



## Criminal Liability for Abuse of Hard Drugs for Illegal Abortion Practices

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**Abstract:** In Indonesia, abortion is still a major and contentious legal and health issue, especially when it is carried out beyond the bounds of the law. Illegal abortion practices have increased as a result of the growing number of unintended pregnancies, which are mostly caused by premarital sex, a lack of information, and adolescent-free association. Criminal culpability for persons, including women who knowingly have abortions and others who help or facilitate the procedure, is the focus of this article. This paper analyzes statutory rules, court rulings, and legal principles using a normative legal research approach, with a special emphasis on Decision No. 1977/Pid.Sus/2019/PN.Sby. The results show that under Articles 20 and 21 of the Criminal Code and Article 194 of the Health Law, the lady who conducted the abortion as well as those who supplied the means, money, or instructions are criminally culpable. The case illustrates how accomplices are also subject to legal culpability in addition to the principal perpetrator. It emphasizes the value of education and regulation in preventing the abuse of abortion-inducing medications and reaffirms the significance of legal clarity in abortion situations. To address the risks of unsafe, illegal abortions in Indonesia, this research advances health law and advocates for stronger legal enforcement as well as more public awareness.

**Keyword:** Criminal Liability, Illegal Abortion, Hard Drugs, Health Law.

### INTRODUCTION

Abortion is one of the common occurrences in Indonesia that is impacted by several variables. Unwanted pregnancy is one of the primary causes, which can be attributed to either extramarital sex or the free association that frequently takes place among youths in the present period (Arsalna & Susila, 2021).

Teenagers are encouraged to engage in risky behaviours, including abortion, by their free-spirited lifestyle, unfavourable environmental influences (such as hanging out with friends who don't set a good example), and unstable emotional states during the identity-searching phase (Dimas Gibran Satrio Utomo & Tajul Arifin, 2024; Perempuan, 2023).

Teenagers who freely associate with one another may engage in several inappropriate deviant behaviours, including drug misuse, criminal activity, premarital sex, and a higher risk of HIV and AIDS transmission (Ayunda & Roselvya, 2021; Bearak et al., 2018; Costescu et al., 2016). These effects have the potential to cause mortality and are a contributing factor to Indonesia's high death rate (Say et al., 2014). To prevent deviations in adolescent life, it is crucial to reinforce the role of parental supervision and increase adolescents' awareness of the risks associated with free association (Arsalna & Susila, 2021; Fadli, 2022).

Cases of sexual crimes, such as rape, have increased in tandem with the advancement of the times. In 2022, there was an increase in sexual violence statistics from service institutions and direct reports to the National Commission on Violence Against Women, according to the National Commission on Violence Against Women's Annual Report.

Sexual violence is the most common type of violence against women, with 2,228 incidents (38.21%) reported to the National Commission on Violence Against Women in 2022 (Perempuan, 2023). According to statistics gathered from many service organizations, sexual violence accounts for 4,102 incidents (26.52%), while physical violence accounts for 6,001 cases (38.8%). With 1,127 cases, complaints of sexual violence to the National Commission on Violence Against Women consistently hold the top spot overall (Perempuan, 2023).

Indonesia strictly prohibits abortion, with exceptions outlined in Government Regulation No. 61 of 2014 concerning Reproductive Health (Radhya E.A et al., 2024). Article 31 of this regulation permits abortion solely under two circumstances: medical emergencies and pregnancies resulting from rape.

A medical emergency refers to situations where the pregnancy poses a threat to the life of the mother or fetus (Government Regulation Number 61/ 2014, 2014). In such cases, a team of at least two qualified healthcare professionals, led by a competent physician, must assess and confirm the necessity of the procedure by issuing an eligibility certificate for the abortion (Ariyad & Masyhar, 2020).

For pregnancies resulting from rape, the regulation stipulates that abortion is permissible only if the gestational age does not exceed 40 days from the first day of the last menstrual period (E. R. K. Putra, 2023; Wiryani et al., 2020). Additionally, the woman must provide evidence aligning the gestational age with the reported incident of rape, accompanied by statements from investigators, psychologists, and or other relevant experts corroborating the occurrence of the assault (Gerdtts & Hudaya, 2016; Yenjau et al., 2024).

Despite these provisions, accessing legal abortion services remains challenging for rape victims in Indonesia (Lamb, 2024). The requirement to obtain official documentation from law enforcement or psychological experts can be daunting, often deterring victims from seeking the services they are legally entitled to. Furthermore, societal stigma surrounding both rape and abortion exacerbates these challenges, leading many to resort to unsafe, clandestine procedures (Herdian & Andriasari, 2025; Wiryani et al., 2020).

The regulatory framework also presents inconsistencies. While the Health Law allows abortion up to six weeks of gestation, Government Regulation No. 61 of 2014 imposes a stricter limit of 40 days for rape-induced pregnancies. This discrepancy creates confusion and potential legal risks for both healthcare providers and patients (Laura & Husin, 2021).

Abortions that are not performed by safe procedures are widespread in countries where access to abortion services is restricted. Unsafe abortion is defined by the WHO as a pregnancy termination performed by an inexperienced person or in a setting that does not adhere to basic medical standards.

A study by Ganatra et al. (2017) discovered that, out of the 55.7 million abortions performed annually worldwide between 2010 and 2014, 54.9% were performed safely, 30.7% were performed using less safe techniques, and 14.4% were performed using unsafe techniques. In developing nations, 97% of abortions are performed using risky techniques (Bearak et al., 2018; Radhya E.A et al., 2024).

Abortion that goes beyond what is allowed by law is considered a crime in many countries, including Indonesia, and can have dire legal repercussions (Fadli, 2022; Wiryani et al., 2020). By outlining the circumstances under which abortion is permitted and outlining the consequences for infractions, criminal law plays a crucial role in controlling abortion. Although the legal designation of abortion as a crime in unapproved situations is intended to safeguard embryonic life, it may paradoxically encourage the use of risky and covert abortion methods (Costescu et al., 2016).

Recent amendments have further complicated the landscape (Lamb, 2024). As of August 2024, new regulations mandate that only the police have the authority to approve abortions for rape victims, removing the previous provision that allowed medical professionals or psychologists to provide such certification (Langkai, 2023).

This change has drawn criticism from rights activists who argue that it may deter victims from seeking necessary care due to the cultural and social sensitivities involved (Elsam, 2020). While Indonesian law permits abortion under specific circumstances, the practical barriers and legal ambiguities present significant challenges.

Addressing these issues requires a comprehensive approach that includes legal reform, public education, and the establishment of supportive services to ensure that women, particularly rape victims, can access safe and legal abortion services without undue hardship (Costescu et al., 2016).

Low public awareness of the risks and dangers that result if the procedure is not performed in compliance with medical standards and without the supervision of qualified health professionals is reflected in the growing prevalence of unsafe and illegal abortion practices (Haryadi et al., 2024; Hudiyani, 2021).

Certain people or groups are also encouraged to perform abortions on their own, either by using drugs that are freely obtained through online trading platforms or by more conventional means like hiring a midwife, due to a lack of information and education about the negative health effects of unsafe abortion practices (Dimas Gibran Satrio Utomo & Tajul Arifin, 2024).

The legal obligations that can be placed on those who sell and use hard drugs that are abused to do criminally provocative abortions will thus be covered and examined in this essay. The goal of this article is to further health law research, particularly about law enforcement's efforts to combat unlawful abortion practices in Indonesia that involve the selling and abuse of hard narcotics.

## **METHOD**

This research uses a normative legal research model, namely research that discusses doctrines or principles in legal science, by seeking solutions to legal issues to identify the basic understanding of rights and obligations, legal events, legal relationships and legal objects (Nurhayati et al., 2021; I. M. A. W. W. Putra & Jaya, 2022).

The use of normative legal analysis method was chosen in writing this article to obtain materials in the form of theories, concepts, legal principles and legal regulations related to the subject matter. The scope of normative legal research. Normative legal research is a scientific research procedure to find the truth based on scientific logic from its normative side. The normative side here is not limited to laws and regulations. The types and sources of data used in this article can be in the form of data obtained through library materials and directly from the community (Haryadi et al., 2024).

The process of collecting legal materials using document studies, namely collecting library legal materials in the form of laws and regulations, legal books, journals, literature, legal dictionaries, Indonesian language dictionaries, medical administration books and state administrative dispute books (Fahrizal & Bintoro, 2022; Nurhayati et al., 2021). The steps for collecting legal materials include: reading, studying, quoting, and connecting legal materials

from primary legal materials, secondary legal materials and tertiary legal materials so that they become one unit so that they are easy to understand.

## RESULTS AND DISCUSSION

In Indonesia's positive legal system, abortions carried out outside the provisions of the law are categorized as criminal acts. Women who intentionally carry out abortions using hard drugs without valid medical indications are considered to have committed an unlawful act.

Law Number 17 of 2023 concerning Health and Articles 463 to 465 of the 2023 Criminal Code expressly regulate the legal limits of abortion, which are only permitted in medical emergencies or pregnancies resulting from rape. If the act is carried out independently without the involvement of authorized medical professionals, the user of the drug can be subject to criminal liability. Thus, the law does not only focus on unauthorized medical practitioners but also on individuals who use hard drugs as the main perpetrators.

Legally, although the fetus is not yet fully considered a legal subject, its existence is protected by the concept of *status nascendi*. The use of hard drugs such as misoprostol that cause fetal death, if not based on a valid legal basis, is seen as a form of violation of the fetus's right to life.

This action not only violates humanitarian values but also violates the principle of legality in criminal law. From a legal perspective, users of hard drugs in illegal induced abortion practices can be subject to criminal penalties for violating explicit provisions regarding the limitations of abortion. This legal protection reflects the state's commitment to maintaining the integrity of life from the womb.

Legal responsibility for users of hard drugs for illegal abortions also includes ethical and social aspects. Carrying out abortions without going through a legitimate legal mechanism, even for social or economic reasons, is still considered a violation of legal norms and the ethics of the health profession.

The government, through the Regulation of the Minister of Health Number 3 of 2016, has established strict procedures including pre- and post-action counselling for legal abortions. Therefore, independent actions by individuals who decide to have an illegal abortion will face criminal and administrative sanctions. Continuous legal education and supervision of the distribution of hard drugs are urgently needed to minimize illegal abortion practices that endanger lives and violate the law.

### **Criminal Liability For Acts Committed By A Woman Who Intentionally Carries Out An Abortion**

Criminal liability for illegal abortion is part of the legal protection efforts for the life of the fetus as regulated in positive Indonesian law. In the case of Tri Suryanti (Decision No. 1975/Pid.Sus/2019/PN Sby), the defendant was proven to have consciously carried out an abortion without any medical indication, and without involving professional medical personnel by statutory provisions.

The action was carried out in an organized manner, starting from the request for medicine, and the transaction, to the direct use of the hard drug Misoprostol. This incident shows that the main perpetrator and parties who assist or facilitate illegal abortion can be held criminally responsible simultaneously.

Article 194 of Law Number 36 of 2009 concerning Health expressly states that anyone who carries out an abortion without meeting the requirements stipulated by law can be subject to a maximum prison sentence of 10 years and/or a maximum fine of 1 billion rupiah. In this case, Tri Suryanti was found guilty of carrying out an abortion without a medical emergency or status as a victim of sexual violence.

Law enforcement in this case makes it clear that women who actively carry out illegal abortions cannot be justified for personal reasons because they have violated the applicable

positive law. This action also emphasizes the limitation that the right to the body does not necessarily allow someone to terminate the pregnancy process unilaterally.

On the other hand, the involvement of third parties who provide and direct the use of abortion drugs is also an important focus in criminal liability. In criminal law, anyone who helps or orders a crime is included in the category of accomplices (deeming) as referred to in Article 55 of the Criminal Code.

In this context, parties such as Muhammad Saiful Arif and Laksmi Wahyuning Putri who ordered, provided, and gave instructions for the use of hard drugs, have the same legal position as the main perpetrators.

This is in line with the principle of criminal law that anyone who plays an active role in carrying out a crime is also responsible for the consequences. Therefore, the legal approach to illegal abortion must consider the entire series of actions and actors involved to ensure the effectiveness of legal protection of the fetus's right to life.

The act of abortion carried out consciously by a woman, either with or without the assistance of another party, is a form of violation of criminal law in Indonesia. In the case of Tri Suryanti, the act of abortion was carried out without medical indication and without the involvement of authorized health workers, which violates Article 463 of the Criminal Code and Article 194 of Law No. 36 of 2009.

The criminal element in this case is fulfilled because the perpetrator was aware of the consequences of her actions, namely the termination of the fetus' life. The imposition of criminal sanctions in this case shows that the law does not only punish based on actions, but also intent and motive.

This case also highlights the involvement of third parties who ordered and assisted the main perpetrator to perform the abortion. Both parties who ordered, provided the drugs, and facilitated the abortion process can be held criminally responsible according to the principle of inclusion in criminal law.

Thus, the law views the act of ordering or assisting an abortion as having a degree of violation that is no less serious. This strengthens the legal position that all individuals involved in the illegal abortion process must be held criminally responsible. To make it easier to explain, it can be seen in Table 1.

**Table 1. Analysis of Criminal Responsibility for Illegal Abortion**

<b>Aspek Hukum</b>	<b>Uraian</b>	<b>Relevansi Kasus</b>
Violated Articles	Article 463 of the Criminal Code concerning the crime of abortion by women, as well as Article 194 of Law No. 36 of 2009 concerning Health	Tri Suryanti was proven to have violated the law by terminating the pregnancy verbally without medical indication.
Elements of a Crime	The accused is a woman who knowingly carried out an abortion which caused the death of the fetus.	The elements of unlawful and deliberate acts have been fulfilled in the court decision.
Motive	Personal motives, namely to cover up the shame of parents	Even if it is not for economic or medical reasons, it is still considered a criminal act.
Criminal Threats	The maximum prison sentence is 4 years according to Article 463 of the Criminal Code	The judge sentenced him to 1 year in prison and a fine of Rp. 20 million.
Role of Third Parties	People who help or order an abortion can also be punished.	In this case, Saiful Arif and the party who gave the medicine were directly involved.

Source: Processed by author., 2025.



Based on Table 1 above, although there are policies that allow abortion in certain conditions such as medical emergencies and pregnancy due to rape, abortion practices that are not by procedures are still categorized as criminal acts.

Legal provisions strictly regulate the time limit and legal requirements for abortion so that it is not misused. Therefore, in the context of Tri Suryanti's case, the failure to fulfil these requirements confirms the status of her actions as illegal abortion or criminal provocateur abortion. Law enforcement in this case is an important precedent for protecting the right to life of the fetus while also emphasizing the limitations of individual freedom in making decisions related to pregnancy.

### **Criminal Liability For Acts Committed By A Person/Party Involved In The Act Of Abortion**

The act of abortion does not only involve women undergoing abortion, but also other individuals who play a role in the process. In the case of Muhammad Syaiful Arif, his involvement began with the search for medicine to the technical arrangements for the abortion. He actively provided the means, financial assistance, and coordination with other parties to facilitate the act. His role as a liaison and provider of abortion facilities places him as a legal subject who can be held criminally responsible. This shows that the law does not only prosecute the main perpetrator but also every party who plays a role in realizing the criminal act.

The charges against Muhammad Syaiful Arif are based on Article 56 point 2 of the Criminal Code in conjunction with Article 194 of Law No. 36 of 2009 concerning Health. This article stipulates that anyone who provides the opportunity, means, or information to carry out an abortion that is not by the provisions can be subject to criminal sanctions. In this case, the elements of the crime were proven to be fulfilled because the defendant deliberately provided concrete support for the illegal act. He even transferred some money to buy abortion drugs and arranged the implementation process. Thus, his legal position is equal to the main perpetrator, because his contribution played a direct role in the occurrence of the crime.

The judge sentenced the defendant to one year in prison and a fine of Rp20 million in the verdict. This sanction shows that involvement in illegal abortion, even though it was not carried out directly, still carries serious legal consequences. In addition, the mechanism for replacing fines with imprisonment also provides certainty that sanctions can still be carried out if the defendant is unable to pay. The determination of this sentence is also a concrete form of law enforcement against parties who help violate the right to life of the fetus. This means that criminal liability does not only talk about the main action but also about active support that facilitates the crime.

This case is an important precedent that criminal liability is comprehensive, covering all parties who contribute to the practice of illegal abortion. In the Indonesian legal system, there is no loophole for parties who help crimes to avoid legal sanctions. In addition to maintaining the supremacy of law, this approach also has a deterrent and educational effect on society. The application of sanctions to parties supporting illegal abortion is expected to narrow the space for similar practices to occur in the future. Therefore, it is necessary to continue to encourage preventive efforts through legal education and supervision of the distribution of hard drugs to prevent individuals from being involved in this unlawful and immoral practice.

In the case of Decision No. 1977/Pid.Sus/2019/PN.Sby, the defendant Muhammad Syaiful Arif was proven to be actively involved in the abortion process carried out by Tri Suryanti. His involvement was not only passive, but also included actions to suggest, facilitate, and provide financial support to obtain abortion drugs. Based on legal facts, his actions fulfil the elements as a party who participated and assisted in the crime (*mededader* and *medeplichtige*), as regulated in Articles 20 and 21 of the Criminal Code. He not only knew the risks of his actions but also consciously helped create conditions that allowed illegal abortions to occur outside the provisions of the Health Law and PP No. 61 of 2014. Therefore, the panel

of judges imposed a criminal sentence based on legal and non-legal considerations and recognized the defendant as an integral part of the implementation of the crime.

In the case of Decision No. 1977/Pid.Sus/2019/PN.Sby, the defendant Muhammad Syaiful Arif was sentenced for his involvement in an illegal abortion. He was proven to have advised, financed, and provided information to support the abortion process carried out by witness Tri Suryanti. In this case, the defendant was positioned as a party who participated in committing a crime (*mededader*) as well as an assistant to a crime (*medeplichtige*) as regulated in Articles 20 and 21 of the Criminal Code. His role not only showed evil intentions but also a concrete form of contribution to the implementation of the crime.

**Table 2. Explanation of the Defendant's Role and Legal Basis**

<b>Aspek Hukum</b>	<b>Uraian</b>	<b>Keterkaitan dengan Kasus</b>
Legal Subject	The defendant as an individual who has criminal legal responsibility	The defendant was recognized in court as the legal perpetrator.
Element of Intention	Actions are taken knowing the consequences	The defendant was aware that his actions supported the abortion
Role in Criminal Acts	Participate and assist in carrying out illegal abortions	The defendant suggested, paid for, and arranged for the abortion.
Legal basis	Article 20 and 21 of the Criminal Code, Article 428 of Law No. 17 of 2023	The defendant was sentenced to a criminal penalty by the provisions of the criminal accessory.
Criminal Threats	Maximum imprisonment of 5 years and a fine by the provisions of the Health Law	The defendant was sentenced to 1 year in prison and a fine.

Source: Processed by author., 2025.

Table 2. above shows how the legal elements related to the role of the assistant and the perpetrator are applied in this case. Each legal aspect is directly linked to the legal facts revealed during the trial. This explanation clarifies the form of criminal responsibility imposed on parties who do not directly carry out the abortion but are actively involved in realizing the crime.

## CONCLUSION

Based on the results of the legal analysis of the illegal abortion case as stated in Decision No. 1977/Pid.Sus/2019/PN.Sby, it can be concluded that abortion carried out outside the applicable legal provisions is a form of a criminal offence.

Women who consciously carry out abortions without medical indications and without involving professional health workers, such as Tri Suryanti, have fulfilled the elements of a criminal act by Article 463 of the Criminal Code and Article 194 of the Health Law. In addition, the involvement of third parties who assist in the form of providing advice, facilities, and financing, such as the defendant Muhammad Syaiful Arif, is also subject to criminal liability under Articles 20 and 21 of the Criminal Code. This shows that the law does not only focus on the main perpetrators but also on all parties who have an active role in the occurrence of illegal abortion crimes.

Law enforcement in this case is an important precedent for the protection of the right to life of the fetus and restrictions on individual freedom in making decisions about pregnancy. The application of criminal sanctions to users and supporters of illegal abortions emphasizes the importance of the supremacy of law and state efforts to control practices that are contrary to legal norms and medical ethics.

Therefore, legal education and strict supervision of the circulation of hard drugs that are misused for abortion are needed, to reduce the number of illegal abortion practices in Indonesia.

In general, the results of this study contribute to strengthening health law, especially in the aspect of law enforcement against perpetrators of abortions who do not comply with the procedures and limitations that have been set by laws and regulations..

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