

The Legal Dilemma of Abortion in Addressing Social Stigma and the Uncertainty of Access to Legal Abortion Services in Indonesia

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ABSTRACT

Background. Abortion in Indonesia is a complex legal issue that involves a delicate balance between protecting women's reproductive rights and adhering to prevailing social and cultural values. While certain legal provisions allow abortion in cases such as medical emergencies or rape, the practical implementation of these policies is often hindered by legal uncertainties, social stigma, and limited access to safe and legal abortion services.

Purpose. This article aims to explore the legal dilemmas surrounding abortion in Indonesia, highlight the challenges women face in accessing reproductive health services, and analyze the existing government policies that affect women's rights in this context.

Method. The research adopts a qualitative approach, reviewing relevant legal documents, policies, and case studies to assess the legal framework surrounding abortion in Indonesia. It also examines the social and cultural factors that influence the accessibility and implementation of abortion services.

Results. The study reveals that despite legal provisions allowing abortion under specific circumstances, women in Indonesia continue to face significant barriers in accessing safe and legal abortion services. Legal uncertainty, social stigma, and the lack of awareness about reproductive rights contribute to the difficulties women experience in obtaining necessary healthcare. The analysis shows that current policies are insufficient to fully protect women's reproductive rights and ensure access to safe abortion services.

Conclusion. It is crucial to establish clear, equitable policies regarding abortion and reproductive health services. Additionally, public education campaigns are necessary to reduce stigma and increase awareness of women's rights. Clear regulations, alongside efforts to inform and educate the public, are key to ensuring that women have access to safe, legal, and equitable reproductive healthcare.

KEYWORDS

Abortion, Access to Health Services, Indonesian Law, Reproductive Rights, Social Stigma,

INTRODUCTION

Abortion in Indonesia is a complex and controversial issue, from a legal, medical, and social perspective (Moseson dkk., 2022). Abortion generally refers to the termination of a pregnancy before the fetus is viable outside the womb, which can be done medically or surgically. In Indonesia, legal abortion practices are only permitted under certain conditions, such as to save the mother's life or if the pregnancy is the result of rape, and must be performed within a

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and must be performed within a certain time limit (12 weeks for rape, and 24 weeks for health risks). However, illegal abortions continue to occur in significant numbers, often carried out clandestinely, and can endanger the mother's health (Moreau dkk., 2021). This situation exacerbates the uncertainty of access to safe and legal abortion services, which is a significant problem in Indonesia (Abrori, 2014).

The history of abortion regulation in Indonesia began with the regulation in Law Number 36 of 2009 concerning Health, which regulates abortion only under certain conditions, namely to protect the mother's life and due to rape (Millar, 2020). However, this regulation is often debated because many women still have difficulty accessing legal and safe abortion services. In addition to legal factors, cultural and religious views play an important role in shaping people's attitudes towards abortion. Indonesia as Muslim plurality views abortion as an act that goes against religious teachings, which prohibit the killing of fetuses. The cultural context that tends to be conservative also exacerbates the stigma against women who choose to have abortions, often seen as an immoral act (Porter Erlank dkk., 2021). These factors make abortion a sensitive and contentious issue in Indonesia, both in the public sphere and in government policy.

Reproductive health is an important aspect in maintaining quality of life and creating a healthy generation, especially among adolescents who are considered the nation's successors (Liang dkk., 2020). The Health Law passed by the DPR aims to ensure the fulfillment of reproductive health rights for men and women according to their life cycle, as well as to maintain and improve the health of the reproductive system. One of the main issues in reproductive health that is often debated is abortion. The Health Law explains that abortion is only permitted under certain conditions, such as abortion with medical indications or if the victim is a victim of rape or sexual violence (Fix dkk., 2020). Nevertheless, abortion remains a controversial issue, especially since in the period 2015-2019, there were around 121 million unwanted pregnancies per year worldwide, resulting in 73.3 million annual abortions. Of that number, the majority were abortions carried out due to non-medical factors, although in some countries there are regulations that limit abortions only to medical conditions or due to rape .

In Indonesia, public attitudes towards abortion are generally influenced by conservative religious and cultural views (Paltrow dkk., 2022). Based on a survey conducted by Ipsos in 2023, 74% of Indonesian respondents considered abortion to be an illegal act that should not be justified by law, making Indonesia the country with the highest percentage of people who oppose abortion legally, much higher than other countries. It shows the tension between the moral views of society and women's reproductive rights. Although international law views abortion from a medico-legal perspective that guarantees safe abortion, the practice of self-managed abortion (SMA) has emerged as a challenge to this legal paradigm. SMA, driven by feminist action, aims to realize safe abortion and challenge legal controls that often limit access to legal abortion (Henker dkk., 2020). This action is not only about medical services but also reflects a desire to fight for women's rights to control their bodies, often hampered by strict legal regulations.

Law of the Republic of Indonesia Number 17 of 2023 concerning Health regulates provisions regarding abortion, which is only permitted under certain conditions, such as medical indications or victims of rape (A. R. A. Aiken dkk., 2021). In addition, criminal provisions related to abortion are stated in the applicable Criminal Code (KUHP), especially in Article 346. However, along with the enactment of Law of the Republic of Indonesia Number 1 of 2023 as a replacement for the old Criminal Code in 2026, provisions regarding abortion will be regulated in Article 463. Although there is a legal basis for regulating abortion in Indonesia, legal certainty regarding abortion perpetrators is still a matter of debate. Women who choose to have abortions outside the provisions

of the law can be subject to criminal sanctions, as can medical personnel involved in illegal abortions (A. Aiken dkk., 2021). It creates legal uncertainty, where abortion perpetrators often fear legal risks even though, in some conditions, abortion is necessary to protect fertility health.

The social stigma surrounding abortion serves as a significant barrier to providing support for women who wish to undergo the procedure (Ding dkk., 2021). In Indonesia, abortion is often viewed as taboo and a breach of moral standards, largely influenced by strong religious and cultural beliefs. Many people perceive women who seek abortions as irresponsible or even immoral. This stigma profoundly affects not only the women themselves but also their families and the wider community, which tend to isolate or judge them. In contrast, some countries adopt a more open perspective on abortion, resulting in lower social stigma and a more supportive healthcare system (De Zordo dkk., 2021). In many instances, this intense stigma deters women from seeking safe and legal abortion services due to the fear of social judgment.

Uncertainty regarding access to safe and legal abortion services constitutes a significant challenge within Indonesia's healthcare system (Sutton, 2020). Numerous women, particularly those residing in remote or conservative regions, encounter substantial obstacles when seeking compliance with legal abortion services. Key barriers include inadequate medical facilities, prohibitive costs, and a pervasive lack of information regarding legal abortion procedures. Moreover, government policies that impose restrictions on abortion access exacerbate these challenges. While abortions are permitted for medical reasons or in instances of rape, many women either lack awareness of the requisite procedures or harbor fears concerning potential legal ramifications (Tognon dkk., 2020). This situation contributes to heightened legal ambiguity for both women and healthcare professionals involved in abortion services. Navigating the delicate balance between women's reproductive health rights and the legal implications arising from the criminalization of abortion remains a critical challenge in ensuring that abortions are conducted within legal frameworks, are safe, and do not pose additional health risks to women.

RESEARCH METHODOLOGY

The normative legal research method is a research method that focuses on the analysis of legal norms contained in laws and regulations, legal doctrines, and court decisions (Munro dkk., 2020). This approach aims to understand how a legal rule is applied and assess the validity and effectiveness of the norm in resolving legal problems. In the context of research on abortion in Indonesia, this method will examine the rules governing abortion, such as the Health Law, the Criminal Code, and other relevant regulations, and analyze the consistency and suitability between existing legal norms and developing social realities.

The statutory and analytical approaches are the two main approaches in normative legal research (Shi dkk., 2022). The statutory approach is used to examine various laws and regulations governing abortion, including articles governing criminal provisions and women's rights related to reproductive health. Meanwhile, the analytical approach focuses on an in-depth understanding of the substance of the legal rule by analyzing the legal implications, implementation challenges, and potential improvements in the context of applicable positive law (Lu dkk., 2021). Through these two approaches, the research aims to explore the legal aspects that frame abortion practices, as well as identify legal loopholes that may impact women's rights to access safe and legal abortion services.

RESULT AND DISCUSSION

Regulations regarding Abortion in Applicable Legislation

Abortion, according to the definition of the World Health Organization (WHO), is the process of the fetus or embryo coming out or being expelled from the womb of the mother who is carrying it, with the weight of the fetus or embryo being less than 500 grams. Meanwhile, according to FIGO (International Federation of Gynecology and Obstetrics), abortion occurs when the result of conception is born before the fetus reaches 20 weeks of age or weighs less than 500 grams, which means the fetus is not yet able to survive outside the womb (Slawek dkk., 2020). In the medical world, abortion is divided into two main categories: first, spontaneous abortion, which includes threatened miscarriage (*abortus imminens*), ongoing miscarriage (*abortus insipiens*), incomplete abortion (where some tissue or fetus has come out), and complete abortion (where the entire fetus and tissue has come out). Second, abortion that is done intentionally or with medical intervention is known as abortion induced. Abortion induced is further divided into two, namely abortion-induced *medicinalis*, which is done by trained medical personnel, and abortion-induced *criminalis*, which is abortion that is done in an unsafe manner and often involves incompetent parties.

In the legal aspect, abortion without medical reasons known as *abortus provocatus criminalis*, is a criminal act known in Indonesian law as "abortion." This abortion practice is often conducted secretly, considering the difficulty of proof by the authorities, even though many people have abortions. The most common reason given is unwanted pregnancy, which is influenced by various factors such as health, social, economic, and cultural (Tangko, 2016). The development of abortion law in Indonesia is still considered to be lagging behind the progress in the medical world. Many negative impacts are experienced by women involved in abortion practices, including serious health risks and even death due to unsafe abortions. In addition, some parties take advantage of this opportunity to gain profit, which often leads to abuse and dangerous abortion practices (Tripihana, 2018).

The trajectory of abortion regulations in Indonesia commenced with the introduction of Law Number 23 of 1992 concerning Health. While this law does not explicitly address abortion, Article 80 delineates the criminal penalties for individuals who perform specific medical procedures on pregnant women who do not adhere to the stipulations outlined in Article 15. This article allows for medical interventions aimed at saving the life of the pregnant woman and/or fetus during emergencies, provided that these actions are based on valid medical indications and conducted by qualified healthcare professionals, with the consent of the pregnant woman or her family (Gambir dkk., 2020). Failure to comply with these conditions can result in imprisonment for up to 15 years and substantial fines. At that time, although there was a general prohibition on abortion, the law lacked clear directives regarding when abortion might be permissible or prohibited (Winoto, 2020).

In 2009, Indonesia enacted Law Number 36 of 2009 concerning Health, which replaced the earlier Law Number 23 of 1992. According to Article 75, paragraph (1) of this new law, abortion is prohibited; however, paragraph (2) allows for exceptions in medical emergencies that pose a threat to the life of either the mother or the fetus, as well as in cases of pregnancies resulting from rape that may cause psychological trauma to the victim. Additionally, Article 75, paragraph (3) stipulates that such abortions can only be performed following counseling with qualified medical personnel. To further clarify abortion procedures, Government Regulation Number 61 of 2014 concerning Reproductive Health was introduced in 2014. This regulation specifies that the permitted gestational age for abortion must not exceed 40 days from the first day of the last menstruation.

The legal discourse surrounding abortion progressed with the implementation of Law Number 17 of 2023, concerning Health, on August 8, 2023, which supersedes Law Number 36 of 2009. Under this law, Article 60 explicitly prohibits abortion, except under conditions that align with the criteria outlined in the Criminal Code (KUHP). Specifically, abortion may be permitted for victims of rape, provided that it is conducted by qualified medical personnel in a government-designated health facility, and with the consent of the pregnant woman or her husband if the pregnant individual is not a victim of rape (Du dkk., 2021). Article 60, paragraph (2), states that any abortion performed outside these established provisions may incur severe criminal penalties. Further regulations regarding abortions for rape victims continue to refer to Government Regulation Number 61 of 2014 until additional derivative regulations are established.

The Criminal Code (KUHP) addresses abortion in several articles, specifically Articles 299, 346, 347, 348, and 349. Article 346 clearly states that intentionally performed abortions may result in a maximum prison sentence of four years. Notably, the Criminal Code does not differentiate between abortions conducted for medical reasons or other circumstances, such as pregnancies resulting from rape. If an abortion leads to the death of the mother, the perpetrator may face a more severe sentence. Article 347 stipulates that those who perform abortions without the mother's consent and cause her death may be subject to a criminal penalty of up to 15 years. Article 348 similarly outlines penalties for individuals who conduct abortions without consent, which also apply if the procedure results in the mother's death. Furthermore, Article 349 allows for an increase of one-third in penalties for medical personnel involved in the abortion.

With the enactment of Law Number 1 of 2023 concerning the Criminal Code, which will take effect on January 1, 2026, the regulations surrounding abortion have been revised. Article 463 states that women who undergo abortions may face imprisonment for up to four years, with exceptions made for victims of rape or in cases where there are indicators of a medical emergency. Article 464 establishes that individuals who perform abortions, regardless of the woman's consent, may incur more severe penalties, particularly if the procedure results in the mother's death (Reynolds-Wright dkk., 2021). Article 465 specifies that medical professionals, such as doctors or midwives, who conduct abortions in violation of the law may face an additional penalty of one-third of their sentence, and may also lose their right to practice. However, no criminal penalties will be imposed if the abortion is conducted due to medical reasons or if the woman is a rape victim.

Legal Dilemmas of Abortion and Barriers to Access to Services in Indonesia

Abortion without medical indication, often referred to as criminal abortion *provocatus*, is hidden and illegal. However, lately, discussions about abortion have become more open because of the frequent cases of abortion, even though they are carried out illegally. It is often done by some people for certain reasons, such as unwanted pregnancies, financial constraints, and severe psychological conditions that contribute to the complexity of abortion in Indonesia. This issue has ignited significant controversy, particularly due to its ties to ethical, moral, religious, and human rights considerations. Many groups, especially religious institutions, view abortion as an unethical act that infringes upon the fetus's right to life. Conversely, others advocate for abortion as a necessary option to safeguard women's health, particularly when performed through safe and regulated procedures.

Under Indonesian law, abortion is categorized as a criminal offense, as outlined in the Criminal Code (KUHP). Specific provisions, particularly Articles 346, 347, and 348, explicitly prohibit abortion and impose strict penalties, including imprisonment. Article 346 states that a woman who deliberately terminates her pregnancy may face up to four years in prison, with no

exceptions made for pregnancies resulting from rape (Miller dkk., 2023). This Criminal Code, inherited from the Dutch colonial era, was designed to protect the Indonesian populace and uphold public welfare. However, over time, numerous stakeholders, especially within the medical community, have raised concerns about this legislation, particularly since certain circumstances may necessitate an abortion to preserve the life of the pregnant woman—situations that are often inadequately addressed in the current legal framework.

Conversely, Health Law No. 17 of 2023 adopts a more flexible stance on abortion, particularly in specific cases. This law permits abortion in medical emergencies and for victims of rape, under certain conditions, such as a gestational age of no more than 40 days. However, the implementing regulations have not yet been fully drafted, causing the practice concerning abortion in cases of rape to still refer to Government Regulation No. 61 of 2014, which restricts abortions to medical emergencies. In this context, although the Criminal Code continues to prohibit abortion in general, Health Law No. 17 of 2023 serves as a more specific and contemporary regulation that supersedes the older provisions found in the Criminal Code. As a *lex specialis*, the Health Law is expected to provide a more pertinent and modern solution, one that prioritizes the safety of women and the protection of their rights.

Abortions resulting from pregnancies due to rape often raise significant questions regarding the psychological and legal protection of victims. A pregnancy that occurs as a result of rape can inflict profound psychological trauma on the victim, which should be a compelling reason to regard abortion as a legitimate legal option. In this context, abortion may be considered an emergency measure, justified to alleviate the psychological stress associated with the trauma of rape. According to Article 285 of the Criminal Code, rape is a criminal offense punishable by a maximum prison sentence of 12 years (Li dkk., 2020). Therefore, rape victims who opt for an abortion must receive not only legal protection but also consideration of their psychological well-being during law enforcement proceedings, recognizing that a pregnancy resulting from rape stems from coercion for which the victim cannot be held accountable.

The application of Article 48 of the Criminal Code on coercive power (overnight) is also relevant in this context, where coercive power is defined as unavoidable pressure or coercion, which eliminates the guilt of the act. If someone has an abortion under pressure due to rape, then the abortion can be considered an act that cannot be punished. This is because the pressure or coercion experienced by the victim is a legitimate reason to exempt them from criminal responsibility, even though the act is still included in the unlawful category. In addition, from an Indonesian legal perspective, women's rights, especially rape victims, need to be protected by Indonesia's international commitments in the CEDAW Convention, which requires the state to eliminate discrimination against women and ensure that they receive equal rights, including the right to protect their physical and psychological well-being.

Furthermore, Law Number 17 of 2023 on Health provides space for abortion in cases of pregnancy due to rape, with certain conditions that are by medical regulations. On the other hand, in the new Criminal Code (KUHP), which will come into effect in 2026, there are provisions regarding protection for doctors, midwives, and other medical personnel who perform abortions in medical emergencies or due to rape. Article 465 of the Criminal Code states that criminal sanctions for medical personnel who perform abortions in such cases will not be imposed, as long as it is done for medical reasons or to protect victims of sexual crimes. This is in line with the state's obligation to protect women from discrimination and provide appropriate legal protection for rape victims, especially in ensuring that abortion in such conditions is not criminalized.

The legal dilemma regarding abortion in Indonesia centers on the tension between prevailing legal norms and the social stigma attached to the practice of abortion. Although abortion without medical indication is considered a criminal offense under the Criminal Code (KUHP), there is much uncertainty regarding the application of this law, especially when considering various factors involving the victim. On the one hand, there is pressure from society and religious values that consider abortion to be immoral, even when performed on rape victims or in medical emergencies. On the other hand, many argue that a total abortion ban has the potential to endanger women's health and safety, as well as exacerbate existing stigma. The social stigma against women who have abortions further exacerbates the situation, forcing them to seek solutions through illegal means that can increase their safety risks. Illegal abortion practices not only increase maternal mortality rates but also contribute to difficulties in accessing safe medical services. Legal uncertainty regarding when abortions can be performed also exacerbates the situation. Although there are regulations in Health Law No. 17 of 2023 that allow abortion to be performed under certain conditions, such as pregnancy resulting from rape or a threat to the mother's health, the procedures and implementation of this regulation are not yet entirely clear. Existing regulations still lead to ambiguity between policies that support women's health rights and stricter regulations on abortion.

It creates tension between women's rights to access safe health services and the right to life, and the state's legal position that prioritizes social and religious morality. Many women, especially rape victims or those facing life-threatening health situations, are forced to choose to have abortions in unsafe conditions. Therefore, the uncertainty of access to legal and safe abortion services further exacerbates this problem. For example, although Law No. 17 of 2023 provides an exception for rape victims, the implementation of this regulation is still limited, with many medical personnel hesitant to perform the procedure for fear of legal sanctions that may befall them. This legal ambiguity creates deep fear, both for women who need abortion services and for medical personnel who potentially have to make decisions that are risky for their profession.

This condition shows that the legal dilemma of abortion in Indonesia is not only about medical or moral considerations but also about unequal access to safe and legal health services. To overcome this, more progressive and transparent legal reforms are needed to accommodate legal and religious interests and protect women's health rights (Watson, 2022). The government needs to take steps to ensure that women facing unwanted pregnancies or medical emergencies can access safe abortion services without fear of criminalization or social stigma. Counseling, education, and support for the community to understand the various legal and medical aspects of abortion are also very important to reduce the uncertainty and stigma that exists.

To overcome the legal dilemma related to abortion in Indonesia, the government needs to adopt a comprehensive, balanced policy that prioritizes the protection of women's health rights. First, the government must formulate a clear policy regarding access to safe and easily accessible legal abortion services, especially in certain conditions such as pregnancy due to rape, threats to the mother's health, or economic inability. The preparation of more specific and detailed regulations regarding the criteria and procedures for abortion, including the availability of trained medical personnel and safe health facilities, will reduce legal uncertainty and avoid errors in the implementation of existing laws. With more detailed regulations, medical personnel can better understand the legal boundaries and not be afraid to provide the services that women need.

In addition, the government must strengthen the education and outreach system for the community regarding reproductive health rights, including a broader understanding of abortion. It must include providing clear information about the laws governing abortion and explaining the exceptions that exist, such as abortion being permitted in medical emergencies or due to rape. This

outreach should be approached comprehensively, beginning at the school, community, and family levels, to foster awareness of women's rights and diminish stigma. By doing so, the community will gain a better understanding that abortion is not a reckless choice, but rather a decision that may arise from urgent circumstances requiring medical care.

The government also needs to ensure legal protection for women who experience pregnancy due to rape or a life-threatening medical condition. Existing regulations must include clear mechanisms so that women who are victims of rape or have a medical emergency do not get into legal trouble if they choose to have an abortion. It is critical to provide a sense of security for women so that they are not forced to seek a way out through illegal abortions that risk their lives. Protection for medical personnel who provide abortion services under legally permitted conditions must also be clarified so that they do not fear facing criminal sanctions if they act by medical principles and women's health needs.

The government needs to develop policies that focus not only on prohibition but also on prevention. For example, by providing more support for family planning programs, comprehensive sex education, and wider access to contraception to prevent unwanted pregnancies. In addition, there needs to be an improvement in the quality of the health care system throughout Indonesia, especially in remote areas, so that every woman has equal access to safe health services, including in decisions related to abortion (Boydell dkk., 2021). These policies must be in line with the state's commitment to protect women's rights and eliminate discrimination against them, which is also in line with international principles such as those stated in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

CONCLUSION

The legal dilemma surrounding abortion in Indonesia reflects the tension between the protection of women's reproductive rights and existing social norms. Although abortion is strictly regulated by law, especially in the Criminal Code (KUHP), the government has provided certain space for abortion in medical emergencies or due to rape through the Health Law No. 17 of 2023. However, legal uncertainty, lack of clear information, and social stigma leading to a total ban on abortion have created barriers for women to access safe and legal abortion services. Therefore, this problem involves not only legal aspects, but also social, moral, and health aspects, which require policies that are more in favor of protecting women's rights and equality in access to health services. Suggestions that can be given are that the government needs to immediately formulate more specific policies related to the procedures and criteria for legal abortion, and provide comprehensive education regarding reproductive health rights to the public. It includes reducing the social stigma against women who choose abortion, and ensuring that abortion services are available safely and legally, especially for cases that are life-threatening or due to rape. In addition, there needs to be an improvement in the healthcare system that can reach all levels of society, including remote areas. An approach based on understanding human rights, protecting women's health, and comprehensive sex education will ensure that women can make informed decisions, without fear of facing adverse legal or social consequences.

AUTHORS' CONTRIBUTION

Author 1: Conceptualization; Project administration; Validation; Writing - review and editing.

Author 2: Conceptualization; Data curation; In-vestigation.

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