

# Indonesian Legal Compliance with International Human Rights Law on Female Genital Mutilation

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## Abstract

This paper examines the legal framework in Indonesia concerning Female Genital Mutilation (FGM) in light of its obligations under international human rights law. FGM persists in Indonesia despite legal prohibitions and international condemnation. Through an analysis of Indonesian laws, international human rights instruments, and relevant case studies, this study explores the extent to which Indonesian legislation aligns with international standards on FGM. Despite ratifying several human rights treaties, Indonesia lacks comprehensive legislation explicitly criminalizing all forms of FGM, leading to inconsistent enforcement and protection gaps for girls and women. Moreover, cultural and religious justifications often hinder effective legal action against FGM practitioners. This paper underscores the urgent need for Indonesia to strengthen its legal framework, ensure effective enforcement, and promote awareness of human rights principles to eliminate FGM fully. By addressing these gaps,



Indonesia can uphold its international human rights obligations and safeguard the rights and dignity of girls and women.

**KEYWORDS** *FGM, Women's and Girls Rights, FoRB*

## Introduction

The Sustainable Development Agenda (SDGs), adopted by UN member states in 2015, sets a deadline of 2030 to achieve gender equality and empowerment of all women and girls.<sup>1</sup> SDG 5 aims to provide women and girls with equal rights and opportunities to live freely without discrimination by eliminating all harmful practices, such as female genital mutilation. The elimination of FGM targeted under this Goal 5.3 draws on the World Health Organization (WHO), which has affirmed that female genital mutilation (FGM), in any form, harms girls and women in many ways and is recognized on a global scale as a violation of girls and women's human rights. According to the WHO, more than 200 million women and girls living today have undergone FGM, and 3 million girls are at risk of experiencing the practice every year. Moreover, not only performed without medical indications, FGM is often performed by traditional circumcisers who do not have any medical training, without any form of anesthesia and using nonsterile devices, such as scissors, broken glasses, or razor blades,<sup>2</sup> and often happens against a girl's will without her consent, and girls may have to be forcibly restrained.

As happened in Egypt, the death of a teenage girl while undergoing FGM<sup>6</sup> led the country to regulate FGM punishment in 2008 and was strengthened in 2021.<sup>6</sup> Meanwhile, recently, a 14-year-old boy from the Keinsay Community in Koidu City, Kono District, also died from chronic

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<sup>1</sup> Unwomen, "In Focus: Sustainable Development Goal 5," UN WOMEN, 2022.

<sup>2</sup> Laura Buggio et al., "Psychosexual Consequences of Female Genital Mutilation and the Impact of Reconstructive Surgery: A Narrative Review, National Library of Medicine," *National Library of Medicine* 3, no. 1 (2019): 36–46, <https://doi.org/10.1089/heq.2018.0036>.

bleeding due to FGM.<sup>3</sup> It should be noted that Sierra Leone has made commitments under various international protocols and conventions, including the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Sustainable Development Goals (SDGs) all aimed at eliminating this practice in the country.<sup>4</sup> These reasons highlight that ratification of the treaties alone is sometimes ineffective. Thus, each country is also required to formulate its national legal provisions prohibiting FGM to strengthen its responsibility to eliminate FGM.

Unfortunately, despite being defined as a harmful practice and a violation of human rights, FGM continues to be practiced in many countries and is deeply rooted in cultural and religious beliefs.<sup>5</sup> In certain parts of Africa, the Middle East, and Southeast Asia,<sup>6</sup> FGM is frequently viewed as a method of ensuring that females are socially accepted in order to maintain the family's position and dignity, as well as ensuring their purity and obedience.<sup>7</sup> This phenomenon represents gender inequality and is an extreme kind of discrimination against girls and women. For such reasons, since 1979, the United Nations (UN) has issued several international instruments calling for the abolition of FGM.

States play an important role in eliminating FGM to protect the rights of women and girls. Thus, several countries already have laws prohibiting FGM and imposing penalties on those who perform, promote or facilitate the practice. Egypt, Tanzania, Senegal, Ethiopia,<sup>8</sup> now have specific legal prohibitions against the practice under their national laws.<sup>9</sup>

<sup>3</sup> Foday Moriba Conteh, "14 Years Old Theresa Tarawallie Died of FGM," News Magazine, 2023.

<sup>4</sup> Conteh.

<sup>5</sup> WHO, *Eliminating Female Genital Mutilation: An Interagency Statement* OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM (Geneva: World Health Organization, 2008).

<sup>6</sup> WHO, "Female Genital Mutilation," World Health Organization, 2023.

<sup>7</sup> Dewi H Susilastuti et al., *Female Genital Mutilation/ Cutting: Standing between the Tradition and Modernity* (Yogyakarta: Center for Population and Policy Studies Gadjah Mada University, 2017).

<sup>8</sup> Amy Hurn and Caroline Pinder, *THE LAW AND FGM AN OVERVIEW OF 28 AFRICAN COUNTRIES* (Afrika: Thomson Reuters Foundation, 2018).

<sup>9</sup> EqualityNow, "FGM: A Global Picture," Equality Now, 2020.

In April 2020, Sudan which has historically had the highest prevalence of FGM among other countries in the world, has made an important step towards criminalizing FGM.<sup>10</sup> Meanwhile, in Asia, not a single country has enacted a specific legal prohibition against female genital mutilation.<sup>11</sup> A 2018 survey by the Ministry of Women's Empowerment and Child Protection showed that FGM is still practiced in some communities in Indonesia, with a prevalence of around 49%. Nevertheless, the Indonesian government has ratified several international human rights conventions that require it to take all necessary measures to end all forms of violence against women and children, including FGM.

Previously, there have been several studies on the issue of FGM in Indonesia. First, a study by Yulita Dwi Pratiwi entitled "Transplantation of Regulation of the Prohibition of FGM Through Comparative Study of Indonesian Law with Egypt" analyzes the transplantation of FGM prohibition arrangements through a comparative study of Indonesian and Egyptian law.<sup>12</sup> Second, a study by Rizky Akbar Idris et al entitled "Female Genital Mutilation as Violence Against Women: A Narrative of Promoting Abandonment."<sup>13</sup> This paper analyzes FGM as violence against women and discusses the legality of FGM practices in Indonesia, Egypt, and Yemen. The studies focus on describing the practice and motivators of FGM, emphasizing a comparative legal perspective between countries.

Meanwhile, this research will elaborate that aside from violating girls' and women's rights, FGM violates freedom of religion and belief. Unlike the previous studies, this research aims to see how Indonesian law regulates FGM and analyze its compatibility with international human rights law related to FGM. Furthermore, this study will be organized through the following structure: Section II explains the research method used. Section

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<sup>10</sup> WHO, "Female Genital Mutilation."

<sup>11</sup> EqualityNow, "FGM: A Global Picture."

<sup>12</sup> Yulita Dwi Pratiwi, "Transplantation of Regulation of The Prohibition FGM Through a Comparison Study of Indonesian Law with Egypt," *Jurnal HAM* 13, no. 1 (2022): 45–64, <https://doi.org/10.30641/ham.2022.13.45-64>.

<sup>13</sup> Rizky Akbar Idris, Muhammad Pramadiathalla, and Tania Daniela, "Female Genital Mutilation as Violence Against Women: A Narrative of Promoting Abandonment," *Indonesian Journal of Law and Society* 2, no. 2 (2021): 121–44, <https://doi.org/10.19184/ijls.v2i2.24565>.

III will present a brief introduction to the context of FGM in Indonesia and FGM discourse in global trends. Section IV will explain FGM as a violation of women's rights and the right to freedom of religion or belief, as well as analyze the conformity and compliance of Indonesian law with international human rights law. To conclude, Section V will be placed at the end, containing conclusions, and closing this research.

This study is legal research to find legal rules and principles and analyze the law's compatibility to answer legal issues under its prescriptive nature. This study aims to provide answers to explore and study legal phenomena regarding the regulation of FGM in Indonesia through a normative approach by analyzing Indonesian law relating to female genital mutilation and its compatibility with international human rights legal obligations. It reviews the literature study by collecting and analyzing primary and secondary legal documents such as laws and regulations and literature relevant to the research topic, particularly human rights and female genital mutilation.

## **Indonesian Context and Global Trends on Female Genital Mutilation**

### **A. Female Genital Mutilation: Development and Debates**

The World Health Organization (WHO) defines FGM as all procedure that partially or completely removes the external genitalia, or other organs injury to the female genitalia for non-medical reasons.<sup>14</sup> Female circumcision or female genital cutting (FGC) is also often used interchangeably to refer to this practice. This terminology has been the subject of debate, mainly related to the difference in approach between those who oppose this practice and those who may condone some types of the practice. As a result, the terms have different connotations and implications.

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<sup>14</sup> WHO, "Female Genital Mutilation."

The term 'female genital mutilation' was invented in 1975 by American anthropologist Rose Oldfield Hayes and popularized in 1981 by Fran Hosken, an American feminist activist. Some consider using the term female genital cutting because the verb "mutilation" can be judgmental, victimizing, and in some cases, can cause more traumatization of an individual. Some organizations also argue that "cutting" is less stigmatizing and tends to be more culturally sensitive. Meanwhile, female genital cutting is considered more neutral and can refer to a broader range of practices. However, the phrase "cutting" may be contentious, and it is feared that it might minimize the severity, and it fails to recognize the significance of the practice as a violation of human rights.

Some countries, like Malaysia and Indonesia use 'female circumcision' or in Islamic terms familiar with the term *circumcision* and refuse to use the term female genital mutilation/cutting. There is evidence that using the term female circumcision often dismisses the gravity of the issue by associating it with the practice of male circumcision, something that has an entirely different tone to that which is sunnah<sup>15</sup> and has a positive impact in terms of health.<sup>16</sup> Considering the context and advocacy purposes, advocates and scholars prefer to use the term female genital mutilation (FGM). The term "mutilation" has a controversial tone to acknowledge and emphasize the harm and the damage of the practice and emphasize a totally different context with male circumcision.<sup>17</sup>

The WHO further classifies FGM into four major categories. Type 1 also known as clitoridectomy, is the partial or total removal of the clitoral glans (the external and visible part of the clitoris, which is a sensitive part of the female genitals), and/or the prepuce/ clitoral hood (the fold of skin surrounding the clitoral glans).<sup>18</sup> Type 2 excision, defined as the partial or total removal of the clitoral glans and the labia minora (the inner folds of

<sup>15</sup> John L Esposito, *The Oxford Dictionary of Islam* (Oxford: Oxford University Press, 2003), <https://doi.org/10.1093/acref/9780195125580.001.0001>.

<sup>16</sup> UNAIDS, *Male Circumcision: Global Trends and Determinants of Prevalence, Safety and Acceptability* (Switzerland: WHO Press, 2007).

<sup>17</sup> UNAIDS.

<sup>18</sup> WHO, "Eliminating Female Genital Mutilation: An Interagency Statement," World Health Organization, 2008.

the vulva), with or without removal of the labia majora (the outer folds of the skin of the vulva).

Then, Type 3, also known as infibulation, is the narrowing of the vaginal opening through the creation of a covering seal. The seal is formed by cutting and repositioning the labia minora, or labia majora, sometimes through stitching, with or without removal of the clitoral prepuce/clitoral hood and glans.<sup>19</sup> And Type 4, this includes all other harmful procedures to the female genitalia for non-medical purposes, for example, pricking, piercing, incising, scraping and cauterizing the genital area.

WHO, on the other hand, emphasizes that all 'forms' of FGM are human rights abuses and a form of gender-based violence (GBV) that has a significant impact on the physical, mental, and emotional health of girls and women, as well as their socio-economic results in life.<sup>20</sup> According to current estimates, 68 million girls will be subject to FGM by 2030.<sup>21</sup> This value is an estimation, the actual number of girls and women harmed by this practice is likely to be far more significant.

FGM lacks health benefits and can cause severe physical and psychological health problems, including bleeding, infection, post-traumatic stress disorder (PTSD) and even death.<sup>22</sup> In the short term, the procedure performed without anesthesia can cause pain during the procedure. However, in the worst-case scenario, FGM can cause excessive bleeding during the procedure as the female organ being cut has many nerves and blood vessels, and if left untreated, it will cause infection and swelling. In Sierra Leona, a 10-year-old girl dies after undergoing FGM. In Egypt, a 15-year-old girl suffered serious bleeding after FGM surgery performed at home.<sup>23</sup>

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<sup>19</sup> WHO.

<sup>20</sup> Susilastuti et al., *Female Genital Mutilation/ Cutting: Standing between the Tradition and Modernity*.

<sup>21</sup> UNFPA, "Bending the Curve: FGM Trends We Aim to Change," United Nations Population Fund, 2018.

<sup>22</sup> WHO, "Health Risks of Female Genital Mutilation (FGM)," World Health Organization, 2023.

<sup>23</sup> Menna A Farouk, "Egypt Arrests Father, Nurse for Female Genital Mutilation of 15-Year-Old," REUTERS, 2021.



While in the long run, FGM has the potential to impair sexual responsiveness, causing less sexual enjoyment for women. In 2010, In 2019, a research project compiling and analyze FGM cases between 1983 to 2018, the result says that women with FGM/ C are more likely to develop psychological disorders, such as post-traumatic stress disorder, anxiety, somatization, phobia, low self-esteem, psychologically less capable of becoming sexually stimulated, than the uncut women.<sup>24</sup>

Due to these effects, some women who underwent FGM when they were young even tried to access reconstructive surgery to restore their genitals through Deinfibulation.<sup>25</sup> Deinfibulation is the procedure of cutting the closed vaginal opening in women who have been infibulated, also known as FGM Type 3. This means that the practice of FGM has restricted women from thoroughly enjoying their lives, especially regarding health.

## **B. FGM in Indonesia: Problems and Challenges**

FGM remains a complex issue in Indonesia, and the practice is endemic. FGM is believed to have been around for many decades and is widely practiced and rooted in cultural and religious reasons, especially Islam as the majority religion in the country. Indonesians generally prefer to use the term female circumcision (*khitan*) with the assumption that female circumcision has the same benefits as male circumcision.<sup>26</sup> In addition, the phrase female circumcision is used as an alibi so that the practice is not considered 'mutilation' or 'cutting' or something harmful to girls and women, as stated by the WHO. However, how a society or state names this practice is not the main issue, but rather the society that seeks to legitimize the practice of 'modifying' the female genitalia to subjugate women, which clearly violates human rights. As affirmed in

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<sup>24</sup> Buggio et al., "Psychosexual Consequences of Female Genital Mutilation and the Impact of Reconstructive Surgery: A Narrative Review, National Library of Medicine."

<sup>25</sup> Ayan A, "After Genital Cutting in Somalia, a Woman Chooses Reconstructive Surgery in America," Vice News, 2015.

<sup>26</sup> Sanjeev C Sharma et al., "Male Circumcision for the Prevention of Human Immunodeficiency Virus (HIV) Acquisition: A Meta-Analysis," *BJU International* 121, no. 4 (2017): 515–26, <https://doi.org/10.1111/bju.14102>.



Article 58 Section 1 of Law Number 39 of 1999 on Human Rights that "every child has the right to protection before the law against all forms of physical and mental violence, neglect, mistreatment and sexual assault while under the care of his parents, guardian, or any other party responsible for his care."

Various methods of performing FGM in Indonesia. Generally, girls between 0 and 18 undergo Type I or Type IV FGM,<sup>27</sup> which is symbolic or gestural and involves a slight cutting of the clitoris.<sup>28</sup> In order of quantity, FGM is most commonly performed by cutting the tip of the clitoris and a small part of the clitoris, followed by rubbing the clitoris with antiseptics, sewing or narrowing the mouth of the vagina, by inserting something into the vagina to cause bleeding, and by performing other procedures. According to an Indonesia Statistical Profile on FGM published by UNICEF in 2019, nearly half of girls under the age of 12 had undergone some type of FGM.<sup>29</sup> Meanwhile, non-medical practitioners frequently engage in the practice, putting women and girls at higher risk.

In Java, FGM is performed symbolically by smeared turmeric onto the girls' clitoris or circumcised area touching, and then throwing or burying pieces of turmeric. While in Jambi and West Sulawesi, similar practices are also often carried out for reasons of tradition and Islamic religious guidance. FGM is practiced in the Sasak community in Sumbawa by shamans or adults cutting a small part of the female genitalia, such as the clitoris, using a razor. Meanwhile, the Mongubingo community in Gorontalo practices FGM as a traditional circumcision ritual for baby girls from infancy, intended as a process of cleansing the genitals from "unclean" glands.<sup>30</sup> In fact, a special event called a mass ceremony to

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<sup>27</sup> Unicef, "Country Profiles Indonesia FGM," Unicef Data, 2023.

<sup>28</sup> Basilica Putranti, "To Islamize, Becoming a Real Woman, or Commercialized Practices? Questioning Female Genital Cutting in Indonesia," *Finish Journal of Ethnicity and Migration* 3, no. 2 (2008): 26.

<sup>29</sup> Unicef, "Country Profiles Indonesia FGM."

<sup>30</sup> Moch Zihad Islami and Yulia Rosdiana Putri, "Nilai-Nilai Filosofis Dalam Upacara Adat Mongubingo Pada Masyarakat Suku Gorontalo," *Jurnal Ilmu Budaya* 8, no. 2 (2020): 186–97, <https://doi.org/10.34050/jib.v8i2.10983>.

perform female circumcision has been organized yearly in Bandung since 1958.<sup>31</sup>

FGM is also performed based on community pressure or family tradition. In other words, grandmothers who have undergone FGM will tend to force their children and grandchildren to undergo it. The survey conducted in Indonesia in 2017 by PSKK UGM revealed that 92% of families in Indonesia would choose to continue performing FGM on their daughters. This pressure is rooted in the belief that FGM will preserve the purity, health and beauty of the female body. FGM will control women's sexuality and reproduction and stabilize women's sexual libido. They believe that FGM will reduce women's excessive sexual desire.<sup>32</sup> FGM serves to limit individual sexual activity, promotes a feminine image, and gives women a sense of powerlessness.<sup>33</sup> Furthermore, the family honor will be maintained because they have carried out religious obligations. There is also a belief that circumcised women will cook rice better,<sup>34</sup> as if women are destined to cook and it will increase the desire of potential husbands towards women. FGM maintains the status quo of uneven and inequitable gender relations. FGM has the function of defining desirable expressions of sexuality under the gender roles established in society.<sup>35</sup>

The survey by PSKK also revealed that the husband and wife view of FGM should be continued because it is a religious order.<sup>36</sup> The firm belief of religious purposes states that male circumcision is compulsory and female circumcision is also mandatory. FGM is regarded as a marker of a Muslim woman both in this life and the afterlife. Some Muslims believe that uncircumcised girls will grow up to become immoral or degenerate

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<sup>31</sup> Abigail Haworth, "The Day I Saw 248 Girls Suffering Genital Mutilation," *The Guardian*, 2012.

<sup>32</sup> Agus Hermanto, "Khitan Perempuan Antara Tradisi Dan Syari'ah," *Kalam* 10, no. 1 (2016): 257–94, <https://doi.org/10.24042/klm.v10i1.343>.

<sup>33</sup> Putranti, "To Islamize, Becoming a Real Woman, or Commercialized Practices? Questioning Female Genital Cutting in Indonesia."

<sup>34</sup> Haworth, "The Day I Saw 248 Girls Suffering Genital Mutilation."

<sup>35</sup> Putranti, "To Islamize, Becoming a Real Woman, or Commercialized Practices? Questioning Female Genital Cutting in Indonesia."

<sup>36</sup> Susilastuti et al., *Female Genital Mutilation/ Cutting: Standing between the Tradition and Modernity*.

women.<sup>37</sup> God will not recognize and accept the worship of uncircumcised women; in essence, FGM for Muslim women is considered a rule and symbol of Islam.

Women's low education level is also one factor that encourages the practice of FGM. This makes women less knowledgeable and have low bargaining power in the community, so they obey orders to undergo FGM. In addition, FGM is practiced on girls aged 0-15 years who cannot decide about their bodies. Even well-informed parents that FGM doesn't have any benefit, due to the social pressure and the demands of in-laws, have to conduct FGM towards their daughter.

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The interpretation of FGM as an obligation in religion is crucial in the emergence of cultural hegemony associated with FGM. Several religious leaders and Islamic institutions (Islamic *boarding schools*) have stated that the practice of FGM is a medical act that needs to be considered and decided in medical expertise.<sup>40</sup> If medically view FGM has no health benefits, then there is no reason to continue the practice.<sup>41</sup> The study by Saputro et al., on their paper,<sup>42</sup> has elaborated that no definite Islamic source and proof of the the authenticity of the narrative that can be used as the bases for a legal ruling on such a life-threatening issue, that is FGM/C. The Holy Quran is void any reference to FGM, there is no Ijma' or consensus on specific regal ruling, and there is no Qiyas or analogy that can be accepted.<sup>43</sup> Meanwhile, even though some maintain a view that one can adhere to a weak hadith because it encourages good morals can be justified in matters related to honorable deeds, not to the unjustified injury of people and their psychological and physical harm as is the case with FGM.<sup>44</sup> Which, of course, is something unacceptable.

Commonly, health workers and health facilities in Indonesia refuse to perform FGM.<sup>45</sup> However, there are strong beliefs, and parents often insist on carrying out circumcision towards their daughters. If the health workers don't want to do it, parents will go to traditional alternatives, which non-medical agents and standards will conduct. The hygiene and safety of the child are riskier. Instead of taking the risk of it, the health workers often "pretend" to perform circumcision, like rubbing the clitoris with antiseptic or betadine and by saying just to clean up the clitoris part.<sup>46</sup>

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<sup>40</sup> Nurhadi Sucahyo, "Indonesia Butuh Komitmen Kuat Hapus Praktik Sunat Perempuan," Voaindonesia, 2021.

<sup>41</sup> Sucahyo.

<sup>42</sup> Lucke Kharimah Pamungkas Saputro and Najamuddin Khairur Rijal, "THE URGENCY TO RE-EVALUATE FEMALE GENITAL MUTILATION PRACTICE AMONG MUSLIM COMMUNITIES IN INDONESIA," *Sangkep: Jurnal Kajian Sosial Dan Keagamaan* 5, no. 2 (2022): 126–36, <https://doi.org/10.20414/sangkep.v2i2>.

<sup>43</sup> Mohamed Selim Al-Awa, "FGM In the Context of Islam," UNFPA Egypt, 2022.

<sup>44</sup> Al-Awa.

<sup>45</sup> Tiara Sutari, "Sunat Perempuan Di Antara Mereka Yang Menginginkan Dan Enggan," CNNIndonesia, 2023.

<sup>46</sup> Sutari.

Even though most types of FGM practice in Indonesia are symbolic and viewed as less dangerous than the other types, it does not provide validation that the practice should be continued. Allowing the symbolic practice also means legitimizing the society to 'modify' the most sensitive part of the body of an infant girl with no ability to understand, speak, and bargain themselves, over the practice that clearly has no health benefits for them. Moreover, the practice is rooted with the intention to perpetuate unjust gender relations. In contrast, the girls will carry the experience with physical or psychological pain.

It can be concluded that FGM in Indonesia is firmly rooted in religious and cultural beliefs. Therefore, the role of religious leader is crucial to reframe the beliefs of society regarding FGM. The education, campaign, and information supply should be continued to be spread out to the community of Indonesia in order to shift that strong cultural beliefs to consider the risk of FGM towards the life of a girl or woman, and so that Indonesian society can be open to change towards eliminating the practice of FGM.

### C. FGM in World Trends

Although the UN has designated FGM as a harmful practice and a violation of human rights, it is still practiced in many countries. To date, FGM is still widely practiced in Islamic countries or areas with a majority Muslim population, especially those with the Shafi'i madhhab such as in several African regions such as Egypt, Cameroon, Kenya, Tanzania, Ghana, Sudan, Nigeria, and in Asia such as Pakistan, Southern Thailand, the Philippines, Malaysia, Brunei, Singapore, Vietnam, Laos, as well as Indonesia. However, FGM is uncommon in the region where Islam originates, namely Saudi Arabia. The same goes for other Islamic regions, such as Afghanistan, Syria, Lebanon, Iran, Iraq, Jordan, Morocco, Algeria, and Tunisia. Even in Turkey, which follows the Hanafi madhhab, FGM or female circumcision is unfamiliar.<sup>47</sup>

The practice of FGM in many countries is motivated by religious, social and cultural reasons. While in many African countries, FGM is generally performed as a ceremony when girls reach adolescence, FGM in

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<sup>47</sup> Easy Noble, *Peeling Sexuality* (Jakarta: Opus Press, 2015).



Southeast Asia is often performed on girls as infants or before the age of two, so the practice is more hidden. FGM is considered a ritual of passage for the Philippines,<sup>48</sup> and in Southern Thailand, FGM is associated with 'softening' the female character.<sup>49</sup> Singaporeans, especially Muslims, practice FGM for religious, cultural and hygiene reasons performed in public clinics.<sup>50</sup> While in India, Indonesia, and Malaysia, FGM is often performed for hygiene reasons, reducing female sexual desire and purifying the body based on religious interpretations.<sup>51</sup>

Malaysia, based on the Shafi'i madhhab, specifically regulates and requires FGM procedures for its citizens. Similar to the Indonesian Ulema Council in Indonesia (Majelis Ulama Indonesia/MUI)<sup>52</sup> Malaysia's National Council of Muslims (JAKIM) in 2009 has issued a fatwa stating that female circumcision is part of Islamic teachings and should (must) be obeyed by Muslims as long as medical practitioners do not consider it harmful. In 2012, the Malaysian Ministry of Health called for FGM procedures to be standardized. As a result, more than 93 per cent of women in Malaysia have undergone FGM, with 80 per cent being religiously motivated. As of 2016, there is an increasing trend in the practice of FGM performed by doctors. Deputy Prime Minister Datuk Seri Azizah Wan Ismail also recently called female circumcision a "cultural responsibility" of Malaysian society, suggesting that the practice is linked to one's ethical obligations.

However, there are divided opinions among local NGOs in Malaysia regarding female circumcision. Sisters in Islam (SIS) opposes the practice

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<sup>48</sup> Salmah Lao Basher, "The Stages of Female Circumcision Practice among Meranaos Living in the Rural and Marginalized Areas in Lanao," *International Journal of Humanities and Social Sciences* 8, no. 2 (2016).

<sup>49</sup> C Merli, *Self-Determination and Women's Rights in Muslim Societies* (Durham: Brandeis University Press, 2012).

<sup>50</sup> theAsianparent, "Female Genital Mutilation in Singapore: What Do You Know About It?," theAsianparent, 2018.

<sup>51</sup> Angela Dawson et al., "Addressing Female Genital Mutilation in The Asia Pacific: The Neglected Sustainable Development Target," *Australian and New Zealand Journal of Public Health* 44, no. 1 (2020): 8–10, <https://doi.org/10.1111/1753-6405.12956>.

<sup>52</sup> Kemenag, "PBNU: Sunat Pada Perempuan Tidak Boleh Dilarang," Kementerian Agama Republik Indonesia, 2006.

of female circumcision, emphasizing that the practice is not mentioned in the Qur'an and is actually harmful to women. Meanwhile, the Muslim Association of Malaysia (ISMA) and Wafiq emphasized that female circumcision has a religious basis and that the method is not harmful. In response to the debate, Health Minister Dzulkefly Ahmad issued a statement in November 2018 clarifying that the type of female circumcision practiced in Malaysia is not FGM, but female genital cutting or female circumcision, and added that the Ministry should release guidelines for standardizing the procedure.<sup>53</sup> Meanwhile, Chairman of the National Human Rights Commission Malaysia (Suhakam) Tan Sri Razali viewed that portraying female circumcision as Malaysian culture could undermine Malaysia's international position on human rights.<sup>54</sup>

Among the various reasons behind the practice of FGM in various countries, it seems that FGM is a religious mandate, especially in Islam. However, the Quran, as the first and primary source of law in Islam, does not explicitly include a circumcision order, either for men or women. Some scholars use Surah An- Nahl verse 123 as the basis for the commandment of FGM, which essentially commands the Prophet Muhammad to follow the teachings of Prophet Abraham. The practice of circumcision was introduced by Prophet Ibrahim, who performed it at 80.<sup>55</sup> Scholars also often refer to hadith<sup>56</sup> (laws based on the words and actions of the Prophet Muhammad) as the legal basis for practicing FGM.<sup>57</sup> However, all the major hadith books or often called the Six Books (*al-polar al-shittah*),<sup>58</sup> do not contain hadiths on female circumcision,

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<sup>53</sup> Tasneem Nazari, "Female Circumcision In Malaysia Explained," The Rakyat Post, 2020.

<sup>54</sup> Veena Babulal, "Female Circumcision Part of Malaysian Culture, Says DPM," New Straits Times, 2018.

<sup>55</sup> Swararahima, "Islam Does Not Introduce Female Circumcision," Swara Rahima, 2020.

<sup>56</sup> Jonathan A.C. Brown, "Hadith," Oxford Bibliographies, 2017, <https://doi.org/10.1093/OBO/9780195390155-0030>.

<sup>57</sup> Dawson et al., "Addressing Female Genital Mutilation in The Asia Pacific: The Neglected Sustainable Development Target."

<sup>58</sup> Ghassan Abdul Jabbar, "The 'Six Books' of Hadith," SSRN, 2018.

except for the Sunan of Abu Dawud. Yet, Abu Dawud admits that the text of the hadith related to FGM in his book is weak (*dhaif*).<sup>59</sup>

The four main Islamic madhhab—Shafi'i, Hanbali, Maliki and Hanafi—differ in their interpretation of Islamic teachings and laws, especially in interpreting the legal status of FGM. Hanafi scholars allow FGM but still do not consider it as sunnah. Although the Maliki and Hanbali scholars believe FGM is an optional act (*mandub*), they advocate the practice of FGM. Meanwhile, just like male circumcision, FGM is considered obligatory in the Shafi'i school of Sunni Muslims and the Dawoodi Bohra school of Shi'a Islam.<sup>60</sup>

Aside from the debate within Islam, the US Department of Health and Human Services states that Christian and Jewish groups in Egypt, Nigeria, Tanzania, and Kenya, including the Beta Israel Jewish minority group or the Falashas in Ethiopia, also practice FGM. However, neither the Torah, the Gospel, nor the Qur'an explicitly mentions FGM or female circumcision. Literature discussing Christian views on FGM is scarce, yet Christian (Coptic) leaders at the 2006 Conference unanimously agreed that FGM has no basis in Christian religious texts.<sup>61</sup> FGM is fundamentally unjustifiable based on teachings in the three religions. Therefore, FGM is understood as a mixture of cultural, social, and religious interpretations that can put tremendous pressure on communities that have long perpetuated the practice of FGM in their areas.

Meanwhile, KH Faqihuddin Abdul Kodir from the Graduate School of Gajah Mada University (UGM) explained that currently, almost all major fatwas of world scholars have prohibited (prohibited) FGM.<sup>62</sup> In

<sup>59</sup> Musdah Mulia, "Sunat Perempuan Dalam Perspektif Islam," Jurnal Perempuan, 2014.

<sup>60</sup> Megan Mnason, "Let's Face Facts: FGM Has Something to Do with Religion," National Secular Society, 2019.

<sup>61</sup> I El-Damanny, "The Jewish and Christian View on Female Genital Mutilation," *African Journal of Urology* 19, no. 3 (2013): 127–29, <https://doi.org/10.1016/j.afju.2013.01.004>.

<sup>62</sup> KemenPPPA, "Praktik Berbahaya, Perempuan Tidak Memerlukan Sunat," Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 2020.

Egypt, the Egyptian Fatwa Institute and Al-Azhar University also issued fatwas in 2008 and February 2020 prohibiting FGM for their citizens after the case of a girl who died due to bleeding while undergoing the procedure.<sup>63</sup> As a result, the practice of FGM has become increasingly recognized as a harmful practice that violates the health of women and girls. In recent trends, many countries around the world have begun to have laws prohibiting FGM and imposing penalties on those who perform, promote, or facilitate the practice. As of 2021, more than 30 countries in Africa, the Middle East, Asia, and Europe have specific laws criminalizing FGM, including Egypt, Ethiopia, Kenya, Nigeria, Somalia, Sudan, Tanzania, and Gambia.<sup>64</sup>

International organizations are working to eradicate FGM through various strategies. The UN General Assembly has passed several resolutions condemning FGM and urging governments to take action to eliminate it. The Sustainable Development Goals also include a target to eliminate all forms of FGM by 2030. The global Zero Tolerance movement for FGM that began in the 1990s is still celebrated every year on February 6. In addition, international human rights law requires countries to establish national action plans, policies and programs to prevent and eliminate the practice. These can include initiatives to raise awareness, educate communities, provide health and social services to affected girls and women, and engage religious and traditional leaders in promoting changes.

It can be concluded that FGM in Indonesia is firmly rooted in religious and cultural beliefs. Therefore, the role of religious leader is crucial to reframe the beliefs of society regarding FGM. The education, campaign, and information supply should be continued to be spread out to the community of Indonesia in order to shift that strong cultural beliefs to consider the risk of FGM towards the life of a girl or woman, and so that Indonesian society can be open to change towards eliminating the practice of FGM.

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<sup>63</sup> Reuters Staff, "Egypt Mufti Says Female Circumcision Forbidden," REUTERS, 2007.

<sup>64</sup> Unicef, "Country Profiles Indonesia FGM."

## **FGM in the Context of Human Rights**

### ***A. FGM in the International Human Rights Law***

The practice of FGM in society must be understood not only as a matter of religious interpretation or tradition but there as a deeper element of motivation; it is an effort to perpetuate patriarchal culture and gender bias to subordinate women. Unfortunately, these are all legitimized by citing the sacred texts of the Qur'an and Prophetic Hadith. Meanwhile, several international human rights instruments have prohibited FGM, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Universal Declaration of Human Rights (UDHR) . Since 1979, The United Nations (UN) has also passed several resolutions and recommendations calling for the elimination of FGM because, besides being carried out without medical indication or necessity, FGM has adverse health effects and is a form of violence against women and girls.

FGM also violates a series of well-established human rights principles, norms and standards, including the principles of equality and non-discrimination based on sex, the right to life when the procedure results in death, and the right to freedom from torture or cruel , inhuman or degrading treatment or punishment. As Articles 1 and 2 of the Universal Declaration of Human Rights (UDHR) affirm that:

*“All human beings are born free and equal in dignity and rights, where everyone is entitled to all rights and freedoms without distinction of any kind, such as race, color , sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.”*

International human rights law also recognizes that the prohibition of FGM is consistent with the right to freedom of religion or belief. While individuals have the right to freedom of religion or belief, this right is not absolute and may be subject to certain limitations to protect the rights of others. The prohibition of FGM is considered a legitimate limitation on the right to freedom of religion or belief because it protects the health, dignity and human rights of women and girls.

Therefore, in 1997, the World Health Organization (WHO), the United Nations Children's Fund (UNICEF) and the United Nations

Population Fund (UNFPA) issued a Joint Statement on Female Genital Mutilation, which states FGM violates the right to health and body integrity by describing the implications of the practice on public health and human rights. These international human rights instruments recognize that FGM violates fundamental human rights principles and is a harmful practice that must be abolished.

### ***B. FGM Violates Women's and Girls Rights***

FGM in any form has been recognized as a harmful practice and a violation of the human rights of girls and women. According to the Article 2 (a) Declaration on the Elimination of Violence against Women proclaimed through UN General Assembly resolution No. 48/104 of December 20, 1993:

*“Violence against women shall be understood to encompass, but not be limited to physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related.”*

FGM violates a range of well-established human rights principles, norms and standards, including the principles of equality and non-discrimination based on sex, the right to life when the procedure results in death, and the right to be free from torture or cruel, inhuman and degrading treatment or punishment. Furthermore, because it disrupts healthy genital tissue in the absence of medical necessity and can lead to severe consequences for a woman's physical and mental health, FGM violates a person's right to the highest attainable standard of health. Moreover, FGM, which removes parts of women's bodies needed for the satisfaction and security of their sex lives, is carried out to control women's sexuality and social life and is gender-based violence used as a form of oppression against women.

FGM has been recognized as discrimination based on sex because it is rooted in gender inequality and power imbalance between men and women and hinders women from enjoying their human rights and equal rights. Violence against women occurs under unequal relations between women and men and is characterized by a less effective and stronger

relationship between the two. Violence against women cannot be separated from the context of patriarchal cultural values and views that always position women as objects and are on the oppressed side, where this has entered into all life structures. This culture shackles women's freedom to play an active role and contribute to society. Then, FGM is also thick with power relations between children and parents because it is mostly carried out at the age of children. FGM prevents girls and women from making independent decisions about interventions that have long-term effects on their bodies and violates autonomy and control over their lives. Patriarchal culture also causes male dominance in the social structure of society to justify the oppression of women.

Sex-based discrimination has been prohibited in all instruments under international human rights law. The Committee on the Elimination of Discrimination against Women (CEDAW Committee), which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), has stated that FGM violates the right to be free from gender-based violence and discrimination under CEDAW. CEDAW is an international treaty signed by many countries to eliminate all forms of discrimination against women. Article 1 of CEDAW affirms women's right not to be subject to discrimination based on sex, including the right not to be the object of discriminatory practices such as FGM. Discrimination against women shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

In the case of FGM, CEDAW highlights the negative impact of the practice that affects women's health and rights, including physical, psychological, and sexual harm. FGM also hinders women's ability to participate fully in society, including education and employment. In addition, Article 12(2) of CEDAW also affirms women's right to equal access with men to health services, including health services related to the health and psychological effects of FGM. In principle, CEDAW recognizes that discrimination against women can hinder a country's



social, economic, and political progress. Therefore, CEDAW calls on signatory states to take measures to eliminate discriminatory practices such as FGM and protect women from gender violence. This includes providing education and awareness about the negative consequences of FGM, providing support and protection for women and girls who have undergone FGM, and taking action against perpetrators who engage in this practice.

The prohibition of FGM is also further affirmed through Article 24 (3) of the Convention on the Rights of the Child (CRC), which requires state parties to “...*immediately eliminate traditional practices that are detrimental to the health of children.*” This provision indicates that FGM has the potential to cause violence and exploitation of children. As the Joint UN Policy Statement on FGM/C recognizes, parents who submit their daughters to undergo FGM perceive that the benefits of the procedure outweigh the risks.<sup>65</sup> However, this perception cannot justify a permanent and potentially life-changing practice that violates girls' human rights.

FGM is steeped in power relations between children and parents because it prevents girls and women from making independent decisions about interventions that have long-term effects on their bodies and violates their autonomy and control over their lives. While the Article 12 of the CRC refers to children's developing capacity to make decisions regarding matters that affect them, FGM, even in cases where there is explicit consent or desire from girls to undergo the procedure, is done without providing them with sufficient information about what will happen to their bodies. In reality, this results from social pressure and societal expectations and stems from girls' aspirations to be accepted as full members of society. Therefore, a girl's decision to undergo FGM cannot be called a free, uncoerced decision.

The Committee on the Rights of the Child, which monitors the implementation of the CRC, has stated that FGM is a harmful traditional practice that is discriminatory and violates children's rights to health, survival and development. With this in mind, it obliges States Parties to

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<sup>65</sup> WHO, *Eliminating Female Genital Mutilation: An Interagency Statement* OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM.

the CRC to take all effective and appropriate measures to eliminate traditional practices that are detrimental to children's health.<sup>66</sup>

*A.2. FGM Violates the Right to Freedom of Religion or Belief*

The international community has recognized that FGM, which involves harmful procedures often based on religious beliefs or cultural traditions, violates the right to freedom of religion or belief (FoRB). In addition, FGM is a clear form of gender discrimination and violates the right of women and girls to live free from violence and discrimination. FGM also hinders girls and women from growing up with their bodily integrity intact and is performed without the consent of the girls undergoing the procedure.

Meanwhile, the ICCPR stipulates that all people have the right to enjoy the FoRB and prohibits all forms of intolerance and discrimination based on religion or belief. The right to FoRB includes the right of everyone to choose their religion or belief and practice their religion or belief in accordance with their conscience. It is as affirmed in Article 18 of the ICCPR:

*"Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance."*

Based on General Comment 22 on Article 18 of the ICCPR, FoRB can be described in 2 ways. First, the freedom to have or adhere to a religion or belief of his own choice (*forum internum*). Second, the freedom to manifest his/her religion or belief (*forum externum*), which in the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Religion and Belief (1981) includes practicing his/her religion and belief in worship activities, having a place of worship, using/wearing religious symbols, commemorating religious holidays, appointing or electing religious leaders, teaching and disseminating religious materials, the right of parents to ensure religious and moral education for their children, communicating with individuals and communities on religion affairs at the national and international levels,

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<sup>66</sup> WHO.

establishing and running humanitarian institutions/raising and receiving funding, and raising a conscientious objection.<sup>67</sup>

While the FoRB protects everyone's right to participate in cultural and religious life, it cannot be used as a justification for harmful practices that violate other human rights, such as the right to life, the right to health, and the right to be free from discrimination and violence. FoRB is not absolute, and international law provides that the freedom to manifest one's religion or beliefs may be subject to restrictions necessary to protect the fundamental rights and freedoms of others.

The practice of the right to FoRB must be balanced with social and moral responsibility, especially in interpreting religious teachings. In exercising the freedom of the forum externum aspect, the ICCPR in Article 18 (3) affirms the political and civil right of freedom of religion, which states that freedom to manifest religion or belief is subject to restrictions "prescribed by law and necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others".

The meaning of these limitation clauses is explained in the Syracuse Principles.<sup>68</sup> The Siracusa Principle determines that clauses based on public health can be used as a basis for limiting certain rights that allow states to take action to deal with severe threats to the health of their population. These restrictions must be specifically intended to prevent illness or injury or to provide care for sick or injured persons with due observance of the provisions in the international health regulations of WHO. Then, restrictions based on public safety are defined as protection against danger to people's safety, life or physical integrity, or serious property damage. Restrictions for public safety reasons may only be used if there are adequate protections and effective remedies against abuse of the restrictions themselves. Meanwhile, because public morality varies from time to time and from one culture to another, a state that uses public morality as a basis for limiting human rights must demonstrate that such restrictions are necessary to maintain respect for human rights and values.

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<sup>67</sup> Zainal Abidin Bagir et al., *Membatasi Tanpa Melanggar: Hak Kebebasan Beragama Atau Berkeyakinan* (Jakarta: Center for Religious and Cross-Cultural Studies, 2019).

<sup>68</sup> Bagir et al.

FoRB is recognized and guaranteed in the ICCPR. However, religious freedom often intersects with the right to health, which arises from the concept of public health in the Siracusa Principles, especially in the issue of FGM. In the case of FGM, for example, the state is interested in keeping women and girls able to attain the quality of health to the fullest, and every child also has the right to health. However, on the other hand, some parents want to perform FGM for religious reasons for their children even though the FGM action endangers the child's health.

In this case, the intersection between FoRB and the right to health in FGM is a conflict of three interests: the rights of individuals or parents as citizens who want to carry out FGM on religious grounds, the rights of other individuals/children to obtain health, and the interests of the state to protect and ensure children, women, and future generations to get the broadest opportunities as possible to grow and develop optimally, be it in physical or mental.

Allowing parents to perform FGM on their children, especially when it is done in a procedure that is not medically recognized, or done traditionally with hygiene and other risk factors, can be dangerous for the health of the child. Therefore, the prohibition of FGM is considered a legitimate limitation on the right to FoRB because it protects the health, dignity and human rights of women and girls. It is important to note that prohibiting harmful practices such as FGM does not necessarily mean violating the right to FoRB. Instead, it is a recognition that the right to exercise religion or belief is not absolute and must be balanced with other human rights to protect individuals from harm. As stated in the 1993 Vienna Declaration and Program of Action, the importance of eliminating violence against women and the adverse effects of certain traditional or customary practices and extreme cultural and religious prejudices. In addition, the UN states that the fulfillment of women's reproductive rights is one of the determinants of a country's development program.

Therefore, it is necessary to set standard norms through public policy to provide clear parameters for restrictions to protect the health of women and children. The government needs to establish standard norms for the prohibition of FGM. Because of the state's interest in protecting the health of children, women, and future generations who will carry the aspirations of the nation's struggle, possess strategic roles and have characteristics and

special traits that will ensure the nation's and country's existence in the future. In order for every child to be able to carry such responsibilities ahead, then they need to get as broadest opportunities as possible to grow and develop optimally, be it physically or mentally. Therefore, protective acts and realizing children's welfare by providing guarantees to fulfill their rights is a legitimate action that should be taken.

Furthermore, governments must take all effective and appropriate measures to modify social and cultural practices based on the notion of female inferiority. States have a primary legal obligation to create frameworks and conditions in society that protect women and girls from violence and for the elimination of discrimination against women and girls. The commitment should be interpreted that the State is accountable for passing legislation and adopting policies (including plans of action) to end harmful traditional policies, and for enforcing such legislation and implementing policies. Any measures to eradicate the practice of FGM must be notified to the CEDAW Committee as a form of implementation of the State's commitment and compliance with international human rights law in promoting and fulfilling human rights for every woman and girl in the country without exception.<sup>69</sup>

### ***C. Compatibility of Indonesian Law on FGM with International Human Rights Law***

The efforts to eliminate FGM in Indonesia have been made for a long time. Various research and advocacy have also been conducted. However, strong traditions, religions and beliefs within the community still have a barrier to eliminating FGM. The debate among stakeholders has influenced policies related to FGM in Indonesia for different reasons; The Indonesian Ulema Council (Majelis Ulama Indonesia/ MUI) objections colored religious interpretations, while the Health Ministry's decision was issued due to international pressure. In the context of Indonesia, the rejection of FGM abolition comes from religious leaders who are members of the MUI. Despite its legal status as a state institution, the Ministry of Health has been seen several times not acting decisively in prohibiting

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<sup>69</sup> United Nations Human Rights, "Female Genital Mutilation: Over 3 Million Women and Girls Are at Risk," United Nations Human Rights, 2012.

FGM, which has no medical reason. Because this inconsistency cannot be resolved, as a result, Indonesia does not have an explicit law prohibiting FGM; thus, some communities are still openly practicing it.

Efforts to ban FGM in Indonesia were seen in 2006 when the Indonesian government, through the Ministry of Health, issued a circular prohibiting all forms of female circumcision from being performed by medical personnel.<sup>70</sup> Most baby girls were not circumcised by then. However, the MUI opposed the policy by issuing a fatwa in 2008 and urged the Ministry of Health to repeal the ban. The MUI insisted that prohibiting FGM is against Islamic law because FGM is *fitrah*, Islamic *syiar*, and *makrumah* (glory laws for women).<sup>71</sup>

Due to this pressure, the government then issued Minister of Health Regulation No. 1636/Menkes/Per/VIII/2010 on the Management of Medical Circumcision (or Female Circumcision) in Health Care Facilities, which only permits FGM to be performed only with medical supervision and under specific guidelines. This regulation is in response to concerns about the prevalence of FGM in Indonesia and the health risks associated with the practice. However, this regulation still leaves open the possibility of performing FGM, as it still allows a small number of genital skin cuts or scrapes that can only be performed by licensed doctors, midwives, and nurses (preferably female), based on the request or consent of the person who will undergo the procedure or the parent/guardian. Although the Ministry of Health is aware of international pressure on the dangers of FGM, in practice, the Minister of Health Regulation only prohibits the most severe form of FGM (Type III), and it allows milder forms (Types I and II), which remain dangerous and violate the rights of women and girls. Hence, every hospital, even private maternity clinics, continues to perform FGM because it is considered safer and more hygienic if trained medical personnel perform it.

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<sup>70</sup> KemenPPPA, "Upaya-Upaya Pencegahan Praktik Sunat Perempuan Menjadi Tanggung Jawab Bersama," Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Republik Indonesia, 2020.

<sup>71</sup> Afifi Fauzi Abbas and Mona Eliza, "Sunat Perempuan Dalam Perspektif Fikih," *FUADUNA: Jurnal Kajian Kegamaan Dan Kemasyarakatan* 2, no. 1 (2018): 10–15, <https://doi.org/10.30983/fuaduna.v2i1.2022>.



Many medical experts and human rights groups oppose the Ministerial Regulation and view FGM as a form of human rights violation. They expressed concern that the medicalization of the FGM procedure did not take into account the traumatic effects that may occur to girls who undergo FGM. The debate also never addressed moral consent or awareness of the child's bodily autonomy. The WHO, the UN, and other international human rights bodies have repeatedly called for the prohibition of all forms of FGM, regardless of whether the FGM is classified as "mild" or "severe". In an international conference 1979, the WHO clearly stated, "it is unacceptable to suggest that performing less invasive forms of FGM in medical facilities will reduce coercion."<sup>72</sup> Furthermore, while it has defined the FGM procedure in such a way, no one can guarantee that the practice is not risky for women and girls who undergo it.

In response to many objections from various parties, in 2014, the regulation was revoked by enacting the Minister of Health Regulation Number 6 of 2014. The Ministry of Health has determined that the practice of FGM is not medically indicated and has not been proven to be beneficial to women's health, but rather is practiced for cultural and religious reasons. Nevertheless, this new regulation remains ambiguous in addressing the practice of FGM and remains inconsistent with the WHO's mission to eliminate the practice of FGM. Although it prohibits health workers from performing the procedure, it also authorizes the Health and Shara ' Advisory Council (MPKS) to develop guidelines for the practice of FGM. The debate between the Ministry of Health and MUI regarding the legality of FGM ended without a definitive rule in the community while maintaining the absence of laws in Indonesia that explicitly prohibit the practice of FGM. Therefore, the Minister of Health Regulation Number 6 of 2014 is a step backwards, as it allows FGM to continue without intervention and facilitation from the state so that there are no sanctions for individuals who continue to perform FGM in Indonesia.

The 2010 and 2014 Minister of Health Regulation not only contradicts international human rights law, particularly the CEDAW,

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<sup>72</sup> WHO, *WHO Guidelines on the Management of Health Complications from Female Genital Mutilation* (Geneva: WHO Press, 2020).



ICCPR, and CRC principles, they also oppose several national legal provisions. The regulations related to FGM are not in line with the government's measures to strengthen the protection of children and women's reproductive health and aim to eliminate all forms of discrimination, violence, and gender inequality outlined in several national laws. These include the 1945 Constitution, Law No. 36 of 2009 on Health, Law no. 39 of 1999 on Human Rights, and Law No. 23 of 2002 on Child Protection. Children are guaranteed the human right to be free and to receive protection from violence and discrimination according to Article 28B Paragraph (2) and Article 28I Paragraph (2) of the Constitution. Furthermore, article 74, Paragraph (1) of the Health Law states that every reproductive health service must pay attention to aspects of women's reproductive health.

Meanwhile, the Human Rights Law protects women's reproductive rights under Article 49. In line with that, Article 4 of the Child Protection Law states that children have the right to protection from violence and discrimination. The government has also ratified CEDAW by ratifying Law Number 7 of 1984. This further demonstrates the Indonesian government's commitment to protecting health rights with gender justice and non-discrimination. These reasons and objectives should be seen as the national legal umbrella under which the prohibition of FGM in Indonesia is formulated.

On the other hand, Indonesia has just passed two laws that have brought changes to criminal law in Indonesia, especially those related to women's rights; New Criminal Code and Sexual Violence Law. Although several sections in the new Criminal Code are still receiving criticism, the Law on Sexual Violence has been criticized by many because it uses the victim's perspective and is normatively sufficient to provide victims of sexual violence. However, despite its progressiveness, the Sexual Violence Crime Law does not explicitly categorize female circumcision as sexual violence, nor does it contain a prohibition against it. Meanwhile, the Criminal Code, as the main body of criminal law provisions in Indonesia, also does not include the term "circumcision", nor does it convict the FGM perpetrators themselves.

Based on that, the prohibition of FGM in Indonesia must be regulated in a particular provision at the level of law. Although the practice of FGM

has been handled by the Minister of Health Regulation and MUI fatwa, it is not enough to provide adequate protection to women and girls. A particular law regulating the prohibition of FGM can provide a more potent legal basis to protect women from this harmful practice. This particular law can also provide a clear and consistent legal basis for law enforcement officials and raise public awareness about the importance of protecting women from harmful practices.

In contrast to the Ministerial Regulation, a particular law could present criminal sanctions to perpetrators of FGM performed outside health facilities that do not have adequate safety and hygiene standards. This regulation is essential and aims to reduce the number of FGM cases in Indonesia. Furthermore, the law can provide more specific guidelines for medical personnel and health professionals on the actions that are allowed and prohibited in conducting medical practices on women and girls. It is important to avoid medical practices that harm women and improve the quality of health services.

In addition, the law that explicitly prohibits FGM can also help drive social and cultural changes associated with the practice. Indonesia has a lot of cultural diversity, including cultures that practice FGM. Therefore, social and cultural change is needed to change society's views towards the practice of FGM and reduce the number of cases. A special law could strengthen government support for social and cultural change campaigns and efforts to raise public awareness of women's human rights. In addition, special laws can also enhance cooperation between the government, civil society, international organizations and relevant parties to prevent and combat the practice of FGM.

In a global context, such a law can also help Indonesia fulfill international commitments to women's human rights, including CEDAW and the UN Sustainable Development Agenda. The goal to eliminate all forms of discrimination against women and girls, including FGM, is reflected in SDG Target 5.3. Indonesia has committed to achieving the SDG targets by signing the UNICEF-initiated Declaration of Joint Commitment to End the Practice of Female Circumcision in 2016 and making the issue a national priority.

In addition, in formulating laws related to FGM, the government and parliament should pay attention to and consider the principles of non-

discriminatory gender equality in international human rights law and national law regarding the rights of women and girls. Furthermore, integrating gender perspectives into laws and technical policies is crucial to realizing gender justice and preventing discriminatory treatment, especially against women. Thus, these provisions will accommodate gender-specific needs and be oriented towards protection and recovery from gender injustice practices.

Therefore, a particular law on the prohibition of FGM is essential to provide better protection for women and encourage positive social and cultural change. A comprehensive and well-implemented legal regulation is expected to reduce the number of FGM practices in Indonesia. However, in addition to laws, support from the government, civil society, international organizations and related parties is also needed to prevent and overcome the practice of FGM. Education and campaign efforts are also required to raise public awareness about the adverse effects of FGM and promote respect for the human rights of women and girls.

Thus, a particular law prohibiting the practice of female circumcision is essential to provide better protection for women and girls and reduce the practice of FGM in Indonesia. However, in addition to legislation, educational efforts and campaigns are needed to raise public awareness about the adverse effects of the practice of female circumcision and promote respect for women's human rights.

In addition, FGM-related laws must be formulated with due regard and consideration of the principles of non-discriminatory gender equality in International Human Rights law and National Law relating to the rights of women and girls. Integrating gender perspectives into laws and or technical policies is crucial to realizing gender justice and preventing discriminatory treatment, especially against women. Thus, these provisions will accommodate gender-specific needs and be oriented towards protection and recovery from gender injustice practices.

## Conclusion

The practice of FGM in Indonesia is not criminalized under its national law, while the existing Ministry of Health Regulation is also not in line with international human rights standards ratified by the

government. To prevent the adverse impact of violating the rights of women and girls, and as a form of participation in international treaties, the Indonesian government should urgently formulate and pass laws that expressly prohibit and criminalize the practice of FGM and ensure perpetrators are held accountable for their actions. The government also needs to increase awareness and educate communities and religious leaders about the adverse effects of FGM on women and girls. Indonesia should provide medical and psychological support to FGM survivors and ensure they have access to appropriate care and resources to aid their recovery and healing. It is also crucial for the government to work with civil society organizations and international partners to provide support to FGM survivors and implement prevention programs in communities where FGM is still practised. Finally, the government should continue to prioritize the issue of FGM in its development planning and strive to reduce FGM.

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