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The Decision of Pregnancy Termination According to Maqāṣid al-Sharī'ah and Clinical Guidelines: *Case Dilemma Series*.

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Abstract

Termination of pregnancy (TOP) is performed for the sake of saving the life of a pregnant woman in the best clinical judgement of the treating doctor. It is in line with the recommendation in the Qur‟an and by the expert opinion of Islamic and Medical scholars. However, this could be a dilemma for most medical doctors to agree with a TOP request by a pregnant mother in emotional distress due to unplanned pregnancy or premarital conception, which is a grey area for this procedure. This case series aims to highlight this issue. Two related cases of mothers who had features of depression secondary to unplanned and unwanted pregnancy will be discussed. Both mothers requested TOP exhibit traits of hopelessness, sadness, anhedonia, reduced appetite and sleep, feeling low and down. These cases were not recommended for TOP in a tertiary centre. However, these cases were approached with a motivational interview and psychological support in which close follow up had been done at the primary care level. The first mother benefited from counselling and managed well with some antidepressants and psychotherapy. The involvement of family support and open discussion also aided the mother to recover from her acute stress condition and decided to take care of the pregnancy compared to proceeding with TOP. Another case was referred for TOP after adequate assessment because of worsening emotional distress. However, the request was denied, and the mother was sent to Obstetric for follow-up. Furthermore, the mother performed self-abortion, which resulted in sepsis. The need for TOP in psychological distress is still debatable. Monitoring and follow up in primary care settings have become important assisting tools in managing these cases. These tools provide ample time for the mother and doctors to fully understand the situation before deciding to terminate the foetus‟ life, which might not be necessary. However, failure to look at the case from the "Maqāṣid al-Sharī'ah" concept of preservation of life (*Hifz al-Nafs*) and mind (*Hifz al-'Aql*) will lead to unnecessary patient action and jeopardise their lives.

Keywords: Termination of pregnancy, emotional distress, Maqasid Al Shariah

Abstrak

Mengugurkan kandungan (*Termination of pregnancy, TOP*) dilakukan demi menyelamatkan nyawa wanita hamil dalam pertimbangan klinikal yang terbaik dari doktor yang merawat. Ia selaras dengan anjuran al-Quran dan pendapat pakar ulama Islam dan Perubatan. Walau bagaimanapun, ini boleh menjadi dilema bagi kebanyakan doktor perubatan untuk bersetuju dengan permintaan TOP oleh ibu hamil yang mengalami tekanan emosi akibat kehamilan yang tidak dirancang atau konsep pranikah, yang merupakan perkara yang tidak jelas untuk meneruskan prosedur ini. Siri kes ini bertujuan untuk menekankan isu ini. Dua kes berkaitan ibu yang mempunyai ciri-ciri kemurungan akibat daripada kehamilan yang tidak dirancang dan tidak diingini akan dibincangkan. Kedua-dua ibu meminta TOP dengan sifat putus asa, sedih, ketidakupayaan untuk merasai kebahagian

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(anhedonia) , kurang selera makan dan tidur, rasa lemah dan berputus asa. Kes-kes ini namun tidak diselesaikan dengan prosedur TOP di pusat tertiari. Walau bagaimanapun, kes-kes ini didekati dengan temu bual motivasi dan sokongan psikologi di mana rawatan susulan telah dilakukan di peringkat penjagaan primer. Ibu dari kes pertama mendapat manfaat daripada kaunseling dan berjaya dengan beberapa ubat antidepresan dan psikoterapi. Penglibatan sokongan dari keluarga dan perbincangan terbuka juga membantu ibu ini pulih daripada keadaan tekanan akut dan akhiranya mengambil keputusan untuk menjaga kehamilan dan tidak meneruskan TOP. Satu lagi kes telah dirujuk untuk TOP setelah penilaian yang memuaskan disebabkan tekanan emosi yang semakin teruk. Bagaimanapun, permintaan itu ditolak, dan ibu tersebut mendapat rawatan susulan oleh pihak Obstetrik. Namun begitu, ibu tersebut akhirnya melakukan pengguguran sendiri, yang mengakibatkan sepsis. Keperluan untuk TOP dalam tekanan psikologi masih boleh dipertikaikan. Pemantauan dan rawatan susulan dalam tetapan penjagaan primer telah menjadi alat bantuan yang penting dalam menguruskan kes ini. Bantuan ini menyediakan masa yang mencukupi untuk ibu dan doktor bagi memahami keadaan dengan sepenuhnya sebelum memutuskan untuk mengugurkan janin, yang mungkin tidak sepatutnya dilakukan. Bagaimanapun, kegagalan melihat kes daripada konsep "*Maqāṣid al-Sharī'ah*" iaitu pemeliharaan nyawa (Hifz al-Nafs) dan fikiran (Hifz al-„Aql) akan membawa kepada ketidakperluan tindakan pesakit dan membahayakan nyawa mereka.
Kata kunci: Mengugurkan kehamilan, tekanan emosi, *Maqasid Al Shariah.*

Introduction

Maqāṣid al-Sharī'ah is a holistic view of life with the concept of maintaining good conditions and the welfare of all humankind while preventing any harmful act, evil, and injury. This concept, with regards to medical practice, in fact, shares similar objectives and aims in promoting wellbeing in life and upholding harm reduction principles (Hashi, 2019; Amiruddin & Aziz, 2018). The intersection of both can be seen as an integration of the role of theoretical input governed by the Maqāṣid al-Sharī'ah and practical aspects delivered by the health care providers in medical settings. Indeed, early Muslim physicians, especially Ibn Sina and Al Razi, had already portrayed the Islamic characteristics in medical and health care practice since the early history of medicine in the world (Hashi, 2019; Amiruddin & Aziz, 2018). Shariah principles play an essential role in decision making among Muslim physicians, which is still applicable till now, including in the aspect of TOP. The fundamental concept of Maqāṣid al-Sharī'ah evolves in the domain of preserving life, mind, religion, ancestry and property. The issue of TOP is also closely related with the domain listed by Maqāṣid al-Sharī'ah in which its purpose is to save the life and maintain a healthy state of mind of the mother (Hashi, 2019; Amiruddin & Aziz, 2018).

Maternal mortality in Malaysia has reduced significantly over the last 60 years (Jeganathan, 2014; Achanna et al., 2018). This is attributed to improved healthcare services, active prevention in primary care and increased awareness of patients on family planning and planned pregnancy (Wymen et al., n.d.). However, further reducing the maternal mortality ratio occasionally is challenging due to several factors. These factors include mortality during pregnancy or a high-risk group mother conceiving accidentally due to suboptimal practice of contraception. Unwanted pregnancy can be defined as an unplanned or undesired pregnancy by the couple or the mother at the time of conception (Seperti Edaran et al., 2012). This could be due to the mother‟s illness, either physically or emotionally. In this situation, there is an option for TOP, especially in the early trimester.

Termination of pregnancy can be defined as procedures to remove an embryo or foetus when the pregnancy is less than 22 weeks or if the gestation is unknown. The foetus is estimated to be less than 500 grams (Seperti Edaran et al., 2012; *Termination of Pregnancy for Fetal Abnormality in England, Scotland and Wales*, n.d; Low et al., 2014). The termination option of pregnancy should always be kept open for discussion with the patient in primary care for indicated cases to avoid unsafe abortion, which is the leading cause of preventable maternal

mortality and morbidity (Beauchamp & Childress, 2019; (*Perinatal Care Manual 3 rd Edition MINISTRY OF HEALTH MALAYSIA*, n.d.; *Non-Communicable Diseases: Risk Factors and other Health Problems*, n.d). Abortion can be defined as the expulsion or removal of an embryo or foetus from the uterus at a stage of pregnancy when it is incapable of surviving independently. Unsafe abortion has been referred to as a procedure of terminating an unwanted pregnancy either by any person lacking necessary skills, or in an environment lacking minimal medical standards, or both (Seperti Edaran et al., 2012; *Termination of Pregnancy for Fetal Abnormality in England, Scotland and Wales*, n.d). In Malaysia, safe abortion services in the hospital are considered legal if the pregnancy threatens the woman"s life or when the pregnancy poses a threat to the woman"s physical or mental health (Low et al., 2014; *LAWS OF MALAYSIA REPRINT Act 574 PENAL CODE*, 2006). These provisions are stated in the Penal Code Act 574 (revised 1997) section 312 and are in line with Malaysia"s fatwa (decree) that allows TOP as long as it is subject to certain conditions with regards to the Maqāṣid al-Sharī'ah principles. According to the clause added in Section 312, the procedure must be performed by a medical practitioner registered under the Medical Act 1971. The practitioner's opinion must be formed in good faith and if the continuation of the pregnancy would involve risk to the life or mental and physical health injury to the pregnant mother, the procedure can be conducted (*LAWS OF MALAYSIA REPRINT Act 574 PENAL CODE*, 2006).

It is an agreeable stand by all medical practitioners that the decision for TOP is when the mother"s life is physically in danger (Beauchamp & Childress, 2019). However, it is a dilemma when handling a pregnant mother with emotional distress. Indeed, severe emotional disturbance and neurotic disorder can also lead to suicidal ideation and mortality (*LAWS OF MALAYSIA REPRINT Act 574 PENAL CODE*, 2006; National Collaborating Centre for Mental Health, 2010; Roos et al., 2013; *MANAGEMENT OF MAJOR DEPRESSIVE DISORDER (SECOND EDITION) Ministry of Health Malaysia Academy of Medicine Malaysia Malaysian Psychiatric Association*, n.d.). However, by law, only one registered medical practitioner is required to assess if TOP is indeed required. Nevertheless, it is strongly suggested to involve two medical practitioners, with at least one being a specialist that would decide the necessity for the termination of the pregnancy. In addition, diagnosis for mental illness during pregnancy can be performed by any medical doctor, even at the primary care level, without referral to a psychiatrist (Seperti Edaran et al., 2012).

The patient"s continuation of care at the primary care level will maintain the patient"s confidentiality and avoid any potential stigma by the community (Beauchamp & Childress, 2019; Pacific, 2012). Therefore, close follow up at the primary care level will provide essential time for the patient to self-reflect and the doctors to identify stressors that lead to emotional distress. The patient will develop trust towards the medical practitioner and will obey the psychoeducation and counselling given. However, at one point, there is still a need for tertiary referral, especially when the TOP is the only option available to control acute stress of the patients (Seperti Edaran et al., 2012; *Termination of Pregnancy for Fetal Abnormality in England, Scotland and Wales*, n.d). Failure to recognise the need for the TOP in preserving the "Maqāṣid al-Sharī'ah" concept of life and mind may lead to unnecessary action by the patient. It includes self-abortion that might be lethal to the mother (Sahih Al Bukhari, hadith no. 254; Ikhlas Rosele, 2018). In this study, two different outcomes of two pregnant mothers indicating the need for TOP are discussed to highlight the importance of handling emotional distress thoroughly, including a request for TOP in accordance with the indications set by Maqāṣid al-Sharī'ah and clinical guidelines.

Case 1

A 44-year-old woman, para 6, who had given birth to her younger child five years ago, and a housewife complained of nausea, abdominal bloating, and early pregnancy symptoms for several weeks. Her urine pregnancy test was found to be positive. A transabdominal scan confirmed the presence of a singleton foetus with

a gestational age of nine weeks. She immediately burst into crying and sadness upon knowing her current status. Her husband has been a labourer with financial constraints for the past few months. They had already decided to complete her family five years ago and had never imagined having another child. She had asked for our help to terminate her current pregnancy. She had an extreme worry that her pregnancy status would lead to her husband‟s anger. Furthermore, they also had multiple episodes of fights due to marital disharmony. We had counselled her and calmed her with our attentive advice. We had offered ourselves to break the news to her husband, but she refused.

One week later, during the follow-up session, she started to have a bad mood, sadness, sleep disturbance and lack of enjoyment in her life. She blames her pregnancy as the cause of her unhappiness since her husband accuses her of causing a burden to the current financial problem in the family after being informed of her pregnancy status. Her husband also started to stay out at night and avoided her constantly. She firmly requested pregnancy termination.

Her case was referred to a social worker and family counsellor. A family conference was conducted with her husband‟s presence. The session was to enlighten and inform him on the pregnancy and its benefits. In addition, occupational therapists, physiotherapists and midwives for education on relaxation techniques, breathing and physical exercise to control her emotional distress were also incorporated. In order to release the couple‟s financial burden, a proper channel for better job placement and Zakat referral for financial assistance were introduced. However, antidepressant medication will be considered if the symptoms persist for more than two weeks.

After one month of follow up sessions, she can finally accept her pregnancy and started to gain support from her husband and our team. She did not require long term antidepressants medication and is finally able to continue her pregnancy. She also withdraws her request for TOP.

Case 2:

A 42-year-old woman, Gravida 5 Para 4, came for her first antenatal booking at seven weeks of amenorrhea. She had a history of marital disharmony and recently divorced from her husband three weeks before her current knowledge of her pregnancy. It is her unplanned and unwanted pregnancy. She also had developed a concomitant stressor by her family, poor sleep, lethargy, poor appetite and bad mood for a month. She also requested for termination of her pregnancy. Her depression, anxiety and stress score show severe depression. Further shared care with a psychiatrist confirmed our initial diagnosis of major depressive disorder secondary to unwantedpregnancy and marital conflicts.

Nevertheless, her request for TOP was denied by an obstetrician, pushing her further to emotional distress. She performed a trial of self-abortion using the traditional method resulting in complications of incomplete abortion and sepsis. The patient was referred to a hospital for admission, dilatation, and curettage. She came close to losing her life.

Discussion

The above two cases highlighted the importance of upholding Maqāṣid al-Sharī'ah and medical ethics principles in dealing with patients. The core bioethical principles include beneficence (do good), non-maleficence (to do no harm), autonomy (control by the individual), and justice (fairness), as stated by Beauchamp and Childress (Beauchamp & Childress, 2019). These indeedmimic the domains in Maqāṣid al-Sharī'ah which concentrate on preserving life and the healthy mind of a person. In preserving life and mind, the elements of beneficence, non-maleficence, autonomy and justice must take into place. Beneficence reflects the principle of providing good towards the patient and avoiding any harmful effects in making the best decision for the patient. Non-maleficence refers to the principle of not causing any harm to the patients either intentionally or unintentionally. It is doctors‟ responsibility to protect the patients from deliberate harm or uninformed participation in any procedures or research. Autonomy signifies patients‟ freedom to act independently and respect the ability of the autonomous person. Last but not least, justice states that there should be an element of fairness in all medical decisions (Beauchamp & Childress, 2019; Tunzi &

Ventres, 2018). The medical doctor should weigh fairness in decisions between burden and benefit, risk and advantages, and equal distribution of scarce resources and new treatments. In order to make these successful, medical doctors need to oblige with applicable laws and legislation when deciding for the best interest of the patient.

In Islam, the highest level of guidelines is the Holy Qur"an revealed to us by Allah the Almighty through Prophet Muhammad (peace be upon him) and also the Sunnah of Prophet Muhammad (peace be upon him) (Sahih Al Bukhari, hadith no. 254; Ikhlas Rosele, 2018; *The Qur'an* 31:1-4). In the Qur"an, Allah had mentioned that preserving one"s life should be upheld in whatever circumstances as in the following meaning of the Quranic verses:

> *"Whosoever has spared the life of asoul, it is as though he has spared the life of all people. Whosoever has killed a soul, it is as though he has murdered all of mankind"*
>
> (*The Qur'an*,5: 32).
>
> *"Kill not your offspring for fear of poverty; it is We who provide for them and for you. Surely, killing themis a great sin".*
>
> (*The Qur'an*, 17: 32).

Our Prophet Muhammad (peace be upon him) also has highlighted the beautiful nature of creations: "Narrated Abdullah: Allah"s Apostle, the true and truly inspired said, "(as regards your creation), every one of you is collected in the womb of his mother for the first forty days, and then he becomes a clot for another forty days, and then a piece of flesh for another forty days. Then Allah sends an angel to write four words: He writes his deeds, time of his death, means of his livelihood, and whether he will be wretched or blessed (in religion). Then the soul is breathed into his body" (Sahih Al Bukhari, hadith no. 549).

Following Maqāṣid al-Sharī'ah and our local guidelines, it is evident that TOP is permissible in order to save the life of the mother regardless of the condition of the foetus (Seperti Edaran et al., 2012; *LAWS OF MALAYSIA REPRINT Act 574 PENAL CODE*, 2006). Moreover, this practice is in line with the principles of both Islamic teachings and medical ethics. The latest fatwa council also has made a clear stand on this issue, supporting medical abortion for the sake of the mother"s life (Ikhlas Rosele, 2018). By applying these laws, we uphold the patients" justice, autonomy and beneficence in terms of protecting the mother"s life and respecting their request. There are also previous successful case reports explaining the benefits of performing TOP if it fulfils the indicated criteria (Kangaude & Mhango, 2018; Saad-Naguib et al., 2017).

However, there is still reluctance among the medical doctors in accepting psychological distress indications to proceed with such a controversial procedure (Low et al., 2014; Dawson et al. 2017; Aniteye et al., 2016; Keogh et al., 2019). Moreover, some doctors have a lack of confidence and exposure in medical ethics training and experience in handling such cases. Furthermore, there is a feeling of fear in sharing the crime or sins in performing the procedure since it involves inducing death to the foetus for an unclear valid reason. Health care providers also feel that the patient's neurotic presentation might not be severe enough to end with maternal death since psychological issues are subjective and need further expert evaluation. Therefore, patients with psychological distress might end up with stigma whenever they request TOP. All these misconceptions should be corrected (Low et al., 2014; Dawson et al. 2017; Aniteye et al., 2016; Keogh et al., 2019).

Clinical criteria to classify depression as severe has been listed in the local and global guidelines on managing a major depressive disorder (National Collaborating Centre for Mental Health, 2010; Roos et al., 2013; *MANAGEMENT OF MAJOR DEPRESSIVE DISORDER (SECOND EDITION) Ministry of Health Malaysia Academy of Medicine Malaysia Malaysian Psychiatric Association*, n.d.). These guidelines follow the Fifth Edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5), the latest update on the taxonomic and diagnostic tool published by the American Psychiatric Association (APA) (Tolentino & Schmidt, 2018). Among the criteria of Severe Major Depressive Disorder includes the presence of at least three typical symptoms (depressed mood, loss of interest and enjoyment,

reduced energy), four common symptoms (reduced concentration and attention, reduced self-esteem and self-confidence, ideas of guilt and unworthiness, bleak and pessimistic views for the future, ideas or acts of self-harm or suicide, disturbed sleep and diminished appetite) with severe intensity, unlikely to continue with social, work or domestic activities, and with or without psychotic symptoms, such as hallucination or delusion. There is also a validated scoring system to assess the severity of the suicidal risk, known as the SADPERSON score (Roos et al., 2013). The respondents for the assessment were male, age <19 or >45 years, who either have depression, previous suicide attempt, ethanol abuse, loss of rational thinking, lack of social supports, organised plan for suicide, no spouse or caretaker and/or concomitant chronic debilitating illness. With this algorithm and scoring, suicidal risk can also be predicted at the primary care level. This scoring system is easy to be executed and clinically significant to convey the message between practitioners (Roos et al., 2013). Failure to recognise these alarming risks will lead to maternal death if we rely too much on conservative management and ignore the channel for TOP.

Therefore, it is clear that holistic management in treating psychological distress in pregnant mothers should be done following the specific needs of each case. There is no single approach that is suitable for all types of cases. For example, the case series shared in this article showed that two similar cases could be managed with two different approaches. In the first case, the patient was successfully managed at primary care with adequate holistic psychological counselling with short-term medical management to control her stressor and regain her family support. However, in the second case, the patient was left alone without adequate support from her family members, which creates an intense depression that pushes her to terminate her pregnancy urgently. The patient‟s request and autonomy were taken into consideration. However, after reviewing her case, medical practitioners agreed to decline the request, which compelled the patient to follow traditional medicine as an alternative to abortion. This case is an important learning point and a reminder that patients with underlying depression are very determined to remove their stressor, including terminating their pregnancy at any cost to control their condition. If the situation is not well taken care of, the mother‟s condition will become fatal. This situation can be prevented if we uphold the principle of "Maqāṣid al-Sharī'ah" in which the patient‟s life, as in this case the mother‟s life, should be protected even if it means to induce abortion (Beauchamp & Childress, 2019; *LAWS OF MALAYSIA REPRINT Act 574 PENAL CODE*, 2006; Ikhlas Rosele, 2018).

What should be implemented in the future is to provide more workshops and training modules for medical professionals and health care providers on the ethical issues in dealing with TOP with the integration of Islamic principles. A clear guideline listing all eligible criteria for inducing an abortion to pregnant mothers with psychological stress, especially for young doctors and other medical personnel who might not be aware of such conditions, must be provided. Successful stories in saving the life of a distressed mother should be published and shared with the public to increase mental illness during pregnancy awareness in the society, which should be given full social support. Stigma towards mental illness during pregnancy should be abolished.

Conclusion

These case series are essential in providing a good comparison on how two similar cases can end up with two different extreme outcomes if we, as medical personnel, are ignorant in recognising our patients‟ needs, even to save lives. Termination of pregnancy is one of the options that should be recognised by medical doctors in treating pregnant mothers with clear indications of mental illness, following Maqāṣid al-Sharī'ah and medical guidelines.

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