



LEGAL PROBLEMS OF ABORTION CRIMINAL ACT IN LAW NUMBER 1 OF 2023 REVIEWED FROM THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)

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Article Info	Abstract
<p>Article History Received : 2024-09-03 Revised: 2024-09-05 Published: 2024-10-01</p> <p>Keywords: <i>Abortion, Law Number 1 of 2023, International Covenant on Civil and Political Rights (ICCPR).</i></p>	<p>This study compares Indonesia's abortion regulation under Law No. 1 of 2023 with principles outlined in the International Covenant on Civil and Political Rights (ICCPR). Indonesia criminalizes abortion with strict exceptions, such as cases involving rape or medical emergencies. The law reflects religious and cultural values rooted in the nation's Pancasila ideology, emphasizing the sanctity of life. In contrast, the ICCPR advocates for broader protections for individual rights, including bodily autonomy and health in reproductive contexts, without discrimination. While both frameworks aim to protect life, Indonesia's approach enforces specific legal and moral criteria before permitting abortion, potentially limiting access for women in challenging circumstances. This study reveals the legal and ethical balance required for abortion regulation in Indonesia, highlighting tensions between national values and international human rights standards.</p>

I. INTRODUCTION

Protection of children, including the unborn, as stipulated in the Convention on the Rights of the Child (CRC) and supported by national laws. In the context of abortion, Law No. 1 of 2023 reflects a similar commitment to protecting the right to life of the fetus, although it often conflicts with the mother's right to personal autonomy, as recognized by the ICCPR. This raises a legal dilemma in balancing the rights of the fetus as a protected individual candidate, with the mother's right to personal freedom and medical decisions, which requires a harmonious approach between national and international standards to ensure a balance of legal rights.

The legal problems of abortion crimes in Law Number 1 of 2023 reviewed from the International Covenant on Civil and Political Rights (ICCPR) reflect the complexity and differences in abortion regulations in Indonesia which often conflict with international standards regulated by the ICCPR. The ICCPR is an international agreement that regulates individual civil and political rights, which has been recognized and ratified by Indonesia in 2005 through Law Number 12 of 2005 concerning Civil and Political Rights. This agreement encourages state parties, including Indonesia, to protect basic rights such as the right to life, privacy, and freedom from arbitrary treatment. International agreements allow participating countries to

receive sanctions from the committee contained in the agreement.

Abortion regulations in Indonesia are currently regulated by Law Number 1 of 2023, which is a revision of the previous regulation and is a binding legal basis for this country. In the new Criminal Code, there are rules that allow abortion with certain exceptions as stated in Article 463 paragraph (2), which states that: The provisions in paragraph (1) do not apply if the woman is a victim of a criminal act of rape or other sexual violence resulting in a pregnancy with a gestational age of no more than 14 weeks, or if there are indications of a medical emergency.

Abortion regulations in Indonesia are very strict and limited, only allowing abortion in certain cases such as to save the mother's life or in pregnancy conditions resulting from rape. This can be seen from the comparison of the formulation of the General Comment ICCPR No. 36 of 2018 article 6 para. 8 which basically states that member states are obliged to provide safe, legal and effective access to safe abortion when the life and health of the pregnant woman are threatened or if the pregnancy may cause physical or mental suffering to the pregnant woman, especially if the pregnancy is caused by rape or incest.

This research is motivated to analyze the differences and points of contact between Indonesian national regulations and international standards mandated by the ICCPR in the context

of abortion. On the one hand, Indonesia has ratified it through Law No. 12/2005, on the other hand, there are differences in the construction of abortion regulation norms between the New Indonesian Criminal Code and the ICCPR.

Furthermore, this study aims to analyze the regulation of abortion in Law Number 1 of 2023 and from the perspective of the ICCPR, this analysis includes philosophical, sociological, legal, and theoretical dimensions. Philosophically, there are differences in values related to the right to life and freedom recognized by the ICCPR with cultural and religious values in Indonesia regarding abortion. From a sociological perspective, these strict restrictions have the potential to encourage risky illegal abortion practices, create stigma, and affect reproductive health and gender equality. From a legal perspective, there are differences in paradigm between national abortion regulations and ICCPR obligations. In theoretical aspects, the perspective of feminism and human rights theory helps understand the conflict between national and international regulations regarding abortion, especially in terms of individual rights and gender equality.

II. RESEARCH METHODS

The research method in this study on "Legal Problems of Abortion Crimes in Law Number 1 of 2023 Reviewed from the International Covenant on Civil and Political Rights (ICCPR)" uses a normative approach with an in-depth analysis of abortion regulations in the context of national and international law. This study aims to evaluate the conformity of the provisions in Law Number 1 of 2023 with human rights standards regulated in the ICCPR. The approaches used include the statutory regulatory approach and case studies, which provide a comprehensive understanding of the application and interpretation of abortion-related laws in theoretical and practical contexts.

The research data was obtained from primary sources in the form of official texts of Law Number 1 of 2023 and the ICCPR, as well as secondary sources such as legal literature, scientific journals, and other relevant documents. The data collection technique was carried out through document studies, with comparative analysis to compare provisions in national laws with the principles of human rights contained in the ICCPR. Through this method, this study aims to identify gaps or conformities between national regulations and international standards, as well as their

implications for the protection of individual rights in the context of abortion law.

III. RESULTS AND DISCUSSION

A. Comparison Between Provisions in Law Number 1 of 2023 Concerning Abortion in Indonesia With the Principles Contained in the International Covenant on Civil and Political Rights (ICCPR)

Abortion regulations in Indonesia are strictly regulated by law, which categorizes abortion as a criminal offense with exceptions in certain circumstances. Articles 463 to 465 of the Criminal Code (KUHP). This regulatory paradigm balances the prohibition of abortion with exceptions that protect the health and rights of victims. Articles 463 to 465 regulate abortion as a criminal offense with the threat of imprisonment, but provide exceptions for cases of pregnancy resulting from rape, sexual violence, or medical emergencies. Article 463 stipulates a sentence of up to 4 years for women who have abortions, except in certain circumstances. Article 464 imposes harsher sanctions on perpetrators of abortions on women, with additional penalties if death occurs. Article 465 increases sanctions for medical personnel who perform illegal abortions, but excludes those who act in medical emergencies or on rape victims. This paradigm combines a firm legal approach with flexibility to protect the welfare of victims.

The regulation of abortion crimes in the New Indonesian Criminal Code is based on the fact that abortion has become an increasingly concerning social phenomenon, with negative impacts on both individuals and society. The culture of promiscuity, especially among teenagers, and the increase in prostitution have also encouraged illegal abortion practices as a way to avoid social stigma. The prevalence of this practice shows that abortion is now a complex and difficult social issue to overcome.

The results of research by Susiati, et., al. (2023) show that based on content analysis of illegal abortion news in the Indonesian media, it can be seen that the media tends to be neutral and impartial, both to the perpetrators and victims of abortion. The media revealed that the high demand for illegal abortion services is triggered by the legal system and social norms in force in Indonesia. The legal system that prohibits abortion is unable to provide a deterrent effect on perpetrators of abortion criminalization, while social norms that are very sensitive to immoral

cases such as pregnancy out of wedlock encourage women to choose illegal abortion.

The continued existence of illegal abortion clinics despite being raided several times by the authorities shows that law enforcement in Indonesia is still ineffective in addressing this problem. These clinics often operate in secret and become an "open secret" in society. Many cases of exposing illegal abortion clinics began with reports from the public, but most people tend to allow the existence of these clinics because they feel they are not directly harmed. This reflects the inconsistency between applicable laws and social norms that develop in society, where abortion perpetrators and those who assist illegal abortions tend to receive greater tolerance compared to women who become pregnant out of wedlock.

In this context, the discussion on abortion in Indonesia continues to develop along with changes in national criminal law. The dialectic between morals and law becomes very important, as explained in the research by Suhefly Ashady and Aryadi Almau Dudy, which shows that abortion cannot be viewed only from a legal perspective, but must also consider the underlying moral aspects. Morality, which is rooted in the values of Pancasila, is the main source for the formation of law in Indonesia. Therefore, good law is law that is filled with morality to avoid conflicts between legal norms and social norms in society.

The legal problems of abortion crimes in Law Number 1 of 2023 from the ICCPR perspective lie in their focus on the protection of women's rights and bodily autonomy. The TPKS Law expands the scope of protection for women from sexual violence, including coercive acts such as forced contraception and abortion, which are in line with the protection of personal rights regulated in the ICCPR. In abortion cases, legal issues often center on women's rights to bodily autonomy and personal medical decisions, which can conflict with the right to life of the fetus. The ICCPR supports the protection of individual rights, including freedom from unwanted intervention, which is relevant to both laws. Thus, both the TPKS Law and Law No. 1 of 2023 reflect efforts to balance women's rights with national protection provisions, although there are still challenges in adequate implementation to ensure optimal protection.

Recent developments in criminal law policy in Indonesia show that abortion is permitted under very strict conditions, such as in cases of

pregnancy resulting from rape or emergency medical conditions. However, if these conditions are not met, abortion is considered a criminal act and can be subject to severe penalties, both for the main perpetrator, those involved, and those who assist in carrying out the abortion. This affirmation is regulated in Law Number 1 of 2023 concerning the Criminal Code and Law Number 17 of 2023 concerning Health, which strengthens previous regulations and adds clearer sanctions for abortion-related violations.

Before the law was enacted, one of the abortion implementation regulations that served as the basis was Government Regulation Number 61 of 2014 concerning Reproductive Health, which permits abortion under certain conditions, such as indications of medical emergencies and pregnancy resulting from rape. This regulation aims to protect the reproductive rights of women who are victims of rape, who often experience psychological trauma due to unwanted pregnancies. This regulation shows the initial steps towards protecting women's reproductive rights in Indonesia, but it is also important to understand how other countries handle similar issues for comparison.

In this context, it is important to compare with other countries such as South Korea, which has decriminalized abortion after the Constitutional Court of South Korea declared that the abortion ban was contrary to women's constitutional rights. In Indonesia, abortion is still considered taboo and is strictly criminalized, although there are exceptions in certain conditions such as pregnancy due to rape or medical emergencies. Feminist Legal Theory analysis shows that the law in Indonesia does not fully provide equal protection and rights for women, especially regarding the right to control their own bodies.

Rosalia Dika Agustanti's research (2022) found that abortion can be performed when pregnancy occurs due to rape that has the potential to cause psychological trauma, as long as the abortion procedure is carried out before the pregnancy reaches six weeks, calculated from the first day of the last menstruation. However, abortions are still found to be carried out after the pregnancy has passed six weeks. Many perpetrators of abortion are subject to criminal penalties, indicating that the implementation of legal protection promised by law is not optimal, especially in law enforcement that does not fully support rape victims who choose abortion, so that it does not fully reflect justice, certainty, and

benefits as the goals of the law. Therefore, legal protection for rape victims who have abortions needs to pay attention to the best interests of the victim, which can be realized when the Government carries out its obligations to protect and prevent abortion.

In this context, it is important to consider international legal frameworks such as the International Covenant on Civil and Political Rights (ICCPR), which affirms the civil and political rights of individuals, including the right to life and freedom from cruel, inhuman or degrading treatment. The ICCPR emphasizes that everyone is equal before the law and is entitled without any discrimination to the equal protection of the law. To this end, the law must prohibit all forms of discrimination and ensure to everyone equal and effective protection against discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Protection of the right to life, a core principle of the ICCPR, further strengthens the argument that states must ensure safe access to abortion, especially in situations where pregnancy threatens the physical or mental well-being of the woman, as set out in Article 6 of the ICCPR.

The legal problems of abortion crimes in Law Number 1 of 2023 in Indonesia can be linked to the ICCPR through the *Mellet v Ireland* case, in which the UN Human Rights Committee stated that abortion restrictions in Ireland violated Amanda Jane Mellet's rights. This case underlines that strict abortion restrictions, such as only being permitted in emergency conditions, ignore women's autonomy and can be considered cruel treatment.

In comparison, this approach shows the importance of analyzing Law Number 1 of 2023 with the ICCPR obligations for the protection of women's rights. This approach emphasizes that the protection of women's rights in the context of abortion must be a priority, which is in line with the principles set out in the ICCPR, and that countries must adjust their domestic laws to prevent human rights violations.

Law Number 1 of 2023 concerning the Criminal Code (KUHP) in Indonesia explicitly regulates the prohibition of abortion, except under certain conditions. This provision aims to protect human rights, especially the right to life, but its implementation raises various challenges, especially when associated with the rights

stipulated in the International Covenant on Civil and Political Rights (ICCPR). The ICCPR is an international agreement that emphasizes the protection of civil and political rights, including the right to life, liberty, and security of person. In this analysis, a comparison will be discussed between the provisions in Law Number 1 of 2023 and the principles stated in the ICCPR.

To better understand the relevance of the ICCPR in the context of abortion, it is important to review the core principles of the treaty, particularly those related to the right to life and the protection of human dignity. The ICCPR, through Article 6, affirms that the right to life is the most fundamental right and cannot be derogated from, even in times of public emergency. However, the ICCPR also recognizes that other rights, such as freedom from cruel, inhuman or degrading treatment, must be respected. In the case of abortion, the ICCPR does not explicitly prohibit or permit abortion, but emphasizes that any action taken by states must not be at the expense of other human rights, including the right to health and well-being of women.

Research by Rezeki, Hastuti Sri (2024) shows that in the context of the ASEAN region, each country has a different legal approach regarding the legality of abortion, especially for cases of rape victims. The legality of abortion for rape victims in ASEAN countries varies, depending on the laws and certain exceptions applied. In Indonesia, abortion for rape victims is permitted with conditions, namely if the gestational age does not exceed 14 weeks or there is an indication of a medical emergency. Meanwhile, in Malaysia, Brunei Darussalam, and Myanmar, abortion is only legal to save the mother's life without any special exceptions for rape victims. Thailand allows abortion with conditions for victims of sexual violence up to 20 weeks and unconditionally up to 12 weeks. Singapore allows abortion with certain conditions for citizens or residents who have lived for at least four months. In the Philippines, abortion is completely illegal without any exceptions.

Furthermore, some ASEAN countries have looser rules on abortion with certain conditions, while others provide more open access. Cambodia and Laos legalize abortion with conditions, including a doctor's approval and a certain gestational age, although they do not always specifically mention abortion for rape victims. In Vietnam, abortion is completely legal without any restrictions on grounds and is provided free of

charge by the state. These differences in policy reflect the diverse approaches to women's reproductive health rights in ASEAN, influenced by the laws, cultures, and moral values that apply in each country.

B. Interpretation and Relevance of the ICCPR Regarding the Right to Private Life and Reproductive Health to Abortion Regulation in Indonesia

As previously explained, basically in ASEAN countries in the context of abortion legalization, the Illegal with Exceptions paradigm means that abortion is basically a prohibited act, but there are exceptions in certain situations. These exceptions are usually limited to emergency conditions, such as medical indications that threaten the mother's life or cases of pregnancy due to sexual violence. Countries with this approach place abortion as an act that is not permitted except in specific cases that are considered to require intervention for the sake of humanity or the health of the mother. This approach reflects the priority of protecting fetal life and is considered a strict legal restriction on abortion, although it still considers exceptions for extraordinary conditions.

Meanwhile, the Legal with Conditions paradigm means that abortion is legally permitted with certain conditions that must be met. This includes gestational age limits, medical approval, or special requirements such as psychological examinations or permission from health care providers. This approach is more open to abortion as part of reproductive health rights, but with strict regulations to ensure the safety and security of women. Overall, Legal with Conditions provides wider access to abortion than Illegal with Exceptions, but remains under legal supervision to maintain medical and ethical standards.

Based on General Comment No. 36 on Article 6 of the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee can be considered to have taken the position that abortion should be considered a legal act with certain conditions. This approach means that women have the right to determine their reproductive health, including safe and legal access to abortion. The balance between legal policies and women's rights must remain in line with applicable laws and regulations in order to protect their health and well-being.

Under General Comment No. 36, States are encouraged to ensure access to safe and legal abortion services in certain circumstances, such as when the pregnancy threatens the woman's life or health, or in cases of rape, incest or fetal

nonviability. Through this approach, the Committee emphasizes the importance of safeguarding women's right to life, while recognizing situations in which other rights, such as health and safety, also play a role.

The committee also warned countries to avoid overly restrictive regulations that could force women to seek unsafe abortion alternatives. Countries were urged to repeal or amend regulations that impede safe access to abortion, especially those that are discriminatory or that cause physical or mental harm. For example, countries were urged to avoid criminalizing women or abortion providers, as this could create an environment in which women are forced to resort to dangerous abortion practices.

Table. Comparison Between the Criminal Act of Abortion in Law Number 1 of 2023 and relevant aspects of the International Covenant on Civil and Political Rights (ICCPR)

Aspect	Law Number 1 of 2023	International Covenant on Civil and Political Rights (ICCPR)	Comparative Analysis
Criminal Abortion for Women	Article 463 paragraph (1) regulates prison sentences of up to 4 years for women who have abortions, except in cases of rape, sexual violence (up to 14 weeks), or medical emergencies.	Article 6 paragraph (1) of the ICCPR affirms the inherent right to life, stating that no one may be arbitrarily deprived of his life, with the aim of protecting the individual's life choices without inhumane punishment.	From the perspective of the ICCPR, this regulation can be seen as a restriction on women's right to life and privacy in regulating their own bodies. The cultural, moral, and religious dimensions in Indonesia that view abortion as a sensitive issue, especially related to the value of life, influence stricter laws as a form of preserving moral norms and respecting religious teachings that prohibit abortion without a specific reason.
State Obligations and Individual Rights	This law establishes the role of the state in regulating certain	Article 17 paragraph (1) of the ICCPR guarantees the right to privacy, which	Strict restrictions from the state may reduce women's right to privacy,

	conditions under which abortion can be permitted, reflecting a controlled approach.	includes personal medical decisions, while Article 3 ensures equal rights for men and women without discrimination in enjoying civil and political rights.	which is guaranteed by the ICCPR. In Indonesia, this policy is also influenced by religious and moral values that view the right to life as fundamental. Therefore, the state's approach reflects respect for religious and cultural principles that prioritize the protection of life and maintain moral harmony in society.
Exceptions to Criminal Provisions	Exceptions are made for victims of sexual violence, medical conditions, and rape victims within certain gestational age limits.	Article 4 allows for certain deviations in cases of public emergency, but does not directly address abortion. The ICCPR encourages conditions that do not lead to discriminatory treatment in such cases.	The ICCPR encourages humane and non-discriminatory treatment. The exceptions in this law are in accordance with the ICCPR's principle of non-discrimination, but the application of a certain gestational age limit can be seen as an additional restriction. In Indonesia, this exception is in line with moral and religious principles, which prioritize medical reasons and the safety of victims as a form of balance between religious norms and humanitarian aspects.

than 14 weeks, or if there are indications of a medical emergency. Meanwhile, in the International Covenant on Civil and Political Rights (ICCPR), Article 6 paragraph (1) emphasizes the right to life which cannot be arbitrarily revoked. The ICCPR perspective which emphasizes the protection of individual rights allows for the potential view that the strict prohibition of abortion in the context of Indonesian law can be a form of restriction on women's rights. However, it should be considered that the Indonesian nation is known to have a religious character, which is reflected in the state ideology, namely Pancasila. In national life, moral values from various religions must still be upheld even though Indonesia is not a country based on a particular religion.

The state regulation of abortion in Law No. 1 of 2023 places the government as the authority that regulates the conditions under which abortion is permitted. This reflects the approach of the welfare state concept of law which is an extension of the material state of law concept. In this concept, the role of the state is not only to maintain security and order, but is also responsible for ensuring the welfare of society.

In addition, exceptions to the criminal provisions on abortion in Indonesia are given in cases of sexual violence, medical conditions, and rape cases with certain gestational age limits. On the other hand, the ICCPR in Article 4 allows for certain rights deviations only in public emergencies that do not specifically regulate abortion, but encourage non-discriminatory conditions in handling certain cases. The laws in Indonesia that provide these exceptions are in accordance with the ICCPR's principle of non-discrimination, despite the gestational age restrictions. This approach can be considered in line with moral and religious principles, which prioritize the safety of victims and emergency medical conditions as a balance between religious norms and human rights.

The combination of Indonesia's national laws and strong cultural and religious values creates more restrictive abortion regulations, despite the ICCPR's support for broader individual rights in reproductive health. In Indonesia, abortion is a complex issue involving legal, moral, and human life considerations. This can potentially pose challenges for women who experience pregnancy due to sexual violence or certain medical reasons, as they must meet quite specific legal criteria before being allowed to have an abortion.

Law Number 1 of 2023 in Indonesia regulates criminal penalties for abortion for women through Article 463, which states that women who have abortions can be punished with up to 4 years in prison. However, there are exceptions for certain cases, such as victims of rape, sexual violence with a gestational age of less

Overall, despite the differences in approach between Law Number 1 of 2023 and the ICCPR, both legal frameworks provide efforts to protect the right to life while still considering aspects of women's rights. However, the implementation of the law in Indonesia prioritizes aspects of cultural, ethical, moral and religious values as the embodiment of Pancasila as a legal basis, while the ICCPR emphasizes more on the welfare and rights of individuals without discrimination.

IV. CONCLUSIONS AND RECOMMENDATIONS

The abortion regulation in Law Number 1 of 2023 in Indonesia strictly criminalizes the practice of abortion except in certain cases, such as medical emergencies or pregnancies resulting from sexual violence. This regulation reflects a legal approach that prioritizes moral and religious values, reflecting the character of a religious nation, as reflected in the Pancasila ideology. Meanwhile, the principles in the International Covenant on Civil and Political Rights (ICCPR) emphasize human rights, including the right to life and personal liberty. In the context of abortion, the ICCPR highlights the importance of balancing the protection of the right to life with the right to bodily autonomy, especially for women in the context of reproductive health.

Although there are differences in approach between Law Number 1 of 2023 and the ICCPR, both aim to protect the right to life. However, the approach taken by Indonesia tends to be more restrictive, which is in line with the moral and ethical values prevailing in society, especially regarding the issue of fetal life. In contrast, the ICCPR is more accommodating of women's rights to determine their reproductive health without discrimination. As a result, in Indonesia, challenges arise when women face situations such as pregnancy due to violence or life-threatening medical conditions, where strict criteria must be met before abortion is permitted. This illustrates the importance of maintaining a balance between national laws based on culture and religious values, and broader individual rights as encouraged by the ICCPR.

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