

Abortion Laws in Indonesia and Islam: A Clash of Morality, Religion, and Rights

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Abstract

Abortion remains one of the most controversial legal and ethical issues, balancing between reproductive rights, religious doctrines, and state regulations. In Indonesia, abortion laws are primarily governed by the Health Law No. 36 of 2009 and the Criminal Code, which generally prohibit abortion except under specific circumstances, such as medical emergencies or rape-induced pregnancies. These legal restrictions reflect Indonesia's socio-religious landscape, where Islamic principles significantly influence legislative frameworks. From an Islamic legal perspective, abortion is largely prohibited but with nuanced interpretations depending on the gestational stage and underlying reasons. Classical Islamic jurisprudence generally forbids abortion after ensoulment (believed to occur at 120 days of pregnancy), though some scholars permit it under limited circumstances, such as to preserve the mother's life or in cases of severe fetal abnormalities. However, differences exist among Islamic schools of thought regarding permissibility before ensoulment, leading to diverse legal applications



across Muslim-majority countries, including Indonesia. This study critically examines the intersection of Indonesian state law and Islamic law on abortion, highlighting their points of convergence and divergence. It explores how legal, religious, and ethical considerations shape abortion policies and the implications for women's reproductive rights. The paper also addresses ongoing debates over potential legal reforms, considering global human rights perspectives and the influence of Islamic jurisprudence in shaping reproductive health policies. By comparing these legal frameworks, this study aims to provide a comprehensive understanding of abortion law in Indonesia within both secular and religious contexts.

KEYWORDS: *Abortion, Women's Reproductive Rights, Islamic Law, Indonesian Law*

Introduction

1. Overview of Abortion as a Controversial Issue

Abortion is one of the most ethically and morally charged issues globally, bringing into question fundamental values related to life, autonomy, and personal rights. The complexity surrounding abortion stems from its multifaceted nature, encompassing not only reproductive health but also gender equality, public policy, and religious doctrine.¹ The decision to legalize or restrict abortion is influenced by deeply entrenched cultural values and varying interpretations of when life begins and what rights a woman holds over her own body.² These ethical dilemmas have led to polarized debates, with some advocating for the protection of women's autonomy, while others emphasize the sanctity of life from conception.

In secular legal systems, abortion laws are often framed as a fundamental right for women, rooted in reproductive justice and human rights. Many countries recognize the importance of ensuring access to safe and legal abortion services to protect women's health, well-being,

¹ Kaczor, Christopher. *The ethics of abortion: Women's rights, human life, and the question of justice*. Routledge, 2022; Watson, Katie. "Abortion as a moral good." *The Lancet* 393.10177 (2019): 1196-1197.

² Greasley, Kate. *Arguments about abortion: personhood, morality, and law*. Oxford University Press, 2017; Cook, Rebecca J., and Bernard M. Dickens. "Human rights dynamics of abortion law reform." *Human Rights Quarterly* 25.1 (2003): 1-59.

and dignity. However, the tension arises when the right to abortion conflicts with religious or moral beliefs, particularly when a country's laws are heavily influenced by religious doctrines. This tension is especially visible in Muslim-majority countries where Islamic law (or *fiqh*) has a significant influence on national legislation, intertwining moral beliefs with legal frameworks.

The situation becomes even more complicated when cultural traditions and societal norms collide with global human rights movements advocating for women's reproductive rights. In many countries, religious convictions, family values, and patriarchal structures play a significant role in shaping national abortion policies, leading to highly restrictive or permissive legal environments. These dynamics form the backdrop for understanding the unique challenges faced by women seeking abortion, particularly in contexts where legal frameworks are not in alignment with modern interpretations of reproductive autonomy.

In Indonesia, a Muslim-majority nation, abortion laws are a reflection of both secular governance and Islamic teachings, creating a legal landscape that is both complex and controversial.³ The Health Law No. 36 of 2009, while allowing abortion in cases of rape or medical necessity, maintains a strong prohibition against abortion under normal circumstances. These provisions, however, are heavily influenced by the Islamic framework that guides both the legal discourse and the societal understanding of morality and life's sanctity. This dual influence of religion and state law produces an intricate tension between women's reproductive rights and religious ethical obligations that is not always easy to reconcile.⁴

³ Shapiro, Gilla K. "Abortion law in Muslim-majority countries: an overview of the Islamic discourse with policy implications." *Health Policy and Planning* 29.4 (2014): 483-494; Mohiuddin, Asif. "Mapping the Terrain of Islamism and Religious Authority: Insights from the Middle East, Southeast Asia and South Asia." *Navigating Religious Authority in Muslim Societies: Islamist Movements and the Challenge of Globalisation*. Cham: Springer Nature Switzerland, 2023, pp. 165-202.

⁴ See Saragi, Paltiada. "An Analysis of Legal Concepts Concerning Abortion Case According to Criminal Code and Law No. 36 of 2009 Concerning Health." *Journal of Contemporary Issues in Business and Government* 27.3 (2021): 1-4; Ariyad, Fikri, and Ali Masyhar. "Abortion by rape victim: A dilemma in the Draft of penal code and Indonesian health law." *Journal of Law and Legal Reform* 1.4 (2020): 631-640; Krismawati, Selviana, et al. "Advocacy and Protection for Victims of Sexual Violence against Children: Insight from Indonesia's

2. Purpose of the Study

This study seeks to examine the intersection between Indonesian state law and Islamic law concerning abortion, analyzing how both systems reflect cultural values, religious doctrines, and public policy. In Indonesia, abortion laws are shaped by both secular state regulations and Islamic legal principles, which often result in legal restrictions that reflect moral judgments grounded in Islamic theology. While Indonesian law permits abortion in cases of rape or health risks to the mother, broader access to abortion services remains highly restricted. This study aims to critically assess the intersection of these two legal systems, focusing on how Islamic jurisprudence influences abortion laws and how such laws impact women's reproductive rights.

By exploring this intersection, the paper will highlight the points of convergence and divergence between state law and Islamic law. It will delve into the socio-religious context of Indonesia, where Islamic teachings and cultural norms guide not only legal structures but also public discourse and social practices. This examination aims to provide a nuanced understanding of how Indonesian law navigates the challenge of balancing reproductive rights with religious morality, a subject of growing importance as global conversations around gender equality and reproductive justice intensify.

Moreover, the study will address the practical implications of these laws on women's health and agency. While Indonesian law permits some exceptions for abortion, the stigmatization of abortion, combined with the religious disapproval of the practice, often places significant barriers in the way of women who seek abortion services. This paper will also explore whether legal reforms in Indonesia are possible, particularly in light of global human rights perspectives and the growing calls for gender equity in reproductive health. It will critically assess the political and social dynamics that influence the formulation and implementation of these laws, considering how local religious values and global legal trends may shape future abortion policies.

Experience." *Indonesian Journal of Advocacy and Legal Services* 5.2 (2023): 207-240.

3. Thesis Statement

The central thesis of this study is that Indonesian abortion laws, shaped by both secular legal principles and Islamic religious teachings, represent a complex amalgamation of legal constraints, moral considerations, and women's reproductive rights.⁵ While Islamic law generally prohibits abortion except under specific circumstances, Indonesian state law offers limited allowances that are influenced by both public health considerations and religious morality. This combination of secular law and Islamic jurisprudence creates a legal framework that reflects societal debates over life, rights, and morality, while also impacting women's ability to make autonomous decisions about their reproductive health.

The tension between Islamic doctrines and secular legal principles becomes particularly pronounced when we examine the ethical implications of abortion, as the religious prohibition on abortion conflicts with the growing international emphasis on reproductive justice.⁶ Indonesian abortion laws illustrate how religion can play a central role in shaping legal interpretations of reproductive rights, with the potential to either restrict or expand access to abortion based on cultural values and religious beliefs. The study will argue that this legal intersection not only reflects the complexities of Indonesian society but also serves as a model for understanding the challenges that other Muslim-majority countries face in navigating the moral and legal aspects of abortion.

Through this analysis, the paper will contribute to the broader conversation on how Islamic law intersects with modern reproductive rights, focusing on the practical realities for women in Indonesia who are navigating these restrictive legal environments. By unpacking this intersection, the study aims to provide insights into the potential for legal reform that balances religious beliefs, legal frameworks, and women's rights in a rapidly changing global context.

⁵ Surjadjaja, Claudia. "Policy analysis of abortion in Indonesia: The dynamic of state power, human need and women's right." *IDS bulletin* 39.3 (2008): 62-71; Surjadjaja, Claudia, and Susannah H. Mayhew. "Can policy analysis theories predict and inform policy change? Reflections on the battle for legal abortion in Indonesia." *Health Policy and Planning* 26.5 (2011): 373-384.

⁶ Roat, Olivia. "Free-Exercise Arguments for the Right to Abortion: Reimagining the Relationship Between Religion and Reproductive Rights." *UCLA Journal of Gender and Law* 29.1 (2022).

Legal Framework of Abortion in Indonesia

1. Indonesian Health Law No. 36 of 2009

The Health Law No. 36 of 2009 is a cornerstone of Indonesia's legal approach to abortion, establishing the legal grounds under which abortion may be permitted in the country. The law recognizes abortion as illegal under most circumstances, but it allows for exceptions in cases where a woman's life or health is at risk, or in cases of rape-induced pregnancies. These exceptions are enshrined in Article 75 of the Health Law, which allows abortion only under the strictest medical conditions. This provision reflects Indonesia's attempt to balance the protection of women's health with religious and moral values embedded in its legal and societal framework.

In particular, medical emergencies are the primary circumstance under which abortion is permitted. This means that in cases where continuing the pregnancy would endanger the life of the mother, abortion becomes legally permissible. Similarly, rape-induced pregnancies are also an exception, with the law providing for abortion in cases where a pregnancy results from rape and if it occurs within a limited time frame (typically up to 40 days of gestation). However, the law is stringent in defining these exceptions, and abortion is only allowed in a licensed medical facility under the supervision of healthcare professionals, making it inaccessible for many women in remote or underserved areas.⁷

Despite these exceptions, the law's overall stance remains restrictive, reflecting the country's cautious approach to abortion. The limitations within the law arise from legal ambiguities regarding the precise definition of a medical emergency or rape-induced pregnancy, leading to inconsistent implementation across different regions. Healthcare providers, for example, may be reluctant to perform abortions due to fear of legal repercussions or lack of clear guidelines on what constitutes an allowable situation under the law.

The Health Law, therefore, not only frames abortion as a necessary measure in specific situations but also restricts it to the extent that women in non-urgent situations face significant legal and social barriers to accessing abortion services. These restrictions can

⁷ See Beck, Connie J., et al. "Children conceived from rape: Legislation, parental rights and outcomes for victims." *Journal of Child Custody* 15.3 (2018): 193-205. See also Kramer, Matthew H. "The Illusion of Neutrality: Abortion and the Foundations of Justice." *University of Cambridge Faculty of Law Research Paper* 9 (2017).

inadvertently lead to unsafe abortions performed outside the bounds of the law, putting women's health at further risk.

2. Indonesian Criminal Code

The Indonesian Criminal Code (KUHP) further complicates the abortion debate by criminalizing the act of abortion except in the instances allowed by the Health Law No. 36 of 2009. Article 299 of the Criminal Code makes abortion a criminal offense, subjecting women and healthcare providers to legal penalties if they engage in abortion procedures outside the legally defined exceptions. This includes the imprisonment of those found guilty of inducing abortion or providing abortion services without proper authorization, highlighting the tension between Indonesia's secular legal system and religious values.⁸

Under the Criminal Code, abortion is seen as a criminal act that violates the sanctity of life, which echoes the strong Islamic ethical prohibition against abortion, except in limited circumstances. The law criminalizes illegal abortion practices, which can result in imprisonment, often without clear differentiation between those seeking abortion and those performing it. Women who undergo abortion outside the legal framework may be criminalized, leading to stigmatization and fear of seeking medical assistance, despite the health law's provision for legal abortion in certain cases.

Moreover, the criminal penalties attached to abortion may create a legal paradox, as the law restricts access to abortion services while simultaneously offering limited exceptions under the Health Law. This creates confusion and ambiguity regarding the rights of women and healthcare providers, especially in a context where societal pressure often promotes adherence to religious values over secular law. The Criminal Code, thus, serves as a barrier to more liberal interpretations of abortion rights, reinforcing the moral and religious dimensions of abortion laws and constraining women's access to reproductive healthcare.

3. Conflict Between Secular Legal Framework and Socio-Religious Norms

One of the most significant features of Indonesia's abortion laws is the conflict between the secular legal framework and the country's

⁸ Marfuatun, Lily. "Aborsi Dalam Perspektif Medis Dan Yuridis." *Jurnal Kebidanan dan Kesehatan Akbid Surya Mandiri Bima* 5.2 (2018): 6-10.

deeply embedded socio-religious norms, particularly those rooted in Islamic teachings. Indonesia, as the largest Muslim-majority country, has a strong Islamic presence in its legal and cultural systems. While the Health Law No. 36 of 2009 is grounded in public health principles, the Criminal Code and broader legal and social attitudes reflect the influence of Islamic moral teachings on Indonesia's stance towards abortion.

Islamic principles generally forbid abortion except in cases of danger to the mother's life, and many interpretations of Islamic law assert that abortion is haram after ensoulment (around 120 days of gestation). Thus, while the Indonesian Health Law offers exceptions for rape and medical emergencies, these allowances are still framed by the broader societal belief that abortion is morally objectionable, leading to an inherent conflict with global standards of reproductive rights. This alignment between Islamic morality and Indonesian law further restricts abortion access and often influences the interpretation of exceptions in practice, where religious authorities and local interpretations of the law can play a significant role in decision-making.

The influence of Islamic principles is particularly evident in the public and political discourse surrounding abortion. Religious groups and conservative factions often argue that any relaxation of abortion laws could lead to a moral decline in society, citing the sanctity of life as a cornerstone of Islamic ethics. These voices significantly shape the public narrative and create legal barriers to more liberal policies. Despite the influence of international human rights organizations advocating for women's reproductive rights, Indonesian policymakers are frequently caught in a delicate balancing act between international obligations and local cultural and religious sensibilities.

This socio-religious climate influences both public opinion and policy development, resulting in a legal framework that tends to privilege religious teachings over secular, human rights-based arguments. As such, any discussions of legal reform regarding abortion must navigate a complex landscape of religious dogma, social stigma, and political resistance, complicating the implementation of policies that prioritize women's autonomy and health.

4. Impact of Indonesia's Socio-Religious Landscape

Indonesia's socio-religious landscape significantly shapes its abortion laws and practices. Islamic beliefs on the sanctity of life and the permissibility of abortion are deeply rooted in the country's cultural

fabric, influencing both legislative and judicial practices.⁹ The interaction between Islamic law and Indonesian legal codes has led to the creation of an abortion law that is influenced by religious morality, and yet, it still attempts to strike a balance with secular health considerations.¹⁰ However, this balance is often precarious, with the law placing heavy emphasis on exceptions rather than allowing for broader access to abortion as a reproductive right.

The strong influence of Islamic jurisprudence complicates Indonesia's abortion laws by embedding a religious moral framework into the legal discourse. As Islamic law typically sees abortion as permissible only in specific situations—such as maternal life-threatening conditions or severe fetal abnormalities—this has shaped the legal exceptions provided by the Health Law. The overarching religious sentiments in Indonesian society continue to promote abstinence, family values, and the sanctity of life, contributing to societal opposition to more progressive abortion laws.

Therefore, Indonesia's legal framework on abortion is a complex mixture of secular and religious law, heavily influenced by Islamic principles and socio-religious norms. The Health Law allows for abortion only under certain circumstances, while the Criminal Code criminalizes abortion outside these parameters, leading to confusion and inconsistency in legal interpretation and application. The religious landscape continues to influence both public opinion and policy on abortion, making it a highly contested issue in Indonesia's ongoing struggle to balance reproductive rights, women's health, and religious morality.

Islamic Perspective on Abortion

1. General Prohibition in Islamic Law

In classical Islamic jurisprudence, abortion is generally viewed as haram (forbidden), with the primary stance being that life is sacred and must be preserved. The prohibition stems from the Islamic ethical principle that life is a gift from God and, therefore, it is not for humans to take it prematurely without just cause. The most significant ethical and legal guidelines on abortion come from both the Qur'an and Hadith.

⁹ Haryanto, Sindung. "The sociological context of religion in Indonesia." *Research in the Social Scientific Study of Religion*, Volume 30. Brill, 2019, pp. 67-102.

¹⁰ Menchik, Jeremy. "The co-evolution of sacred and secular: Islamic law and family planning in Indonesia." *South East Asia Research* 22.3 (2014): 359-378.

While the Qur'an does not explicitly address abortion in a detailed manner, the Hadiths—recorded sayings and actions of the Prophet Muhammad—provide more insight into Islamic views on fetal development and the sanctity of life.¹¹

A key point in Islamic views on abortion is the concept of ensoulment, which is believed to occur at approximately 120 days (or 4 months) of gestation. This is based on a Hadith where the Prophet Muhammad is reported to have said, "*The creation of each one of you is gathered in the womb of the mother for forty days, then becomes a clot of blood for another forty days, then a lump of flesh for another forty days, and then the angel is sent to him to breathe the spirit into him*" (Sahih Muslim). The timing of ensoulment—120 days—marks a pivotal moment in Islamic jurisprudence, after which abortion is considered a serious moral transgression.

Classical Islamic scholars generally argue that abortion after ensoulment is forbidden, as it entails the taking of a soul that has been given life by God. This is seen as a violation of the sanctity of human life, which is sacred in Islamic teachings. Therefore, the general rule is that abortion is haram after ensoulment, except in cases where the mother's life is in danger or if the fetus is found to have severe abnormalities that would prevent it from surviving outside the womb.¹²

2. Interpretations Based on Gestational Stage

Despite the general prohibition of abortion, Islamic law takes into account the gestational stage of the pregnancy, with a distinction made between abortion before and after ensoulment. Abortion before 120 days—the point of ensoulment—is a subject of considerable debate among Islamic scholars. While the dominant view across many schools of thought is that abortion before ensoulment is permissible under certain conditions, others hold it as disliked (*makruh*) but not outright haram.

The permissibility of abortion before 120 days is often justified on the grounds of the lack of ensoulment. Since the fetus is not yet considered a fully human entity, some scholars argue that abortion in

¹¹ Bagheri, Alireza, et al. "Abortion in different islamic jurisprudence: Case and commentaries." *Asian Bioethics Review* 3.4 (2011).

¹² Khitamy, Badawy AB. "Divergent views on abortion and the period of ensoulment." *Sultan Qaboos University Medical Journal* 13.1 (2013): 26; Hussain, Arif Abdul. "En soulment and the prohibition of abortion in Islam." *Islam and Christian-Muslim Relations* 16.3 (2005): 239-250.

the early stages of pregnancy is allowed, particularly in the case of medical emergencies or health risks to the mother. Severe fetal abnormalities or cases where the pregnancy results from rape are also commonly cited as permissible reasons for abortion before ensoulment, as long as the procedure is conducted with proper medical oversight.

However, despite these more permissive views, the idea of ensoulment serves as a moral and legal boundary for abortion. The fetus before ensoulment is seen as lacking a soul and, thus, it is not given the same moral weight as a fetus after ensoulment. This distinction between the pre-ensoulment and post-ensoulment stages is crucial in understanding how Islamic law treats abortion across different gestational stages, allowing for greater leniency in the first few months of pregnancy.

3. Differences in Islamic Schools of Thought

One of the most fascinating aspects of Islamic law on abortion is the divergence of opinions among the various schools of thought (*madhahib*), particularly regarding the permissibility of abortion before ensoulment. The four main Sunni schools—Hanafi, Shafi'i, Maliki, and Hanbali—as well as the Shi'a school, have nuanced interpretations of the law on abortion.

- Hanafi school: The Hanafi school is relatively permissive about abortion before ensoulment, allowing it under certain conditions such as to preserve the mother's health, or if the pregnancy is a result of rape. This school tends to focus on the lesser harm caused by abortion, allowing it if the pregnancy poses harm to the mother's physical or mental well-being.
- Shafi'i school: The Shafi'i school takes a more restrictive stance on abortion, permitting it only in cases where the mother's life is at risk or if the fetus is found to have serious defects that would affect its quality of life. The Shafi'i school generally emphasizes the sanctity of life and is stricter about abortion even before ensoulment, viewing it as haram unless the circumstances are dire.
- Maliki school: The Maliki school also holds abortion to be generally forbidden after ensoulment but allows for abortion before ensoulment if there is a valid reason, such as the threat to the mother's life or health. The Maliki school tends to be slightly more flexible regarding abortion in the early stages of pregnancy compared to other schools.

- Hanbali school: The Hanbali school shares a similar stance to the Shafi'i school in that it permits abortion only in the case of serious maternal health risks or fetal abnormalities. This school is particularly stringent regarding abortion after ensoulment, arguing that it is categorically forbidden unless the mother's life is in danger.
- Shi'a school: In the Shi'a tradition, scholars are somewhat more permissive of abortion before ensoulment, acknowledging the possibility of abortion in cases of health risks or rape. Shi'a scholars often permit abortion if the fetus is not yet ensouled, placing less emphasis on rigid timelines and more on the circumstances surrounding the pregnancy.

These variations across Islamic schools of thought reveal how cultural interpretations, local practices, and jurisprudential schools shape the legal and moral stance on abortion in different Muslim-majority countries. The differences also highlight the ongoing debates within the Islamic world on how modern challenges—such as health risks, rape, and fetal abnormalities—should be reconciled with traditional interpretations of Islamic law.

4. Nuanced Islamic Exceptions

In Islamic jurisprudence, abortion is generally allowed in exceptional cases. While these exceptions are not universally accepted across all schools of thought, they are commonly cited in situations where the life or health of the mother is at risk or when the fetus is found to have severe abnormalities that would lead to its death after birth or result in extreme suffering. These cases are viewed as instances where the lesser harm (abortion) is preferable to a greater harm (the death or suffering of the mother or fetus).

- Danger to the mother's health: This is one of the most widely accepted exceptions in Islamic law. If continuing the pregnancy poses a threat to the mother's life or health—whether physically, psychologically, or emotionally—abortion is generally permitted, even after ensoulment, depending on the severity of the situation. This exception stems from the Islamic legal principle of prioritizing the life of the mother in circumstances where both lives cannot be preserved.
- Extreme fetal abnormalities: Another exceptional case where abortion may be allowed is when the fetus is diagnosed with severe defects that would result in death shortly after birth or

would cause significant suffering. Islamic scholars differ on how severe the abnormalities must be for abortion to be permitted, but the general consensus is that the lesser harm principle applies, especially if the fetus has no chance of survival after birth.

- Rape: Some Islamic scholars also accept abortion in cases of rape, especially if the pregnancy is discovered early and the mother is emotionally or psychologically incapable of carrying the pregnancy to term. While opinions on this vary significantly across different schools of thought, some scholars argue that the trauma experienced by the mother justifies abortion under these circumstances.¹³

These nuanced exceptions in Islamic jurisprudence show that while abortion is generally prohibited, there is flexibility in the law when it comes to situations where the life or well-being of the mother, or the quality of life for the fetus, is at stake. This nuanced approach highlights the balance that Islamic law attempts to strike between moral teachings on the sanctity of life and practical considerations related to health and human suffering.

Comparative Analysis: Indonesian Law vs. Islamic Law on Abortion

Both Indonesian law and Islamic law share notable points of convergence when it comes to abortion. Perhaps the most significant area of agreement is in the exceptions that allow for abortion, particularly in cases where the mother's life or health is at risk. The Health Law No. 36 of 2009 in Indonesia permits abortion if it is necessary to preserve the life of the mother, and this aligns with Islamic law, which similarly permits abortion when the mother's life is in danger. This agreement underscores the moral priority placed on the mother's health in both frameworks, recognizing the tragic nature of a situation where both lives cannot be saved.

In both systems, maternal health is a primary consideration, albeit approached with varying degrees of strictness. Islamic jurisprudence also allows for abortion in cases where continuing the pregnancy would

¹³ See Yusra, Nelly. "Aborsi dalam perspektif hukum Islam." *Marwah: Jurnal Perempuan, Agama dan Jender* 11.1 (2012): 1-19; Fidawaty, Linda. "Aborsi dalam Perspektif Hak Asasi Manusia dan Hukum Islam (Analisis terhadap Peraturan Pemerintah No. 61 tahun 2014 tentang Kesehatan Reproduksi)." *Al-'Adalah* 14.1 (2017): 107-130; Farhana, Nurul. "Aborsi Dalam Perspektif Hak Asasi Manusia Dan Hukum Islam." *Journal Presumption of Law* 4.2 (2022): 178-193.

result in severe harm to the mother, a stance echoed in Indonesian law. Furthermore, both legal systems allow for abortion in cases where the fetus suffers from severe abnormalities that would render it unable to survive after birth, further demonstrating common ground in recognizing the tragic consequences of carrying such a pregnancy to term.

The legal framework in Indonesia and the Islamic viewpoint thus share a pragmatic approach when it comes to prioritizing the well-being of the mother and acknowledging the exceptional nature of these situations, marking a point of convergence in the two approaches to abortion. While there are commonalities in the exceptions allowed, there are significant divergences between Indonesian law and Islamic law on abortion, particularly in terms of the moral and legal boundaries regarding abortion. One of the most profound differences lies in the prohibition of abortion in Islamic law after ensoulment (120 days). Classical Islamic jurisprudence is extremely strict on abortion post-ensoulment, considering it haram unless the mother's life is at stake. The doctrinal prohibition reflects the strong religious opposition to the termination of a soul-bearing life.

In contrast, Indonesian law, while restrictive, allows for abortion under broader circumstances than Islamic law, particularly regarding rape-induced pregnancies or other health-related conditions. Indonesian law also allows abortion to be performed within 40 days of conception in cases of rape or when the mother's life is at risk, offering a broader timeframe for legal abortion compared to the Islamic doctrine, which emphasizes a stricter timeline before ensoulment.¹⁴

The legal framework in Indonesia also tends to be more focused on health and medical concerns in determining the permissibility of abortion, whereas Islamic law places a strong emphasis on the moral dimension of abortion, with greater weight placed on the soul and the sanctity of life. This ethical divergence between the secular law in Indonesia and the religious moral framework of Islamic law presents a fundamental conflict in aligning the two perspectives.

¹⁴ Nurcahyo, Edy, et al. "Reproductive health protection and the abortion prohibition in Indonesia." *International Journal of Health Sciences* 5.2 (2021): 99-110; Udasmoro, Wening. "Political Transitions and Abortion Regulations in Indonesia." *Lorena Parini, Thanh-Huyen Ballmer-Cao & Sylvie Durrer (éds.). Régulation sociale et genre, Paris, Harmattan* (2006): 71-80.

1. Influence of Religion on Legal Decisions

The influence of religion—especially Islamic principles—on legal decisions concerning abortion in Indonesia is profound and multifaceted. Islamic law, which is deeply entrenched in the cultural and legal fabric of the country, plays a crucial role in shaping public discourse and judicial decisions on abortion. Islamic clerics and religious scholars are often consulted in legal matters, and their interpretations significantly influence the formation of laws and policies concerning reproductive rights.

This religious influence can be observed in the cautious approach taken by Indonesian lawmakers, who are mindful of the Islamic moral framework in crafting legislation. For example, while the Health Law No. 36 of 2009 allows abortion under certain circumstances, it is still heavily influenced by Islamic principles, which prioritize the sanctity of life and permit abortion only in situations deemed exceptional. This cultural influence is reflected in how the law is applied on the ground, where religious views may impact judicial interpretations of what constitutes a legitimate reason for an abortion.

This blending of religious principles with secular law creates a complex legal landscape, where religious morality and secular legal frameworks often conflict, especially when addressing the rights of women. The role of religion in shaping legal decisions highlights the intersection between Islamic law, Indonesian law, and cultural norms, which makes it difficult to implement reproductive health policies that fully align with international human rights standards.

2. Role of Secular vs. Religious Law

Indonesia's secular legal system operates within the context of a Muslim-majority society, where Islamic principles have a significant influence over legal and social norms, especially when it comes to matters like abortion. The secular legal framework, as represented by the Health Law No. 36 of 2009, provides a legal pathway for abortion in specific cases, such as medical emergencies or rape-induced pregnancies, reflecting a more modern, health-oriented perspective on reproductive rights. However, the religious landscape, shaped by Islamic law, often presents a moral challenge to fully adopting such legal reforms.

The tension between the secular and religious legal systems is evident in Indonesia's approach to abortion. Secular law is more focused on health and autonomy, while Islamic law prioritizes moral values,

sanctity of life, and religious principles, which in turn restrict women's rights in reproductive matters. This tension complicates efforts to pass reformative legislation that could make abortion more accessible, as religious opposition often plays a pivotal role in shaping public opinion and legal norms.

This division between secular and religious law is particularly apparent when dealing with cases that do not fit neatly into the exceptional circumstances allowed by Islamic teachings but are permissible under the secular framework of Indonesian law. As a result, legal reforms are often limited by the influence of religious doctrine, hindering progress towards more progressive policies that align with women's reproductive rights on a global scale.

Reproductive Rights and Gender Perspectives Impact on Women's Reproductive Rights

The restrictive abortion laws in Indonesia significantly affect women's reproductive rights, as they place stringent limitations on a woman's autonomy over her body and health decisions. While the Health Law offers exceptions in cases of medical emergencies or rape, the overall legal framework still regards abortion as a privilege rather than a right, which can leave women vulnerable to unsafe procedures if they are unable to meet the legal criteria.

Women in Indonesia often face legal, social, and economic barriers to accessing legal abortion services. The healthcare infrastructure in rural areas, where access to trained medical professionals and facilities is limited, further exacerbates the challenges faced by women seeking safe abortions. As a result, many women may resort to unsafe, clandestine abortions, jeopardizing their health and lives. Additionally, the moral and religious pressure within Indonesian society often stigmatizes women who seek abortions, especially outside the strict legal exceptions. This results in disempowerment for women, particularly those who may not have access to the financial resources or social support necessary to navigate the legal complexities surrounding abortion.

The ethical dilemma of balancing women's reproductive rights with the need to respect religious and moral standards presents a significant challenge. On one hand, women's right to autonomy over their reproductive health is increasingly recognized in global human rights frameworks. On the other hand, religious beliefs rooted in Islamic

law place strict limitations on abortion, viewing it as a moral transgression except in limited cases. This creates a conflict between protecting women's rights and adhering to religious and cultural norms, where policymakers are forced to consider both human rights and religious prescriptions.

The ethical conflict becomes particularly pronounced when discussing abortion for cases of rape or severe fetal abnormalities—situations where the mother's autonomy is at odds with societal expectations regarding the sanctity of life. This conflict presents moral challenges not only for legislators but also for society as a whole, as it grapples with questions of personal freedom, health, and religious duty.

Furthermore, in Indonesia, social stigma plays a significant role in shaping women's choices regarding abortion. The moral framework grounded in Islamic teachings dictates that abortion is generally seen as immoral, even if legal exceptions are made. Women who seek abortions, particularly in cases of rape or unwanted pregnancies, often face social ostracism and psychological stress due to religious condemnation of their decisions.¹⁵

The pressure to conform to societal expectations of family values, sanctity of life, and religious piety creates a complicated environment for women, making it difficult for them to make informed decisions about their reproductive health. This environment discourages open discussion on abortion and limits access to accurate information, leaving women to rely on unofficial, often unsafe, means to terminate pregnancies. Religious and cultural norms, therefore, play a regulatory role, shaping both legal interpretations and individual behavior.

Global Human Rights Perspectives on Abortion

1. International Human Rights Framework

From a comprehensive international human rights perspective, access to safe and legal abortion is increasingly recognized as integral to a woman's right to health, life, privacy, equality, and bodily autonomy. Various international treaties, declarations, and institutional

¹⁵ Makleff, Shelly, et al. "Exploring stigma and social norms in women's abortion experiences and their expectations of care." *Sexual and Reproductive Health Matters* 27.3 (2019): 50-64; Kumar, Anuradha, Leila Hessini, and Ellen MH Mitchell. "Conceptualising abortion stigma." *Culture, Health & Sexuality* 11.6 (2009): 625-639;

frameworks developed under the auspices of the United Nations and other global organizations have consistently emphasized that the denial or restriction of abortion can amount to a violation of fundamental human rights.

One of the core instruments is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Indonesia ratified in 1984. Article 12 of CEDAW obligates state parties to eliminate discrimination against women in healthcare, including ensuring access to services related to family planning. The CEDAW Committee has interpreted this to include access to safe abortion services, especially in cases of rape, incest, or threats to a woman's health or life. Denial of such services, it argues, reinforces systemic gender inequality and may constitute cruel, inhuman, or degrading treatment under international law.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) further support the notion that reproductive rights are protected human rights. For instance, the Human Rights Committee, which monitors implementation of the ICCPR, has stated that restricting access to abortion can violate a woman's right to life (Article 6), especially when unsafe abortions are the consequence. Similarly, the Committee on Economic, Social and Cultural Rights recognizes reproductive health as part of the right to the highest attainable standard of health (Article 12).

The United Nations Human Rights Council and the Office of the High Commissioner for Human Rights (OHCHR) have issued several reports highlighting how restrictive abortion laws disproportionately affect poor and marginalized women, increasing the risk of maternal mortality and unsafe procedures. These bodies urge states to decriminalize abortion, remove barriers to access, and provide evidence-based sexual and reproductive health education and services.

The World Health Organization (WHO) echoes these positions in its technical and policy guidance, stating that access to safe abortion is essential for reducing preventable maternal deaths and ensuring gender equity. WHO classifies abortion as a critical component of reproductive healthcare, particularly when performed by trained professionals in a hygienic setting. Denial of such care, the organization notes, violates the principles of medical ethics, non-maleficence, and human dignity.

Furthermore, the Maputo Protocol (adopted by the African Union) and the Beijing Platform for Action reaffirm the commitment of states to

safeguard reproductive autonomy. Though these frameworks may vary in geographical scope, they reinforce the growing consensus that access to abortion is a matter of rights, not discretion.

2. The Challenge of Aligning National Laws with International Human Rights

Aligning Indonesia's domestic abortion laws with international human rights standards presents a complex legal and socio-cultural challenge, largely due to the interplay between secular law and religious morality. Although Indonesia is a signatory to several core international human rights instruments—such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR)—the country's national legislation continues to restrict abortion except in limited circumstances. The Health Law No. 36 of 2009 and the Indonesian Criminal Code (KUHP) still criminalize most abortion procedures, permitting them only in cases of rape, life-threatening medical conditions, or fetal abnormalities, and even then, under strict regulatory and procedural controls.

This narrow scope of legality falls short of international human rights expectations, which advocate for broader reproductive autonomy and access to safe abortion as a fundamental component of the right to health, life, and non-discrimination. International monitoring bodies, including the CEDAW Committee and UN Human Rights Council, have repeatedly called for the decriminalization of abortion and the removal of excessive barriers that prevent women from accessing reproductive healthcare services. However, such recommendations often encounter resistance at the domestic level, where religious values—especially those derived from Islamic jurisprudence (*fiqh*)—strongly influence both legal interpretation and public policy.

In Indonesia, the tension arises from the fact that while the legal system is formally secular, its policymaking and legal outcomes are often shaped by the moral perspectives of a Muslim-majority population. Many lawmakers, religious authorities, and segments of the public view liberalization of abortion laws as a direct challenge to Islamic ethical norms, which typically prohibit abortion beyond the ensoulment stage (approximately 120 days of gestation), and even before that, only allow it in tightly circumscribed circumstances. As a result, legal reform efforts aimed at expanding abortion access are

frequently met with socio-political opposition, and policymakers are reluctant to appear as contradicting religious norms for fear of public backlash or accusations of moral relativism.

Moreover, there is a tendency toward selective implementation of international human rights obligations in Indonesia, particularly when such obligations are perceived to conflict with cultural or religious values. This selective approach undermines the universality and indivisibility of human rights, resulting in fragmented reproductive policies that leave many women—especially the poor, rural, and marginalized—without safe, legal, and affordable abortion services. The legal ambiguity and bureaucratic obstacles also contribute to legal insecurity, discouraging healthcare providers from offering abortion services even when the law technically allows it.

Therefore, while Indonesia has demonstrated formal commitments to international human rights, aligning its national abortion laws with these standards remains a deeply contested process. True harmonization would require not only legislative change but also broader efforts to reconcile religious values with human rights discourse, foster public education on reproductive health, and create inclusive platforms for dialogue between religious scholars, legal experts, women's rights advocates, and policymakers.

3. Possible Legal Reforms

Amid increasing pressure from international human rights bodies and domestic advocacy groups, Indonesia is gradually engaging in legal and policy debates concerning the reform of its abortion laws. These discussions aim to bring national legislation more in line with global human rights standards while navigating the deeply embedded religious and cultural frameworks that shape Indonesian society. The potential for reform reflects an evolving awareness of the health risks, legal inequities, and gender-based discrimination caused by the current restrictive legal regime.

Among the key proposals for reform is the broadening of legal exceptions for abortion beyond the limited grounds currently recognized—namely, rape-induced pregnancies, threats to the mother's life, or severe fetal anomalies. Human rights advocates argue for expanding access to include circumstances involving mental health risks, socioeconomic hardship, or cases where pregnancy would significantly burden the woman's well-being and life prospects. These

additions would provide a more comprehensive and humane approach that reflects women's lived realities.

Equally important is the push for decriminalization of abortion under specified conditions. At present, the criminalization of abortion deters both women and medical professionals from pursuing or providing safe services, even when abortion is legally permissible. Removing criminal penalties and replacing them with a regulatory health-based model would help shift the discourse from punishment to public health and rights protection, aligning Indonesian policy with WHO guidelines and CEDAW recommendations.

Additionally, reform advocates call for greater institutional support through improvements in reproductive health infrastructure, including training for healthcare providers, clear clinical guidelines, and the availability of counseling services. Public education campaigns on sexual and reproductive health rights are also essential to reduce stigma and promote informed decision-making, particularly in rural and conservative areas.

However, these reform efforts must carefully consider the Islamic moral framework that heavily influences Indonesian legal culture. Any proposed change must be framed not as a rejection of religious values but as a contextual interpretation of Islamic ethics in light of contemporary health and social realities. For instance, Islamic jurisprudence contains flexibilities (*istislah*, *darurah*) that can be invoked to justify legal reform when it serves the public interest (*maslahah*) and protects life and dignity—principles that resonate with human rights goals.

A balanced legal reform strategy, therefore, requires inclusive dialogue involving religious scholars (*ulama*), medical professionals, women's rights organizations, legal experts, and policymakers. Building consensus around shared values—such as the protection of life, justice, and dignity—can create a culturally legitimate pathway for reform that respects both religious sensibilities and women's rights. Ultimately, sustainable legal reform in Indonesia must strive to reconcile moral tradition with modern legal standards, ensuring that women are not forced to choose between their faith, safety, and autonomy.

Conclusion

The legal and ethical discourse surrounding abortion in Indonesia is marked by a complex intersection of state law, Islamic jurisprudence, and international human rights norms. This paper has explored how

Indonesian abortion laws—primarily derived from Health Law No. 36 of 2009 and the Criminal Code—permit abortion under limited conditions such as rape, threats to maternal life, or severe fetal abnormality, while still largely reflecting the moral conservatism rooted in Islamic teachings. In parallel, classical and contemporary Islamic legal interpretations prohibit abortion after ensoulment (120 days) but offer varying degrees of permissibility before that stage based on specific conditions, revealing both flexibility and constraint within Islamic legal thought.

These overlapping frameworks produce a legal landscape that is often ambiguous, with selective implementation, legal uncertainties, and social stigmas that disproportionately affect women's autonomy, particularly those from vulnerable or rural communities. The analysis also underscores the significant role of religion in shaping judicial attitudes and public opinion on abortion, often creating friction with Indonesia's secular commitments under international human rights instruments such as CEDAW, ICCPR, and ICESCR.

The implications for legal reform are both urgent and sensitive. As Indonesia continues to modernize its healthcare and legal systems, reforming abortion laws will require a delicate balance between upholding women's reproductive rights and respecting religious values that remain central to Indonesian identity. This necessitates an approach rooted in dialogue, inclusivity, and contextual interpretation of Islamic ethics—especially by engaging religious scholars, legal experts, medical professionals, and civil society.

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“Governments who manipulate population growth have two choices: making maternity pleasant, or making it inescapable.”

– Kate Millett, *Sexual Politics*

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