

Legal and Criminological Analysis of the Crime of Abortion from the Perspective of Criminal Law in Indonesia

Johan Alfred Sarades Silalahi¹, Novelina Mutiara S Hutapea², Jenriswandi Damanik³, Senni Pionita Saragih⁴, Desy Kartika C. Sitepu⁵

^{1, 2, 3, 4, 5}Universitas Simalungun, Indonesia

*Corresponding Author: desysitepu22@gmail.com

Article Info

Article history:

Received :
Acceptance :
Published :
Available online

<http://aspublisher.co.id/index.php/kolaborasi>

E-ISSN: 3064-4054

How to cite:

Silalahi, S, A, J., Hutapea. S, M, N., Damanik. J., Saragih. P, S (2025). "Legal and Criminological Analysis of the Crime of Abortion from the Perspective of Criminal Law in Indonesia". KOLABORASI: Journal Of Multidisciplinary, vol. 2, no. 1, pp. 45-52, 2025.



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ABSTRACT

Abortion or termination of pregnancy is a controversial issue that causes debate between the pros and cons in society, where abortion cases continue to increase every year and can occur in various circles, including teenagers who are involved in free sex, but in positive law in Indonesia, abortion in certain cases can be justified if it is an abortion provokatus medicinalis, while abortion that is generalized as a criminal act is known as abortion provokatus criminalis, so in this study three main problems were studied, namely the factors that encourage a woman to commit the crime of abortion, the application of criminal sanctions for the crime of abortion, and efforts to overcome it, using library research methods, and from the results of the analysis it was found that socio-economic factors such as financial inability, pregnancy due to rape, and pregnancy outside of marriage are the main drivers for women to have illegal abortions as a solution to unwanted pregnancies; the application of criminal sanctions against perpetrators of abortion can only be carried out if there is an element of error in the act which violates the provisions as regulated in Article 77A paragraph (1) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, which states that anyone who intentionally carries out an abortion on a child who is still in the womb for reasons and procedures which are not permitted by statutory regulations as referred to in Article 45A, can be subject to a maximum prison sentence of ten years and a maximum fine of one billion rupiah; and efforts to overcome abortion can be carried out through pre-emptive, preventive, and repressive strategies, where pre-emptive efforts are carried out through routine counseling on abortion, socialization of reproductive health, and appeals to parents and the community to carry out strict supervision and provide positive activities to build the future of the younger generation, while preventive efforts are carried out through cooperation between law enforcement and health institutions such as the Doctors Association, Police Medicine, Forensic Laboratory, and the Ministry of Health to provide

guidance to women who experience unwanted pregnancies so that they do not have illegal abortions, while repressive efforts are carried out through law enforcement by imposing penalties on perpetrators in accordance with applicable provisions.

Keywords: *Destruction of Banknotes, Criminal Liability, Law Number 7 of 2011 concerning Currency.*

1. INTRODUCTION

Abortion remains a highly debated legal and social issue in Indonesia. In recent years, the number of illegal abortions has increased, particularly among teenagers and women facing unwanted pregnancies due to sexual violence or economic factors (Siregar et al., 2023; Putra, 2024). Unsafe abortions can lead to severe medical complications, including maternal and fetal death, as well as psychological distress for the women involved. Additionally, illegal abortion practices are often linked to criminal networks that operate without regard for health standards and legal provisions. This phenomenon highlights the multidimensional challenges in abortion regulation, where health, morality, and law intersect, necessitating a more in-depth legal examination (Shankar, 2021; Knight & Miller, 2023).

From the perspective of Indonesian criminal law, abortion is a prohibited act punishable under Article 75(1) of Law No. 36 of 2009 on Health, which states that abortion is forbidden except in specific medical and legal circumstances. Furthermore, Articles 346 to 349 of the Indonesian Penal Code (KUHP) impose criminal sanctions on women who undergo abortions, medical personnel who assist in the procedure, and any other parties involved in illegal abortion practices (KUHP, 2022). However, the law allows exceptions in cases where abortion is necessary to save the mother's life or when pregnancy results from rape, which could endanger the psychological well-being of the victim (Constitutional Court Decision No. 93/PUU-X/2012). Despite the existence of these legal provisions, enforcement in the field remains challenging due to inconsistencies in law implementation and societal stigmatization of women who undergo abortions (Schaaf & Khosla, 2021; Torres & Maldonado, 2024).

This study aims to analyze the juridical and criminological aspects of abortion crimes in Indonesia by examining the legal framework governing abortion and investigating the underlying factors contributing to the prevalence of illegal abortion practices. This research will also explore the legal implications for abortion perpetrators, including women who undergo abortions, medical practitioners involved, and other parties facilitating illegal abortion services. Furthermore, this study will assess how the Indonesian criminal justice system addresses and manages abortion-related offenses and evaluate the effectiveness of the existing legal policies in preventing and reducing the rate of illegal abortions in society (Hall et al, 2023; Syukriani et al., 2024).

Based on the findings of this study, several arguments emerge concerning the criminalization of abortion in Indonesia. First, although the law prohibits abortion except under specific conditions, illegal abortion practices remain widespread due to weak law enforcement and regulatory loopholes. Second, there is a discrepancy between existing regulations and societal needs, particularly in cases of pregnancy resulting from rape or when the mother's health is at serious risk. Third, from a criminological perspective, the persistence of illegal abortions is influenced by various social, economic, and cultural factors that compel women to seek unsafe abortion procedures rather than face societal stigma. Therefore, comprehensive legal reform and a multidisciplinary approach are necessary to address the issue of illegal abortions in Indonesia, integrating legal, healthcare, and public education strategies to provide better solutions for affected individuals (Efendi & Sartika, 2021; Satria et al., 2023).

2. RESEARCH METHOD

In this study, the method used is library research by collecting, analyzing, and reviewing various relevant legal sources and literature, including laws and regulations, academic books, scientific journals, articles from trusted media, and online sources containing material in accordance with the focus of this research, where the data obtained from these materials are then read, compared, analyzed systematically, and interpreted in order to produce a comprehensive presentation and answer the problem formulation that has been formulated in this study (Suharsimi, 2021; Creswell, 2018).

3. RESULT AND ANALYSIS

Factors Behind Criminal Abortion Acts

Abortion is an act influenced by various factors, including social, economic, health, and psychological reasons. Research indicates that the primary motivations for abortion include pregnancies resulting from extramarital sex, rape-induced pregnancies, economic hardship, and maternal and fetal health concerns (Harduf & Wattad, 2023; Aseltine & Olson, 2024). In general, abortion occurs due to two major factors: natural causes (*abortus spontanus*) and human intervention (*abortus provocatus*). *Abortus provocatus* is further divided into two types: medically justified abortion (*abortus provocatus medicinalis*) and illegal or criminal abortion (*abortus provocatus criminalis*) (Abdullah, 2021; Triwulandari & Tarsono, 2022). According to Lysa Angrayni (2020), several factors drive individuals to seek abortions, including economic hardship, career and education concerns, maternal age being too young or too old for childbirth, pregnancies resulting from problematic relationships (such as rape or incest), and severe fetal

abnormalities. Additionally, abortion is sometimes performed for medical reasons to protect maternal or fetal health, which, in certain cases, may be legally justified.

Furthermore, Dewi Sulistianingsih (2019) highlights that medical abortions are often performed to prevent health risks for the mother, avoid congenital defects in the fetus, or address pregnancies that cause significant psychological distress. From an Islamic law perspective, abortus provocatus criminalis is strictly prohibited as it constitutes an intentional act without legitimate medical reasons, thus carrying severe legal consequences (Nelli, 2021; Lestari et al., 2024). From a criminological perspective, Huzaemah T. Yanggo (2021) identifies several factors that influence criminal abortions, including economic pressure discouraging parenthood, psychological distress due to unintended pregnancies or sexual assault, and medical concerns regarding maternal health. Additionally, environmental factors such as easy access to abortion facilities, societal norms that tolerate extramarital sex, and weak moral controls contribute to the rising abortion rates (Francome, 2024).

From the standpoint of Indonesian criminal law, illegal abortion is classified as a criminal offense under Article 75 of Law No. 36 of 2009 on Health, which only permits abortion under specific conditions, such as medical emergencies or rape-induced pregnancies, and must be performed by authorized medical professionals (Kemenkes, 2020). Furthermore, Articles 346-349 of the Indonesian Penal Code (KUHP) impose criminal sanctions on both individuals undergoing abortion and those assisting the procedure. Consequently, any abortion conducted outside legal provisions constitutes a criminal act, punishable by imprisonment and fines.

Criminal Law Review of Abortion Crimes in the Indonesian Penal Code (KUHP) and the Child Protection Act

Abortion is classified as a criminal offense under Article 346 of the Indonesian Penal Code (KUHP), which states that any woman who intentionally terminates or causes the death of her pregnancy, or orders someone else to do so, shall be subject to imprisonment for up to four years (KUHP, 2021). The subject of this provision is a pregnant woman, regardless of her marital status. This offense is categorized under Chapter XIX on Crimes Against Life, implying that the fetus in the womb is considered to possess life. Furthermore, a woman who performs an abortion may act as a sole perpetrator or as an accomplice if she orders or involves another party in the act.

Additionally, Article 348 of the KUHP stipulates that any person who intentionally terminates a woman's pregnancy with her consent shall be subject to imprisonment for up to five years and six months. If the act results in the woman's death, the maximum penalty increases to seven years (KUHP, 2021). The primary distinction between Articles 346 and 348 is the subject of the offense; Article 346 applies to women who self-induce abortion, whereas Article 348 targets external parties who perform or assist in the procedure.

In cases where medical professionals such as doctors, midwives, or pharmacists are involved in abortion, Article 349 of the KUHP states that if they commit or assist in offenses under Articles 346, 347, or 348, the prescribed penalty may be increased by one-third. Moreover, they may also be subject to additional sanctions, such as the revocation of their professional licenses if their medical practice facilitated the crime (KUHP, 2021). Thus, healthcare professionals engaged in illegal abortion procedures face harsher legal consequences compared to other offenders.

From the perspective of child protection laws, abortion regulations have been reinforced through Law No. 35 of 2014, which amended Law No. 23 of 2002 on Child Protection. In the earlier legislation, abortion was not explicitly addressed as a prohibited act. However, Article 77A of Law No. 35 of 2014 specifies that any individual who deliberately performs an abortion on a fetus using unauthorized methods, as regulated in Article 45A, shall face a maximum prison sentence of ten years and a fine of up to Rp 1,000,000,000.00 (one billion rupiah) (Child Protection Law, 2014).

A comparison between the KUHP and the Child Protection Law reveals that newer regulations impose stricter measures on abortion, with increased criminal penalties for offenders. This shift indicates the Indonesian government's growing commitment to addressing illegal abortion cases, particularly in protecting children's rights from the earliest stages of life. Consequently, these legal provisions aim to establish clear legal boundaries concerning abortion while safeguarding the legal status of the fetus within Indonesia's legal framework.

Crime Prevention Strategies Against Abortion in Criminal Law Perspective

Efforts to combat crime, including abortion-related offenses, continue to be carried out by the government and society through various strategies to reduce occurrences and create a deterrent effect for perpetrators. A.S Alam (2021) classifies crime prevention strategies into three primary categories: pre-emptive, preventive, and repressive approaches. The pre-emptive approach aims to prevent abortion offenses from occurring by instilling moral and legal awareness in society. This strategy involves routine educational campaigns on the dangers of abortion, reproductive health awareness programs, and parental monitoring, as well as providing positive activities for youth to shape their future. The goal is to eliminate criminal intent even if the opportunity arises (Stern & Lester, 2021).

The preventive approach follows the pre-emptive strategy by directly addressing the risk of illegal abortions through collaboration between law enforcement and health institutions, such as the Indonesian Medical Association, Forensic Medicine Laboratories, and the Ministry of Health, to provide guidance to women experiencing unwanted pregnancies (Yanggo, 2019). The repressive approach involves law enforcement measures and criminal sanctions as regulated in the Indonesian Penal Code (KUHP). Abortion is classified as a criminal offense

under *Abortus Provocatus Criminalis*, where illegal abortions are punishable under KUHP Articles 346, 347, and 348.

There are three categories of offenders:

1. Pregnant women who perform self-induced abortions (Article 346 KUHP) - Punishable by up to four years in prison.
2. Individuals who encourage or facilitate abortion, such as partners or family members (Articles 347-348 KUHP) - Sentences range from five to fifteen years depending on whether the procedure was consented to or resulted in death.
3. Medical professionals performing illegal abortions, facing one-third additional sentencing (Articles 63 and 103 KUHP).
4. By integrating pre-emptive, preventive, and repressive strategies, the legal framework ensures comprehensive protection against abortion-related offenses in Indonesia.

4. CONCLUSION

Based on the results of the discussion in the study entitled *Legal Review of Criminology on the Crime of Abortion*, it can be concluded that socio-economic factors, such as financial inability, pregnancy due to rape, and pregnancy outside of marriage, are the main drivers for women to have illegal abortions as a solution to unwanted pregnancies; the application of criminal sanctions against perpetrators of abortion is carried out if there is an element of error in the act that violates the provisions as stipulated in Article 77A paragraph (1) of Law Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection, which states that anyone who intentionally carries out an abortion on a child who is still in the womb for reasons and procedures that are not permitted by the laws and regulations as referred to in Article 45A, can be subject to a maximum prison sentence of ten years and a maximum fine of one billion rupiah; efforts to overcome abortion can be carried out through pre-emptive, preventive, and repressive strategies, where pre-emptive efforts are carried out by providing routine counseling on the dangers of abortion, socializing reproductive health, and appealing to parents and the community to carry out strict supervision and provide positive activities to build the future of the younger generation, while preventive efforts are carried out through cooperation between law enforcement and health institutions such as the Doctors Association, Police Medicine, Forensic Laboratory, and the Ministry of Health to provide guidance to women who experience unwanted pregnancies so that they do not have illegal abortions, while repressive efforts are carried out by implementing law enforcement against illegal abortion practices as regulated in Articles 346, 347, and 348 of the Criminal Code, where if an abortion is carried out by a doctor or other health worker such as a midwife, then the criminal liability is increased by an additional one third of the

criminal threat contained in each proven article; there needs to be motivation from various parties such as the government, community, law enforcement, and other related parties in the form of religious education, reproductive health, and legal counseling to prevent abortion cases that can cause death in babies; law enforcement officers should improve their performance in handling abortion cases so that they can prevent the recurrence of similar acts and ensure that reported cases can be processed professionally in the context of investigation so that the perpetrators cannot avoid the applicable legal entanglement; and a woman should have a strong understanding of religion and be able to act more maturely in responding to problems by considering decisions carefully before acting so as not to cause detrimental impacts on herself or others.

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