

## Empowering Women: Abortion Regulations and The Right to Self-Determination

Vina Sabina<sup>1</sup>, Budiarsih<sup>2</sup>

<sup>1</sup> Faculty of Law, August 17, 1945 University, Surabaya-Indonesia, shabinavinaofficial@gmail.com

<sup>2</sup> Faculty of Law, August 17, 1945 University, Surabaya-Indonesia, budiarsih@untag-sby.ac.id

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### ABSTRACT

Pregnancy is a very personal matter, and every individual has the right to privacy. Women have the right to decide when to become pregnant and whether or not to become mothers. Unwanted pregnancies can harm physical and mental health, so women should be able to make abortion decisions based on their right to self-determination. The purpose of this research is to find out how abortion is regulated in Indonesia and viewed from the right to choose in women (*Pro-Choice*) and *Feminist Legal Theory* (FLT). The views of *Pro-Choice* and FLT provide strong arguments for protecting women's rights to abortion. Understanding and respecting women's rights to bodily autonomy, health and safety, and applying FLT principles such as the right to privacy and anti-discrimination, can help society view the issue of abortion with a more inclusive perspective and respect for women's rights. This research uses a normative juridical method that utilises a statutory approach and a conceptual approach. The result of this research is to ensure that women can have abortions based on their right to choose and that access to safe abortion services is not hindered by various social barriers, and to ensure that the applicable law is in line with the provisions of the Act. However, there are still certain restrictions that must be followed, such as certain gestational age limits, counselling, and certain required consents.

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## 1. INTRODUCTION

All individuals are entitled to fundamental human rights, irrespective of gender, race, religion, sexual orientation, or socio-economic standing. In addition, including women's rights is significant within the broader human rights framework. Since adopting the Universal Declaration of Human Rights (UDHR) in 1948, the international legal framework has acknowledged women's rights, including the entitlement to gender equality and safeguards against discrimination. The right to health is acknowledged as one of the fundamental rights of women. Considering

women's health rights is paramount due to its significance as a multifaceted and distinctive matter. Several determinants, including community culture, education, nutrition, and access to health information, significantly influence women's health, particularly about reproductive health and gender discrimination. From a biological and physiological standpoint, women exhibit fundamental distinctions compared to men. The primary cause of health issues in women can be attributed to reproductive health concerns, with pregnancy being one of the prominent factors in this domain<sup>1</sup>.

Therefore, it is imperative to prioritize the issue of pregnancy as the primary role of women's reproductive health services<sup>2</sup>. The correlation between the successful outcome of a woman's pregnancy in delivering a healthy and optimal infant and the prospects of a nation is a topic of significant relevance. Nevertheless, pregnancy may not always be regarded as a favorable circumstance. Numerous unintended pregnancies arise due to various factors, including the lack of contraceptive use, the inadequate physical, emotional, and financial readiness of pregnant women, and pregnancies stemming from the perpetration of a criminal act such as rape. Unintended pregnancies often result in the termination of pregnancy, commonly referred to as abortion. The issue of abortion, also referred to as termination of pregnancy, is an undeniable reality that has garnered significant attention and serves as a thought-provoking subject of discussion and ethical conundrum within contemporary society. Abortion is a frequently employed method for terminating an undesired pregnancy, albeit with significant risks.

The regulation of abortion in Indonesia is governed by Law No. 17/2023 on Health, which amends Law No. 36/2009 on Health (hereafter referred to as Health Law No. 36/2009 jo. Law No. 17/2023). Moreover, Government Regulation No. 61/2014 about Reproductive Health (hereafter referred to as PP No. 61/2014) stipulates that the act of abortion is strictly forbidden, save in cases where there is a medical emergency or when the pregnancy is a result of rape, which may inflict psychological anguish upon the victim of rape. According to the prevailing legislation in Indonesia, abortion is strictly forbidden unless it falls within the specific circumstances stipulated by the law. Any abortion performed outside these legally defined parameters is deemed unlawful and can result in criminal penalties as prescribed by the Criminal Code (KUHP)<sup>3</sup>. There exist two prominent international factions pertaining to abortion: the Pro-Life movement, which advocates against abortion, and the Pro-Choice

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<sup>1</sup> Joanna N. Erdman. 2017. 'Theorizing Time in Abortion Law and Human Rights', *The President and Fellows of Harvard College*, 19: 29–40.

<sup>2</sup> Puspita, Melati Intan, and Budiarsih Budiarsih. 2022. 'Penegakan Dan Perlindungan Hukum Terhadap Korban Pelecehan Seksual Secara Verbal', *Bureaucracy Journal: Indonesia Journal of Law and Social-Political Governance*, 2.3: 704–14 <https://doi.org/10.53363/bureau.v2i3.58>.

<sup>3</sup> Wiwik Afifah. 2013. 'Perlindungan Hukum Bagi Perempuan Korban Perkosaan Yang Melakukan Aborsi', *DIH, Jurnal Ilmu Hukum*, 9: 93–109.

movement, which supports the absence of opposition towards abortion. According to the perspective of the Pro-Life stance, the foetus possesses an inherent entitlement to life. Consequently, abortion is regarded as a grave transgression against religious beliefs, as it results in the termination of the foetus's right to life. This viewpoint aligns with murder, as it involves deliberately eliminating the foetus's existence<sup>4</sup>. In contrast, the Pro-Choice perspective posits that women possess agency over their bodies, granting them the right to terminate or continue a pregnancy. In Indonesia, there exist factions known as Pro-Life and Pro-Choice, who have differing perspectives on matters related to reproductive rights. According to the prevailing legislation in Indonesia, there is a clear inclination towards the Pro-Life stance, as seen by the provisions outlined in the Criminal Code (Lex Generalis) and Health Law No. 36/2009 (Lex Specialis). These legal frameworks strictly prohibit the practice of abortion due to its inherent risks and potential harm. Nevertheless, when considering the Pro-Choice standpoint, it is argued that abortion can be conducted with a reasonable level of safety under specific circumstances.

According to Feminist Legal Theory (FLT), it is imperative to acknowledge, uphold, and safeguard women's rights in all manifestations, including the contentious issue of abortion. The FLT framework places significant focus on prioritising women in decision-making processes and preserving women's rights<sup>5</sup>. From a feminist standpoint, recognising and respecting abortion as an integral component of reproductive rights is imperative. This idea posits that abortion manifests a woman's autonomy in exercising control over her body. The provision of legal and safe abortion services holds significant importance in safeguarding women's health and well-being, while empowering them to exercise autonomy over their own lives and prospects.

There are 3 comparisons of researchers who examine similar issues, namely, first with the title "*Faktor-Faktor Pendorong dan Praktik Aborsi di Indonesia*" from Suryani and Lilis (2021)<sup>6</sup>. This study discusses the criminal offence of abortion carried out illegally and efforts to tackle abortion. Second, "*Aborsi: Kajian Dalam Perspektif Hukum Islam dan Peraturan Perundangan di Indonesia*" from Yudha Ardy Tama and Rachmat Ihya (2023)<sup>7</sup>. This study discusses the act of abortion when viewed from the perspective of Islamic law and knows about the study of abortion when viewed from legislation in Indonesia.

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<sup>4</sup> Sara L. Crawley, Rebecca K. Willman, Leisa Clark, And Clare Walsh. 2009. 'Making Women the Subjects of the Abortion Debate: A Class Exercise That Moves Beyond "Pro-Choice" and "Pro-Life"', *University of Illinois Press*, 19: 227–40.

<sup>5</sup> Nancy Levit, and Robert R. M. Verchick. 2016. *Feminist Legal Theory* (New York: New York University Press).

<sup>6</sup> Suryani, Lilis. 2021. 'Faktor-Faktor Pendorong Dan Praktik Aborsi Di Indonesia', *Jurnal Studi Gender Dan Anak*, 8.02: 148 <https://doi.org/10.32678/jsga.v8i02.5506>.

<sup>7</sup> Yudha Ardy Tama, and Rachmat Ihya. 2023. 'Aborsi: Kajian Dalam Perspektif Hukum Islam Dan Peraturan Perundangan Di Indonesia', *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora*, 1.

Third, with the title "*Analisis Yuridis Tindakan Aborsi Dalam Perspektif Hak Asasi Manusia (HAM) di Indonesia*" from Putra, Achmad Syahbana, Suharno Suharno, and Hanuring Ayu (2022)<sup>8</sup>. This study discusses the regulation of criminal acts of abortion according to legislation in Indonesia and also finds out the act of abortion from the perspective of human rights.

In Indonesia's legal framework, abortion is neither justified nor forbidden as stipulated by Law No. 17/2023. This paper examines the few circumstances under which abortion is permitted in Indonesia, specifically focusing on two justifications: medical necessity and cases of rape. While abortion on the grounds of self-determination of women is not allowed, so women can not determine the right to choose in performing abortion outside the two reasons. The author tries to analyse how the regulation of abortion in Indonesia and reviewed from the right to choose in women (Pro-Choice) and Feminist Legal Theory (FLT). Since there is no age limit for abortion in Indonesian legislative, women should have the fundamental right to make decisions within their own bodies with supporting reasons for abortion<sup>9</sup>.

## **2. METHOD**

This writing uses a normative juridical method that uses conceptual and statutory approaches, or written legal sources to analyse the regulation of abortion. The author uses secondary data not collected directly from the field but through literature studies from books, journals, and articles relevant to the study of writing<sup>10</sup>.

## **3. RESULTS AND DISCUSSION**

### **3.1. Abortion Based on the Right to Self-Determination**

Pregnancy is commonly perceived as a natural occurrence often associated with feelings of joy and contentment among individuals. Nevertheless, it is important to acknowledge that not all pregnancies are perceived as positive occurrences, particularly in cases where they are unwanted. Unintended pregnancy is a multifaceted phenomenon that has far-reaching implications for several dimensions of a woman's life, instigating profound societal discourse. Unintended pregnancy is a prevalent phenomenon among women of all backgrounds. Various factors can contribute to unintended pregnancies, including inadequate utilization of contraceptives, contraceptive method failures, instances of sexual assault, and medical reasons. In such circumstances, it is imperative to contemplate the principle of women's autonomy, particularly their choice to undergo an abortion. Women possess agency and autonomy regarding their physical bodies and reproductive choices. This

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<sup>8</sup> Putra, Achmad Syahbana, Suharno Suharno, And Hanuring Ayu. 2022. 'Analisis Yuridis Tindakan Aborsi Dalam Perspektif Hak Asasi Manusia (HAM) Di Indonesia', *Jurnal Penelitian Serambi Hukum*, 15.02: 10–18 <https://doi.org/10.59582/Sh.V15i02.570>.

<sup>9</sup> Francis J. Beckwith. 2007. *Defending Life: A Moral And Legal Case Against Abortion Choice* (New York: Cambridge University Press).

<sup>10</sup> Peter Mahmud Marzuki. 2016. *Penelitian Hukum*.

particular entitlement encompasses providing abortion services under specific circumstances, such as instances involving unintended pregnancies. The issue of abortion holds significance in safeguarding women's rights and upholding their autonomy regarding decisions about their bodies and overall well-being<sup>11</sup>.

Abortion is often regarded as a morally reprehensible act in the context of Indonesia. Abortion is a frequently observed criminal act inside communities, although only a few cases reach the judicial level<sup>12</sup>. This is attributed to the inherent challenges associated with procuring substantial evidence that might effectively implicate the perpetrator of abortion in a legal setting. The lack of substantial consequences associated with abortion, despite its widespread occurrence and potential for unlawful practices to fulfill specific occupational requirements, accounts for this observation. In the context of Indonesian legislation, it is imperative to comprehend the underlying objectives and justifications about the practice of abortion. There exist two primary justifications for permitting abortion in specific circumstances, namely when the well-being of the mother or the fetus is at risk, or in cases involving instances of sexual assault. Nevertheless, the prevalence of illicit abortion remains extensive in regions where it is prohibited by legislation, exposing economically disadvantaged women to significant health hazards. The presence of stringent rules and policies poses significant challenges for women seeking access to safe and lawful abortion services. Abortion refers to the deliberate termination of a pregnancy before the viability of the developing fetus outside the uterine environment. The topic of abortion has generated significant discourse, particularly within the framework of women's reproductive rights and the ethical considerations surrounding the right to life of the fetus. Abortion can be categorized into two distinct forms, specifically Abortion Provocatus Therapeuticus and Abortion Provocatus Criminalis. Abortion Provocatus Therapeuticus refers to an abortion procedure conducted for medical reasons and administered by trained individuals who possess specialized knowledge and demonstrate professional conduct. Aborsi Provocatus Criminalis refers to the clandestine practice of Aborsi Provocatus, typically performed by individuals lacking specialized training<sup>13</sup>.

The issue of abortion presents a complex ethical and social conundrum primarily affecting women due to their unique reproductive systems and capacity for pregnancy. This circumstance grants women the exclusive experience of facing undesired pregnancies, irrespective of any medical considerations<sup>14</sup>, with or without any medical

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<sup>11</sup> Mufliha Wijayati. 2015. 'Aborsi Akibat Kehamilan Yang Tak Diinginkan (Ktd): Kontestasi Antara Pro-Live Dan Pro-Choice', *Jurnal Studi Keislaman*, 15.

<sup>12</sup> Zaitun Hamid Al Hamid. 2017. 'Tinjauan Yuridis Terhadap Tindak Pidana Aborsi (Studi Kasus Putusan Nomor: 417/Pid.B/2017/PN.MKS)' (SKRIPSI, MAKASSAR: UNIVERSITAS HASANUDDIN).

<sup>13</sup> Rochmansyah Setiono. 2016. 'Abortus Menurut Hukum Islam Dan Hukum Positif Di Indonesia', *Lex et Societatis*, IV.

<sup>14</sup> Mark A. Graber. 1996. *Rethinking Abortion: Equal Choice, the Constitution, and Reproductive Politics* (Princeton, New Jersey: Princeton University Press).

indication. The phenomenon of societal-induced mental distress leading to abortion, notwithstanding the woman's own reluctance, is an often-observed occurrence. Abortion refers to the deliberate termination or expulsion of a pregnancy prior to the viability of the fetus outside the uterine environment. According to the World Health Organisation (WHO), a limitation exists when pregnancy duration is shorter than 20 weeks, fetal weight is less than 500 grams, or gestation is terminated before 22 weeks. Abortion is a frequently employed method for ending an undesired pregnancy, albeit with the highest risk level. Multiple significant justifications underpin the argument for granting women the freedom to undergo abortion in instances where they face an undesired pregnancy;

1. **Physical and Mental Health:** Unwanted pregnancies can threaten women's physical and mental health. Safe and legal abortion is an option that should be available to women at risk of serious medical complications or adverse psychological effects.
  2. **Right to Privacy and One's Own Body:** Women's right to have full control over their bodies and private lives is fundamental. Forcing women to maintain unwanted pregnancies is an unlawful interference with their right to privacy and body.
  3. **Rape Cases:** In cases of rape, women often become forcibly pregnant. Requiring women to maintain a pregnancy in these situations is unfair and harmful.
  4. **Economic Limitations:** Pregnancy can have a significant economic impact, especially if women are unprepared for parenthood. Abortion can be a solution that allows women to continue living their lives without having to experience a heavy financial burden.
  5. **Prevention of Risky Pregnancy:** In some cases, pregnancy can endanger a woman's life, especially if there are underlying health problems. The right to abortion is a way to prevent unnecessary health risks.
  6. **Protecting against Discrimination:** An unwanted pregnancy can lead to discrimination against women if forced to keep an unwanted pregnancy, while other options may not be available.
  7. **Prevention of Violence Against Women:** Protecting women's rights emphasises the importance of preventing violence against women. Forcing someone to continue an unwanted pregnancy violates this right if the act is considered a form of violence or pressure.
  8. **Husband-Wife Decision:** Married women can choose whether to have children or postpone it. This decision is based on a discussion between husband and wife, so there is no one-sided choice, and it does not become a problem in the household.
  9. **Control Over the Future:** Women have many dreams to achieve and aspects of their lives, including education, career, and family planning. The right to
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decide when and if to become a mother is important to self-control and a better future for women.

10. Women's Right to Self-Determination: Whether or not to have an abortion is a woman's choice about her body. She has the right to self-determination in her life<sup>15</sup>.

The assertion that women's entitlement to bodily autonomy and personal decision-making constitutes a primary rationale supporting their right to opt for abortion is a prevalent argument. The idea of bodily autonomy, as a fundamental principle in human rights, posits that each person possesses the inherent right to exercise control over their own physical being<sup>16</sup>. This encompasses the entitlement to make a personal choice regarding the decision to assume the role of a parent. The act of compelling women to undergo pregnancies against their will constitutes a violation of their fundamental right to bodily autonomy. Furthermore, it is imperative to address the well-being and welfare of women in circumstances that may compel them to contemplate abortion, such as pregnancies that pose risks to their physical or mental health<sup>17</sup>.

### **3.2. Abortion Regulation from the Perspective of Pro-Choice and Feminist Legal Theory (FLT)**

In accordance with Law No. 39/1999 on Human Rights, commonly referred to as Law 39/1999, the entitlement to life or preservation is deemed essential for individuals, encompassing both the fetus and the mother. This entitlement safeguards their well-being, upholds their inherent human dignity, and is grounded on principles of self-preservation derived from moral and religious considerations. Aborting a fetus without a justifiable reason, under the pretext of safeguarding the woman's right to life, is often regarded as a violation of human rights. Consequently, the human rights perspective on legalising abortion is primarily concerned with safeguarding the well-being and survival of both the fetus and the mother. When dealing with unintended pregnancies, it is crucial to take into account the rights of the parties involved, which encompass women's autonomy over their bodies and their entitlement to make choices regarding their own lives, as stipulated by the human rights principles acknowledged under Law No. 39 of 1999 in Indonesia<sup>18</sup>.

The regulation governing abortion in Indonesia is Government Regulation No. 61/2014 on Reproductive Health, commonly referred to as PP No. 61/2014. This

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<sup>15</sup> Carla Mooney. 2013. *Should Abortion Be Legal?* (San Diego).

<sup>16</sup> Achie Sudiarti Luhulima, Tapi Omas Ihromi, and Sulistyowati Irianto. 2006. *Penghapusan Diskriminasi Terhadap Wanita*.

<sup>17</sup> Naomi Amadea Tumbelaka, Edward Thomas Lamury Hadjon. 2019. 'Legalitas Aborsi Dalam Hukum Hak Asasi Manusia Internasional', 7: 1–16.

<sup>18</sup> Alex Jefrianto Nainggolan. 2018. 'Aborsi Dalam Perspektif Hukum Dan Hak Asasi Manusia' (unpublished SKRIPSI, YOGYAKARTA: UNIVERSITAS ATMA JAYA).

government regulation specifically addresses matters related to reproductive health inside the country. The aforementioned rule was established to implement the preexisting Health Law, specifically Law No. 36/2009 on Health (hence referred to as Law No. 36/2009). The regulation outlined in Policy Paper No. 61/2014 encompasses various aspects of reproductive health, one of which pertains to abortion. The regulation pertaining to abortion is elaborated upon in Articles 31 to 39 of Presidential Regulation No. 61/2014, which addresses the circumstances of medical emergencies and cases of rape as exceptions to the general prohibition of abortion. In other words, these articles permit abortion in medical emergencies or when the pregnancy results from rape<sup>19</sup>.

The provisions outlined in Articles 75, 76, and 77 of Law No. 36/2009 elucidate the circumstances under which abortion is permissible and lawful. Specifically, abortion is deemed acceptable when it is requested or consented to by the pregnant woman, provided that the husband's authorization is obtained. It is important to note that discrimination and material incentives should not be prioritized in these situations. Furthermore, Article 75, paragraph (1) of Law No. 36/2009 explicitly prohibits any individual from engaging in the act of abortion. Nevertheless, as stipulated in Article 75, paragraph (2) of Law No. 36/2009, the restriction is granted an exemption. Two requirements permit the practice of abortion. Abortion is permissible in medical crises and must be conducted exclusively by qualified medical professionals, with the assistance of competent and authorized healthcare employees. Additionally, abortion may be carried out in cases of rape, potentially leading to psychological distress for the victim of the assault. Anyone who deliberately carries out an abortion violates the regulations outlined in Articles 75, 76, and 77 of Law No. 36/2009 shall be subject to criminal penalties, including a maximum prison sentence of 10 years and a maximum punishment of Rp. The amount of 1 billion, as specified in Article 194 of Law No. 36/2009.

Moreover, the regulation of abortion is addressed within the framework of the Health Law, which was just enacted in 2023. Law No. 17/2023 encompasses a comprehensive framework governing multiple facets of health within the Indonesian context. The legislation encompasses a comprehensive range of topics, which are methodically organized to encompass overarching provisions, individual entitlements and duties, responsibilities of both central and local governing bodies, administration of healthcare, initiatives in the field of health, facilities for healthcare services, human resources in the healthcare sector, supplies related to health, oversight of health-related matters, management of environmental health, and provisions pertaining to criminal offences. One of the notable modifications implemented by this legislation pertains to

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<sup>19</sup> M. Fairuz A. S. 2016. 'Analisis Hukum Terhadap Aborsi Akibat Pemerkosaan Berdasarkan Peraturan Pemerintah No. 61 Tahun 2014 Tentang Kesehatan Reproduksi' (unpublished SKRIPSI, MAKASSAR: UNIVERSITAS HASANUDDIN).



abortion. Historically, the legal allowance for abortion was limited to two specific circumstances: where the mother's life was at risk or in cases of rape and situations when the fetus's health rendered its survival impossible.

Law No. 17/2023 significantly altered the regulatory framework concerning abortion in Indonesia. Abortion is legally permissible in a range of circumstances, encompassing situations where the mother experiences significant mental health issues, the fetus exhibits severe deformities, or pre-implantation tests reveal the presence of grave genetic irregularities. The implementation of more comprehensive regulations pertaining to abortion serves to enhance women's ability to obtain safe and lawful abortion services. Nevertheless, it is imperative to adhere to specific regulations, including gestational age limitations, the provision of counseling, and obtaining informed consent. The legal framework around abortion is established in Law No. 17/2023, specifically in Articles 60, 61, and 62. The consequences for engaging in abortion are outlined in Articles 427, 428, and 429 of the same law.

According to Article 60 of Law No. 17/2023, individuals are generally forbidden from undergoing abortion, unless specific criteria outlined in the Criminal Code (KUHP) are met. The Law No.17/2023 stipulates three requirements that permit abortion. Firstly, it mandates that abortion procedures must be carried out only by qualified medical professionals and aided by authorized healthcare employees. Furthermore, the termination of pregnancy can be performed at healthcare facilities that adhere to the criteria established by the relevant ministerial regulations. Moreover, Article 61 stipulates that the government and society are responsible for safeguarding and preventing women from undergoing unsafe abortions and contravening laws and regulations. Additionally, Article 62 provides explicit regulations regarding abortion mentioned in Article 60 and Article 61, which are to be governed or aligned with existing governmental regulations. The Explanation Article of Law No. 17/2023 is not yet able to supplant the preexisting regulations, as the latter remain interlinked with and serve to supplement the former.

Moreover, the specific provisions pertaining to the criminalization of abortion are stipulated in Law Number 1 of 2023, known as the Criminal Code (hence referred to as the New Criminal Code). The Criminal Code undergoes continuous development as a legal instrument, wherein modifications and adaptations are made to the New Criminal Code to maintain criminal law's relevance, efficacy, and equity in Indonesia<sup>20</sup>. The New Criminal Code establishes sanctions for women who undergo abortions without medical justification, as well as for victims of rape, as outlined in Law No. 17/2023. The New Penal Code additionally has provisions that criminalize unauthorized abortions and introduce stricter sanctions for anybody involved in the

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<sup>20</sup> Malau, Parningotan. 2023. 'Tinjauan Kitab Undang-Undang Hukum Pidana (KUHP) Baru 2023', *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam*, 5.1: 837–44  
<https://doi.org/10.37680/almanhaj.v5i1.2815>.

provision of unlawful abortion services. Furthermore, it is noteworthy that the recently enacted Criminal Code includes provisions aimed at safeguarding the rights of the unborn. It is important to highlight that any exemptions from criminal liability are exclusively applicable to medical practitioners who carry out abortion procedures. The New Criminal Code encompasses the regulation of termination of pregnancy or abortion through two distinct chapters. These chapters are titled "Incitement and Offering to Commit Criminal Offences" and "Termination of Pregnancy or Abortion." The former is outlined in Article 251, while the latter is covered in Articles 463, 464, and 465 of the New Criminal Code.

The abortion legislation in Indonesia fails to adequately safeguard women's autonomy and bodily rights, as it restricts the procedure to cases involving medical necessity or instances of rape. The issue of women's reproductive rights, specifically the freedom to choose whether to bear a child or not (often referred to as "Pro-Choice"), is a topic that has garnered significant attention and debate. Advocates of this perspective argue that every woman possesses the fundamental right to make decisions regarding her own body and reproductive health<sup>21</sup>. The support for the pro-choice stance on abortion is grounded in fundamental human rights principles, which encompass women's entitlement to exercise autonomy over their own bodies<sup>22</sup>. Furthermore, this aligns with the ideas of gender equality. According to proponents of the Pro-Choice perspective, the decision to undergo an abortion should be regarded as a fundamental right of women, independent of governmental or faith-based influence. A woman can reach an optimal conclusion by considering her unique life circumstances and personal values. The absence of legally sanctioned and secure abortion alternatives can result in women being ensnared in circumstances that pose risks to their well-being and survival. Consequently, women are entitled to exercise agency in shaping their life trajectory, particularly through the Pro-Choice movement, which empowers them to decide the destiny of their developing embryo or fetus. Furthermore, women are justified in asserting their autonomy to determine their own fate<sup>23</sup>. This perspective advocates women's empowerment in exercising autonomy over their familial decisions, reproductive well-being, and long-term aspirations. The Pro-Choice movement centers around four primary points:

1. Bodily Autonomy: The principle of granting women the freedom to exercise autonomy over their bodies is an essential and imperative right that warrants utmost respect. It is imperative to recognize that individuals lack

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<sup>21</sup> Andrea Smith. 2005. 'Beyond Pro-Choice Versus Pro-Life: Women of Color and Reproductive Justice', *Johns Hopkins University Press*, 17: 119–40.

<sup>22</sup> Freedman, Lynn P., and Stephen L. Isaacs. 1993. 'Human Rights and Reproductive Choice', *Studies in Family Planning*, 24.1: 18 <https://doi.org/10.2307/2939211>.

<sup>23</sup> Kimala Price. 2020. 'What Is Reproductive Justice? How Women of Color Activists Are Redefining the Pro-Choice Paradigm', 10: 42–65.

the authority to compel a woman to sustain a pregnancy against her volition.

2. Health and Wellbeing: The provision of safe and legal abortion services is crucial for safeguarding the health and well-being of women.
3. Better Lives: The provision of legal and medically supervised abortion services can allow women to improve their overall well-being and that of their families, particularly when faced with unwanted pregnancies or pose significant health risks.
4. Reduction of Illegal Abortion Practices: The mitigation of illicit abortion practices can be achieved through the enhancement of accessibility to secure and lawful abortion services<sup>24</sup>.

Feminist Legal Theory (FLT) advocates for protecting women's rights and promoting gender equality. The objective of FLT is to bring about transformations in the legal system and enhance the comprehension of the law, with the ultimate goal of enhancing the quality of jurisprudence and the lives of women<sup>25</sup>. This idea also advocates for the recognition of women's autonomy in making decisions regarding their bodies, which encompasses the right to access abortion services. In the context of free trade, it is argued that government intervention should be avoided. Women must have access to reliable and secure reproductive health care provided by qualified medical professionals and correct information about their reproductive health<sup>26</sup>. The FLT asserts that abortion constitutes a fundamental human right for women.

The extent to which Law No. 17/2023 and the New Penal Code have fulfilled feminist aspirations is limited, primarily due to disparities in the penalties imposed on women who undergo illegal or medically-necessary abortions and victims of rape. The FLT has emphasized the significance of evaluating the practice of abortion within the framework of individual circumstances, rather than applying a uniform punishment across all instances. Women who partake in the act of abortion will encounter significant repercussions, irrespective of the intricacy of their circumstances and the limited array of alternatives available to them. The moral implications of this phenomenon adversely affect women, while simultaneously disregarding the socio-economic circumstances that may have compelled them to resort to illegal abortion.

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<sup>24</sup> Virginia Santini. 2016. 'Our Right To Choose: Challenging The State's Control Over Women's Bodies', *Pluto Journals*, 72: 39–41.

<sup>25</sup> Janice Richardson, And Ralph Sandland. 2000. *Feminist Perspectives On Law & Theory* (London: Cavendish Publishing).

<sup>26</sup> Budiarsih, Budiarsih. 2021. 'Pertanggungjawaban Hukum Dokter Atas Kesalahan Dalam Mendiagnosis Dalam Pelayanan Medis Di Rumah Sakit', *Jurnal Hukum Kesehatan Indonesia*, 1.01: 49–58 <https://doi.org/10.53337/Jhki.V1i01.5>.

#### 4. CONCLUSION

Unintended pregnancy is a multifaceted and frequently challenging phenomenon. The recognition of women's autonomy and agency (Pro-Choice), encompassing the entitlement to terminate a pregnancy in instances of undesired conception, constitutes a significant component of fundamental human rights. The legal framework established by Human Rights Law 39/1999 is a robust foundation for safeguarding this right. The significance of upholding women's autonomy in making decisions regarding their bodies and health should not be overlooked. By facilitating the provision of safe and lawful access to abortion in suitable circumstances, we can effectively safeguard women from potential health hazards and uphold their fundamental human rights in a manner that is duly recognized. The Health Law 17/2023 and the new Criminal Code Law 1/2023 demonstrate notable shifts in the legal framework around abortion inside Indonesia. Both approaches aim to safeguard women's rights and acknowledge the fetus's rights. Still, they also pose difficulties in implementing them and ensuring compliance. It is imperative to maintain vigilance in observing the progress made in implementing these two legislations while ensuring that they effectively uphold women's rights and safeguard the well-being of the unborn. The endorsement of women's entitlement to self-determination holds significant importance within a societal framework that upholds principles of equality and justice. Resolving this matter necessitates engaging in constructive discourse and fostering collaboration among relevant stakeholders, including governmental bodies, Pro-Choice organizations, and the FLT. There exists a necessity to implement legislation and policies that uphold the autonomy of women in matters pertaining to their bodies, beyond instances of medical necessity and cases involving victims of sexual assault, while also mitigating any unjust discrimination against the practice of abortion. In addition, it is imperative to provide enhanced educational opportunities and improved accessibility to reproductive healthcare services, empowering women to make autonomous decisions about their bodies

#### References

- Sara L. Crawley, Rebecca K. Willman, Leisa Clark, And Clare Walsh. 2009. 'Making Women The Subjects Of The Abortion Debate: A Class Exercise That Moves Beyond "Pro-Choice" And "Pro-Life"', *University Of Illinois Press*, 19: 227-40
- Achie Sudiarti Luhulima, Tapi Omas Ihromi, And Sulistyowati Irianto. 2006. *Penghapusan Diskriminasi Terhadap Wanita*
- Alex Jefrianto Nainggolan. 2018. 'Aborsi Dalam Perspektif Hukum Dan Hak Asasi Manusia' (Unpublished Skripsi, Yogyakarta: Universitas Atma Jaya)
- Andrea Smith. 2005. 'Beyond Pro-Choice Versus Pro-Life: Women Of Color And Reproductive Justice', *Johns Hopkins University Pres*, 17: 119-40

- Budiarsih, Budiarsih. 2021. 'Pertanggungjawaban Hukum Dokter Atas Kesalahan Dalam Mendiagnosis Dalam Pelayanan Medis Di Rumah Sakit', *Jurnal Hukum Kesehatan Indonesia*, 1.01: 49-58 <<https://doi.org/10.53337/Jhki.V1i01.5>>
- Carla Mooney. 2013. *Should Abortion Be Legal?* (San Diego)
- Francis J. Beckwith. 2007. *Defending Life : A Moral And Legal Case Against Abortion Choice* (New York: Cambridge University Press)
- Freedman, Lynn P., And Stephen L. Isaacs. 1993. 'Human Rights And Reproductive Choice', *Studies In Family Planning*, 24.1: 18 <<https://doi.org/10.2307/2939211>>
- Janice Richardson, And Ralph Sandland. 2000. *Feminist Perspectives On Law & Theory* (London: Cavendish Publishing)
- Joanna N. Erdman. 2017. 'Theorizing Time In Abortion Law And Human Rights', *The President And Fellows Of Harvard College*, 19: 29-40
- Kimala Price. 2020. 'What Is Reproductive Justice? How Women Of Color Activists Are Redefining The Pro-Choice Paradigm', 10: 42-65
- M. Fairuz A. S. 2016. 'Analisis Hukum Terhadap Aborsi Akibat Pemerkosaan Berdasarkan Peraturan Pemerintah No. 61 Tahun 2014 Tentang Kesehatan Reproduksi' (Unpublished Skripsi, Makassar: Universitas Hasanuddin)
- Malau, Parningotan. 2023. 'Tinjauan Kitab Undang-Undang Hukum Pidana (Kuhp) Baru 2023', *Al-Manhaj: Jurnal Hukum Dan Pranata Sosial Islam*, 5.1: 837-44 <<https://doi.org/10.37680/Almanhaj.V5i1.2815>>
- Mark A. Graber. 1996. *Rethinking Abortion : Equal Choice, The Constitution, And Reproductive Politics* (Princeton, New Jersey: Princeton University Press)
- Mufliha Wijayati. 2015. 'Aborsi Akibat Kehamilan Yang Tak Diinginkan (Ktd): Kontestasi Antara Pro-Life Dan Pro-Choice', *Jurnal Studi Keislaman*, 15
- Nancy Levit, And Robert R. M. Verchick. 2016. *Feminist Legal Theory* (New York: New York University Press)
- Naomi Amadea Tumbelaka, Edward Thomas Lamury Hadjon. 2019. 'Legalitas Aborsi Dalam Hukum Hak Asasi Manusia Internasional', 7: 1-16
- Peter Mahmud Marzuki. 2016. *Penelitian Hukum* (Jakarta: Prenada Media Group)
- Puspita, Melati Intan, And Budiarsih Budiarsih. 2022. 'Penegakan Dan Perlindungan Hukum Terhadap Korban Pelecehan Seksual Secara Verbal', *Bureaucracy Journal : Indonesia Journal Of Law And Social-Political Governance*, 2.3: 704-14 <<https://doi.org/10.53363/Bureau.V2i3.58>>

- Putra, Achmad Syahbana, Suharno Suharno, And Hanuring Ayu. 2022. 'Analisis Yuridis Tindakan Aborsi Dalam Perspektif Hak Asasi Manusia (Ham) Di Indonesia', *Jurnal Penelitian Serambi Hukum*, 15.02: 10-18 <<https://doi.org/10.59582/Sh.V15i02.570>>
- Rochmansyah Setiono. 2016. 'Abortus Menurut Hukum Islam Dan Hukum Positif Di Indonesia', *Lex Et Societatis*, Iv
- Suryani, Lilis. 2021. 'Faktor-Faktor Pendorong Dan Praktik Aborsi Di Indonesia', *Jurnal Studi Gender Dan Anak*, 8.02: 148 <<https://doi.org/10.32678/Jsga.V8i02.5506>>
- Virginia Santini. 2016. 'Our Right To Choose: Challenging The State's Control Over Women's Bodies', *Pluto Journals*, 72: 39-41
- Wiwik Afifah. 2013. 'Perlindungan Hukum Bagi Perempuan Korban Perkosaan Yang Melakukan Aborsi', *Dih, Jurnal Ilmu Hukum*, 9: 93-109
- Yudha Ardy Tama, And Rachmat Ihya. 2023. 'Aborsi: Kajian Dalam Perspektif Hukum Islam Dan Peraturan Perundangan Di Indonesia', *Mandub: Jurnal Politik, Sosial, Hukum Dan Humaniora*, 1
- Zaitun Hamid Al Hamid. 2017. 'Tinjauan Yuridis Terhadap Tindak Pidana Aborsi (Studi Kasus Putusan Nomor : 417/Pid.B/2017/Pn.Mks)' (Skripsi, Makassar: Universitas Hasanuddin)