulation of Law No. 17 of 2023 on Health (Health GR). This regulation is intended to maintain and improve the systems, functions, and processes of reproduction in men and women. As a result, everyone can lead a healthy sexual life and reproductive function, free from physical and mental violence, including sexual violence. The reproductive health efforts referred to are carried out through promotive, preventive, curative, rehabilitative, and/or palliative measures in a comprehensive and integrated manner in accordance with the human life cycle. Specifically, these reproductive health efforts are outlined in Articles 96–130 of the Health GR. Observing the controversy surrounding the provision of reproductive health services for adolescents, the National Commission on Violence Against Women invites all parties to read this regulation in its entirety, particularly the provisions on the fulfillment of reproductive health in accordance with the human life cycle and its needs, in this case for school-age children and adolescents:

- a. In accordance with Article 49, adolescent health efforts are aimed at preparing adolescents to become healthy, intelligent, high-quality, and productive adults.
- b. Article 50 (1) states that adolescent health efforts are carried out through promotive, preventive, curative, rehabilitative, and/or palliative measures.
- c. As stipulated in Article 103, reproductive health efforts for school-age children and adolescents must include, at a minimum, communication, information, and education (CIE) and reproductive health services.
- d. The provision of communication, information, and education must at least cover:
 - 1) The reproductive system, its functions, and processes;
 - 2) Maintaining reproductive health;
 - 3) Risky sexual behavior and its consequences;
 - 4) Family planning;
 - 5) Protecting oneself and being able to refuse sexual relations;

- 6) Selecting age-appropriate entertainment media. Reproductive health services, at a minimum, include:
 - a. Early detection of diseases or screening;
 - b. Treatment;
 - c. Rehabilitation;
 - d. Counseling;
 - e. Provision of contraceptives.(Perempuan, n.d.)

According to Ministry of Health Regulation No. 25 of 2014, the term “school-age children” refers to children aged over 6 years until they turn 18 years old, while “adolescents” refer to the age group from 10 years old until they turn 18 years old. Upon closer examination, both categories fall under the same age group as defined by Law No. 35 of 2014 amending Law No. 23 of 2002 on Child Protection (Child Protection Law). As stipulated in Article 1(2) of the aforementioned law, child protection encompasses all activities aimed at ensuring and protecting children and their rights so that they may live, grow, develop, and participate optimally in accordance with the dignity and worth of humanity, and receive protection from violence and discrimination. The National Commission on Violence Against Women recognizes that the regulation of reproductive health services for school-age children and adolescents is also intended to fulfill the mandate of the Child Protection Law as explained above. Additionally, it aims to fulfill the constitutional mandate to ensure children's right to grow and develop and to live free from violence and discrimination (Article 28B Paragraph 2 of the 1945 Constitution of the Republic of Indonesia). In this context, girls, with all their reproductive functions, receive support to address the vulnerabilities they face in accessing their constitutional rights. Contraceptive services for school-age children and adolescents should be viewed as preventive measures to reduce the risks of unintended pregnancy, sexually transmitted infections, maternal and infant mortality due to reproductive risks at a young age, and sexual violence in the form of forced marriage.(Perempuan, n.d.)

The validity of the norms governing the provision of contraceptives in reproductive health services for school-age children and adolescents is contrary to Article 28B paragraph (2) of the 1945 Constitution, which regulates the right of children to protection from

violence and discrimination. Second, there is a need for judicial review by the Supreme Court of Article 103(4)(e) and its reconstruction through further studies, including the removal of the provision regarding the provision of contraceptives for school-age individuals and students. This will address biases in reproductive health services for school-age individuals and students by ensuring protection for children.(Viryadi, 2024)

Within the framework of positive law, adolescents have the right to receive adequate education on reproductive health as part of preventive measures against issues such as early pregnancy, sexually transmitted diseases, or unsafe abortion. However, direct access to contraceptives for adolescents is often a subject of debate, due to concerns that it may encourage irresponsible sexual behavior. In the context of positive law, the protection of children and adolescents is also regulated by legislation, such as the Child Protection Law in Indonesia (Law No. 23 of 2002 and its amendments). This law affirms that children have the right to education, health, and protection from exploitation or harm. In this regard, the use of contraceptives for school-age children and adolescents should be based on efforts to protect them from adverse effects such as unmarried pregnancy, sexually transmitted diseases, or psychological pressure due to lack of knowledge. However, this step must be taken with an approach that does not conflict with cultural and religious norms. The eligibility criteria for recipients of contraceptives for school-age children and adolescents should require that they be married. This is to mitigate the occurrence of unprotected sex. The novelty of this study is demonstrated in its critique of Maqasid al-Syariah and Positive Law, which are brought together in the certainty and usefulness of law. Legal certainty is seen in the disharmonisation of rules and has implications for law enforcement. The usefulness of law is oriented towards the social aspects of a regulation. When viewed in the context of maqasid al-Syari'ah (daruriyyatul khamsah), this has a dominant implication on the social morality that is sought in a community context. In this case, the use of contraceptives for school-age children and adolescents in terms of social benefits provides a solution to one social problem, namely HIV/AIDS. However, from a Sharia perspective, it further clarifies that the problem is being solved with a solution that

exacerbates the problem by legalising facilities for free sex. This has the potential to trigger an increase in the rate of free sex.

C. Conclusion

Regulations on the provision of contraceptives for school-age children and adolescents are not fully in line with the Maqasid al-Syariah. This is marked by biased categorization or qualification of school-age children and adolescents without regard to marital status. This poses a risk of opening up opportunities for the legalization of free sex. On the other hand, from a positive law perspective, the regulation on the provision of contraceptives for school-age children and adolescents is considered inconsistent with the lack of clear qualifications for recipients of such contraceptives. Legal certainty is seen in the disharmonisation of regulations and has implications for law enforcement. The usefulness of law is oriented towards the social aspects of a regulation. These findings emphasise regulatory reform that emphasises the harmonisation of regulations. This is so that there is no overlap between regulations. This is seen as clearly biased because it appears to support the tolerance of deviant behavior among school-age children and adolescents, such as free sex. Additionally, the regulation on the provision of contraceptives for school-age children and adolescents is inconsistent with Article 534 of the Criminal Code, which prohibits the display of contraceptives, the dissemination of written materials related to contraceptives, and their offer for sale. The provision of contraceptives to minors may also conflict with Article 408 of Law No. 1 of 2023, which prohibits the promotion of contraceptives to children, with the threat of criminal fines. the findings of this study can contribute to the regulation of contraceptive access for school-age adolescents and teenagers: Based on the Maqasid Al-Syariah and Positive Law.

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