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# Abortion and Human Rights: An Analysis of Indonesian Legal Perspectives in Balancing the Right to Life of the Fetus and Women's Reproductive Health

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**Abstract:** Abortion in Indonesia is a complex legal and ethical issue, sparking debates concerning human rights (HR) from the perspective of the fetus's right to life and women's reproductive health rights. Legally, abortion is governed by the 1945 Constitution, Pancasila, Law No. 39 of 1999 on Human Rights, Law No. 1 of 2023 on the Criminal Code, and Law No. 17 of 2023 on Health. Human rights related to abortion encompass two primary perspectives: the fetus's right to life as part of humanitarian principles and women's right to reproductive health, including access to abortion under specific conditions such as medical indications or cases of rape. While abortion is generally viewed as violating humanitarian principles, Indonesian law accommodates certain exceptions to save the mother's life or provide justice for victims of sexual violence. This study aims to foster public awareness that abortion in Indonesia remains strictly regulated within the legal framework, balancing human rights and societal moral values.

**Keyword:** Abortion, Human Rights, Legislation, Health, Criminal Law.

## INTRODUCTION

In Indonesia, abortion is a controversial issue in the context of human rights (HR). As a nation founded on Pancasila and the 1945 Constitution of the Republic of Indonesia, the law and humanitarian values serve as the basis for evaluating the act of abortion. On one hand, abortion is considered a violation of the fetus's right to life as a human being entitled to life from the moment of conception. On the other hand, abortion is also viewed as a part of women's reproductive rights, particularly in specific cases such as pregnancies resulting from rape or emergency medical indications. Therefore, the role of state legal institutions is crucial in protecting all citizens, particularly safeguarding the right to life from the moment a fetus is conceived. This must be demonstrated to uphold evidence that Indonesia remains a nation governed by the rule of law.

Based on data, the number of abortion cases in Indonesia each year reaches a significantly high figure, ranging from 750,000 to 2.3 million cases. One of the causes of the high abortion rate in Indonesia is the rapid advancement of technology, particularly among

teenagers, who can easily access various information, including sexual knowledge (Suryani, L. 2021). If the sexual knowledge obtained by teenagers through the internet is not accompanied by parental and teacher supervision, it may lead to misunderstandings about sexuality. This can result in deviations, such as an increase in premarital sexual activities and a rise in abortion cases. Abortion is often viewed as an easy solution to unwanted problems, whether it is a pregnancy resulting from casual relationships, contraceptive failure, or pregnancy due to rape.

In society, abortion has become a subject of debate, marked by pros and cons stemming from differing opinions. Some believe that legal abortion can be justified under emergency medical indications that endanger the mother's life, as well as for the protection of rape victims. Others, however, view abortion as a violation of religious, legal, moral, and ethical principles (Tumbelaka, Hadjon, & Lamury, 2019). Proponents of abortion argue that every woman has the right to her own body and the right to live a life with reproductive health according to her personal choices. This right is enshrined in Article 49, Paragraph (3) of Law No. 39 of 1999 on Human Rights. Meanwhile, opponents of abortion contend that every human being has the right to life and to preserve their existence, as stipulated in Article 52, Paragraph (2) of the same law (Pemerintah Republik Indonesia, 1999).

Based on this background, this study aims to analyze human rights perspectives on abortion in Indonesia, focusing on legal regulations, implications for human rights, and the application of laws in abortion cases involving women's reproductive health.

## **METHOD**

This research was conducted using a normative approach with a descriptive analysis method. The data sources utilized include primary sources, such as Law No. 39 of 1999 on Human Rights, Law No. 17 of 2023 on Health, and Law No. 1 of 2023 on the Criminal Code (KUHP). In addition, secondary data, including journals, books, and scientific articles, were also used to provide a comprehensive perspective. The analysis was carried out systematically to understand the legal basis, human rights perspectives, and social implications of abortion practices in Indonesia.

## **RESULTS AND DISCUSSION**

### **1. Definition and Classification of Abortion**

The definition of abortion refers to the threat or expulsion of a fetus resulting from conception before the gestational age of 5 months or when the fetus weighs less than 500 grams and is capable of living outside the womb (Gulardi, 2012). Medically, abortion can be defined as the termination or completion of pregnancy before viability, prior to a gestational age of 20 weeks, when the fetus is not yet capable of surviving independently outside the womb (Kalibonso, 2022). Broadly, abortion is classified into two categories, spontaneous abortion and provocatus abortion. Spontaneous abortion occurs naturally without external factors influencing the uterus, either through intervention or the use of drugs. This type of abortion happens due to natural factors. Natural causes of abortion include chromosomal abnormalities, congenital uterine defects, hormonal disorders, and complications from infectious diseases such as sexually transmitted infections, kidney diseases, and tuberculosis. Spontaneous abortions can be further categorized into several types, imminent abortion, incomplete abortion, missed abortion, habitual abortion, infectious & septic abortion, incomplete abortion, complete abortion (Gulardi, 2012).

Provocatus abortion refers to intentional abortion (provocatus/induced abortion) caused by external factors. This type of abortion is divided into two subcategories, medicinalis abortion (Therapeutic Abortion), This refers to abortion performed based on medical emergency indications, carried out by a doctor to save the life of the mother when her life is at risk if the pregnancy continues. Criminalis Abortion This refers to the intentional termination of a

pregnancy without medical indications. Such abortions are often driven by various factors, such as economic issues, fear of moral sanctions, or other personal reasons (Gulardi, 2012).

## 2. Definition of Human Rights

Human rights are inherent rights that serve as fundamental principles and freedoms of human beings as creations of God Almighty. These rights are a gift and a dignity that must be respected and protected by the state, law, and government. This definition aligns with Law No. 39 of 1999 on Human Rights and Presidential Regulation No. 53 of 2021 on the National Action Plan for Human Rights 2021–2025 (Pemerintah Republik Indonesia, 2021)

In addition to the legal definition of human rights in Indonesia, several scholars have also provided definitions of human rights. According to Mariam Budiardjo, human rights are rights that individuals possess and acquire from birth in this world and throughout their life in society (Nurdin & Athahira, 2022). These rights are universal, making no distinctions based on ethnicity, nationality, race, religion, or gender. The Universal Declaration of Human Rights (UDHR) states that human rights are God-given rights that remain inseparable from human nature. They cannot be detached from human essence, ensuring that every person is entitled to a decent life, freedom, safety, and personal happiness (United Nations, 1948).

## 3. Legal Basis for Abortion in Indonesia

### a. The Criminal Code (KUHP)

The Criminal Code (KUHP) provides specific regulations regarding abortion, which is generally considered an illegal act. However, the KUHP also allows for exceptions under certain conditions. Article 347, Paragraph (1) of the KUHP states that anyone who intentionally causes the abortion or death of a fetus in a woman's womb without the woman's consent shall be punished with imprisonment for up to twelve years. This act involves deliberately terminating a pregnancy without the knowledge or consent of the woman involved. The absence of the woman's consent is a key element that categorizes the act as a criminal offense. In law, consent is considered part of a woman's right over her own body. The act of abortion includes all methods or procedures used to terminate a pregnancy, whether physically, chemically, or through medical intervention.

This article contains criminal elements, meaning that the perpetrator can be anyone, including medical professionals, family members, or individuals outside the family with no direct connection to the pregnant woman. The act must be performed with awareness and intent to terminate the pregnancy, and the perpetrator must not have obtained consent from the woman involved. This lack of consent is a crucial element in proving the criminal offense. Additionally, the criminal elements include the result of the fetus being aborted or dying in the womb.

Article 347, Paragraph (2) further explains that if the woman's death results from this act, the perpetrator will be punished with imprisonment for up to fifteen years. This paragraph provides a heavier penalty if the abortion not only causes the fetus to die but also results in the death of the pregnant woman. The criminal elements in this paragraph are similar to those in Paragraph (1), with the additional element of the woman's death as a direct consequence of the abortion. The maximum imprisonment of fifteen years serves as an aggravated penalty. This reflects greater legal protection for women, both as individuals and as mothers carrying a pregnancy. This article emphasizes that Indonesian law places significant importance on protecting women and fetuses from harmful actions or those performed without consent.

Meanwhile, Article 348 of the KUHP regulates abortion offenses committed with the woman's consent. This article distinguishes the legal penalties based on the consequences resulting from the abortion act.

Paragraph (1) states that anyone who intentionally causes a woman to experience a miscarriage or the death of a fetus in her womb with her consent shall be punished with imprisonment for up to five years and six months. This act involves the intentional termination of a pregnancy with the consent of the pregnant woman, which distinguishes it from Article 347. The procedure can be carried out using various methods such as physical, chemical, or

medical procedures. Although the woman's consent is given, the act is still prohibited because it violates the right to life of the fetus, with a maximum imprisonment penalty of five years and six months.

Article 348, Paragraph (2) explains that if the abortion causes the woman's death, the perpetrator will be punished with imprisonment for up to seven years. This paragraph imposes a heavier penalty if the abortion, performed with the woman's consent, results in the death of the woman. The maximum imprisonment of seven years serves as an aggravated penalty. This indicates that the woman's consent does not absolve the perpetrator of legal responsibility if their actions result in death. The woman's consent may reduce the degree of fault but does not eliminate the criminal nature of the act.

b. Republic of Indonesia Law No. 1 of 2023 on the Criminal Code (KUHP)

Law No. 1 of 2023 on the Criminal Code (KUHP) contains more comprehensive regulations regarding abortion, considering aspects of law, health, and human rights. This regulation emphasizes that abortion is essentially a criminal act; however, exceptions exist under certain conditions, which are clearly and strictly defined.

The 2023 KUHP regulates abortion in Articles 463, 464, 465, and several other articles. These provisions include prohibitions, exceptions, conditions for legal abortion, and sanctions for violations. Article 463, Paragraph (1) states that anyone who intentionally performs an abortion shall be punished with imprisonment for a maximum of 4 years, or a fine in Category IV (the maximum fine amount is determined by the relevant regulations). This provision indicates that abortion, if not performed according to the required conditions and procedures, remains a criminal act in Indonesia.

The 2023 KUHP provides exceptions to the abortion prohibition in Article 463, Paragraph (2), in two situations: first, in cases of medical emergencies, and second, in pregnancies resulting from rape. Abortion in medical emergencies is permitted if the pregnancy poses a serious risk to the life or health of the mother. This includes medical complications or certain conditions that can directly threaten the safety of the woman. Abortion is also allowed for women pregnant as a result of rape, in cases of pregnancy resulting from criminal sexual acts, to protect women from psychological trauma. This provision reflects the legal recognition of the rights of women who are victims of sexual violence.

Article 463, Paragraph (3), and Article 464 regulate the technical and procedural requirements to ensure that abortions are performed legally and safely. Abortion is only permitted if the pregnancy has not reached 14 weeks. This provision is based on medical considerations, as abortion is considered safer when performed in the early stages of pregnancy. The procedure may only be carried out by qualified medical professionals with official authority to perform abortions. This aims to ensure that medical procedures are conducted professionally and safely. This article also stipulates that the abortion procedure must be carried out in a designated, licensed healthcare facility, such as a hospital or accredited clinic.

Violations of the abortion prohibitions and conditions set out in the 2023 KUHP will result in strict sanctions. According to Article 464, if someone causes an abortion without the consent of the pregnant woman, the perpetrator may face imprisonment for up to 5 years and 6 months. If the action results in the woman's death, the perpetrator can be sentenced to up to 7 years. In Article 465, if the abortion is performed by someone who is not qualified, outside an official healthcare facility, or not in accordance with the procedure, the perpetrator may face punishment under criminal law.

The 2023 KUHP seeks to balance the protection of the fetus's right to life and the woman's right to reproductive health. This regulation is rooted in the fundamental legal principles of Indonesia, which prohibit abortion as a general act but still allow legal space for specific cases, such as recognizing the fetus's right to life as part of the principle of humanity and justice. At the same time, the law acknowledges the woman's right to undergo a safe and legal abortion, particularly in cases involving health threats or sexual violence.

## **The Republic of Indonesia Law No. 17 of 2023 on Health The Republic of Indonesia Law No. 17 of 2023 on Health**

The Law of the Republic of Indonesia No. 17 of 2023 on Health provides detailed regulations regarding abortion, including prohibitions, exceptions, procedures, and women's rights in the context of reproductive health. This regulation aims to ensure the protection of human rights (HR), maternal health, and fetal safety, while also establishing limitations that align with Indonesia's moral and legal values.

Abortion is generally prohibited in Indonesia because it is considered an action that violates the right to life of the fetus and human principles. This prohibition is based on moral views and social values that prioritize the protection of life, except in certain conditions regulated by law.

However, Law No. 17 of 2023 provides exceptions to the abortion prohibition under two specific conditions. The first is when a pregnancy threatens the life of the mother. Abortion is allowed if the pregnancy endangers the physical or mental health of the mother seriously. Examples include medical complications such as ectopic pregnancy, severe preeclampsia, or other diseases that threaten the safety of the woman. The second is in cases of pregnancy resulting from sexual violence (rape). In cases of pregnancy due to criminal acts of rape, abortion is permitted as it could cause severe psychological trauma to the victim, and the abortion in this case aims to protect the woman's physical and mental health.

For these two specific conditions, Law No. 17 of 2023 establishes strict requirements for performing legal abortion. This aims to ensure that the procedure is carried out safely, professionally, and in accordance with legal procedures. The requirements for a legal abortion include that the pregnancy should not exceed 14 weeks. This time limit is established based on medical and ethical considerations, where the risks to the mother and fetus are more manageable. Additionally, a legal abortion must be accompanied by written consent from the woman carrying the pregnancy, and in cases of rape-induced pregnancy, official proof or reports must confirm that the pregnancy resulted from a criminal act. The legal abortion procedure must be performed by a doctor with official competency and authority, such as a specialist obstetrician or a trained general practitioner, and it must be carried out in a government-recognized health facility, such as a licensed hospital or clinic.

Law No. 17 of 2023 positions abortion as part of the protection of women's reproductive health, recognizing that women have the right to access safe and quality healthcare services, receive medical and psychological counseling before and after abortion, and be protected from discrimination, stigma, or criminalization in situations where abortion is legally permitted.

Penalties for violations are also established in Law No. 17 of 2023 for offenses related to abortion, in the form of criminal sanctions. Perpetrators of abortion without a valid reason, whether healthcare professionals or others, may face criminal penalties according to the applicable legal provisions. Likewise, healthcare professionals who perform abortions not in accordance with the prescribed procedures, such as performing abortions outside of the established conditions, may lose their practice license and be subject to criminal penalties.

Law No. 17 of 2023 seeks to balance the protection of the fetus' right to life through the prohibition of abortion, reflecting Indonesia's legal commitment to protecting life from the beginning of pregnancy, and the rights of women to reproductive health, where abortion is allowed to protect women's safety, health, and justice, particularly for victims of sexual violence.

## **The Government Regulation of the Republic of Indonesia No. 61 of 2014 on Reproductive Health**

Government Regulation (PP) No. 61 of 2014 on Reproductive Health is the legal foundation in Indonesia that regulates various aspects of reproductive health, including provisions related to abortion. This regulation provides detailed guidelines on the specific

situations in which abortion is permitted, the procedures for performing it, and the protection of women's rights. Article 31, paragraph (1) states that abortion is prohibited, except in two explicitly defined conditions. This prohibition reflects the principle of protecting the right to life of the fetus from the beginning of pregnancy. Meanwhile, Article 31, paragraph (2) provides exceptions that allow for legal abortion in two cases: first, in the case of a medical emergency, abortion is permitted if the pregnancy threatens the life or health of the mother, both physically and mentally. Examples of medical conditions include ectopic pregnancy (outside the womb), severe preeclampsia that could potentially lead to maternal death, and other life-threatening chronic diseases such as uterine cancer or heart failure. Second, abortion may be permitted in cases of pregnancy resulting from rape. Women who are victims of rape have the right to abortion services to alleviate the psychological trauma caused by sexual violence. This provision aims to prevent and protect victims from the heavy mental and social burden caused by such circumstances.

In order for abortion to be performed legally, PP No. 61 of 2014 establishes a number of conditions and procedures for lawful abortion. Abortion can only be performed if the pregnancy is less than 6 weeks old, calculated from the first day of the last menstrual period. This provision is based on medical considerations that abortion is safer when performed in the early stages of pregnancy. The abortion must be accompanied by written consent from the woman involved. In cases of pregnancy due to rape, the victim must provide evidence, such as a police certificate, a psychologist's report, or another relevant authority's statement. The abortion can only be performed by a competent doctor, specifically a doctor with expertise in obstetrics and gynecology. The doctor must have official practice authorization and adhere to the applicable medical standards. Furthermore, the abortion must be performed in designated healthcare facilities authorized by the government, such as hospitals or clinics that have official licenses to conduct abortion procedures.

PP No. 61 of 2014 emphasizes the importance of counseling before and after the abortion. Counseling aims to provide information regarding the physical and psychological impacts of abortion, assist women in making decisions that align with their health conditions and rights, and offer psychological support to victims of sexual violence. This regulation affirms the protection of women's rights in the context of abortion, especially for victims of rape and women with high medical risks. The regulation positions abortion as part of reproductive health services aimed at protecting women from health risks and death, providing access to safe and legal healthcare services, and reducing stigma and discrimination against women who undergo abortion in exceptional circumstances.

PP No. 61 of 2014 also establishes sanctions for parties that violate abortion-related provisions, such as performing an abortion without medical indication or outside the allowed conditions, performing abortion without meeting the required conditions (such as the woman's consent or the pregnancy's age), and conducting abortion procedures by unauthorized medical personnel or in facilities without the necessary licenses. Government Regulation No. 61 of 2014 on Reproductive Health provides a clear legal framework regarding abortion in Indonesia. Abortion is generally prohibited, but permitted in exceptional conditions such as medical emergencies that threaten life and pregnancies resulting from rape, under strict procedures. This regulation aims to protect women's health rights, minimize medical risks, and ensure that abortion procedures are performed safely, professionally, and in accordance with applicable laws.

#### 4. The Human Rights Perspective on Abortion

Abortion is closely linked to human rights, and therefore, the issue of abortion generates serious debates within the context of human rights (HR). These debates arise because of two rights that are often perceived as being in conflict: the right to life of the fetus and the right of women to control their own bodies, including reproductive health. The human rights

perspective on abortion addresses the balance between these two rights in various legal, social, and ethical contexts (Tumbelaka, Hadjon, & Lamury, 2019).

The right to life is a fundamental right that is universally recognized and guaranteed by various international human rights instruments, such as Article 3 of the Universal Declaration of Human Rights (UDHR), which states that everyone has the right to life, liberty, and security. Similarly, the Convention on the Rights of the Child (CRC) acknowledges the right to life of the child, including protection before and after birth (United Nations, 1989).

From the perspective of the right to life, it is argued that the fetus has a right to live from the moment of conception (fertilization) as a potential human being, and thus, abortion is considered a violation of the fetus's right to life, especially if performed without legally or morally justifiable reasons.

Another human rights perspective on abortion can be seen from the right of women to control their own bodies, which is recognized as an integral part of human rights, encompassing reproductive health rights and the right to make decisions regarding their bodies. This perspective is supported by international human rights instruments such as Article 12 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which guarantees women's rights to healthcare services, including reproductive health (United Nations, 1979). Additionally, the International Conference on Population and Development (ICPD), 1994, emphasized the importance of women's access to reproductive health services, including safe abortion under certain conditions (United Nations, 1994).

From this perspective, it is argued that women have the right to decide what happens to their bodies, including the decision to continue or terminate a pregnancy. Restrictions on access to abortion are viewed as a violation of women's rights to health and freedom of choice. In cases such as pregnancies resulting from rape or when a pregnancy threatens a woman's life, a woman's right must take precedence.

The human rights perspective recognizes that these two rights often conflict with each other. As a result, many countries and international legal instruments attempt to balance both by providing exceptions to the abortion ban under certain conditions, such as in cases of medical emergencies where the pregnancy threatens the life or health of the mother. In such cases, abortion is permitted to protect the woman's right to life. In cases of pregnancies resulting from rape, abortion is viewed as a form of protection for the woman's rights to safety, justice, and mental health. Other cases, such as severe fetal abnormalities, may also allow for abortion if the fetus has a condition that cannot be cured and would result in severe suffering after birth.

In Indonesia, the human rights perspective on abortion is regulated by laws and regulations, such as Law No. 39 of 1999 on Human Rights, which guarantees women's rights to health and safety. Additionally, Law No. 17 of 2023 on Health permits abortion in cases of medical emergencies that threaten the life of the mother and pregnancies resulting from rape, while the Criminal Code (KUHP) outlines sanctions for illegal abortion, but provides exceptions for specific cases.

## CONCLUSION

This study reveals that the human rights perspective on abortion is a complex and controversial issue that requires a balanced approach between protecting the right to life of the fetus and respecting women's rights to their bodies and health. In Indonesian law, this approach is strictly regulated to ensure that abortion is only permitted in medical emergencies or cases of sexual violence, performed by competent medical professionals, and carried out in adequate medical facilities while considering principles of justice and humanity. However, the implementation of this policy requires strong support from both the government and society, including education, adequate healthcare services, and protection against social stigma.

This study also opens up space for other researchers to further examine public understanding of abortion practices and the role of the government and healthcare providers in

ensuring women's rights to their bodies and health, as well as the right to life of the fetus, through the provision of adequate healthcare facilities.

## REFERENCE

- Budiharjo, M. (1985). *Fundamentals of Political Science*. Jakarta: Gramedia.
- Government of the Republic of Indonesia. (2021). Presidential Regulation No. 53 of 2021 on the National Action Plan for Human Rights 2021-2025.
- Gulardi, H. W. (2012). Issues of life and fetal development. In M. U. Anshor, et al. (Eds.), *Abortion* (p. 4). Magazine.
- Kalibonso, R. S. (n.d.). Abortion from a legal perspective. In M. U. Anshor, et al. (Eds.), *Abortion* (p. 51). Ibid.
- Law of the Republic of Indonesia No. 1 of 2023 on the Criminal Code.
- Law of the Republic of Indonesia No. 17 of 2023 on Health.
- Law of the Republic of Indonesia No. 39 of 1999 on Human Rights.
- Nurdin, N., & Athahira, A. U. (2022). Human rights, gender, and democracy. C.
- Suryani, L. (2021). Driving factors and abortion practices in Indonesia. *Journal of Gender and Child Studies*, 8(2), 25-44.
- Tumbelaka, N. A., Hadjon, E. T. L., & Lamury, E. T. (2019). The legality of abortion in international human rights law. Faculty of Law, Udayana University. Retrieved from <https://ojs.unud.ac.id>
- United Nations. (1948). Universal Declaration of Human Rights (Article 3). Retrieved from <https://www.un.org/en/universal-declaration-human-rights/>
- United Nations. (1979). Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Article 12. Retrieved from <https://www.ohchr.org/en/professional-interest/convention-elimination-all-forms-discrimination-against-women>
- United Nations. (1989). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/professional-interest/convention-rights-child>
- United Nations. (1994). International Conference on Population and Development (ICPD) Programme of Action. Cairo, Egypt. Retrieved from <https://www.unfpa.org/icpd>
- United States Information Agency. (1991). What is democracy.