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Between Medical Necessity and Penal Prohibition: Maqāṣid al-Syarī'ah as a Reconstructive Framework for Abortion Law in Indonesia

Rizki Amar[1*], Isyaq Maulidan[2]and M. Rafli Kurniawan[3]
[1]Institut Agama Islam Miftahul Ulum Tanjungpinang, Kepulauan Riau, Indonesia
[2]Universitas Sunan Gresik, Jawa Timur, Indonesia
[3]Mutah University Al-Karak, Jordan

*Corresponding Author: rizkiamar123456@gmail.com

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Abstract

This research examines the reconstruction of abortion law in Indonesia through the tension between criminal prohibition and the medical necessity of saving women's lives. The 1946 Criminal Code criminalized abortion without exception, while the New Criminal Code (Law No. 1 of 2023, in force since January 2026) exempts medical emergencies and sexual-violence pregnancies within fourteen weeks, yet retains penalties. Meanwhile, the Indonesian Ulema Council (MUI), through Fatwa No. 4 of 2020, recognizes abortion in cases of medical emergency and severe genetic defect. Using normative legal research with statutory, fatwa, and conceptual approaches, the study analyzes Law No. 1 of 2023, Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024, and MUI Fatwa No. 4 of 2020, supplemented by comparison with the United States and the Netherlands. It applies *maqāṣid al-syari'ah* at the level of *ḍarūriyyāt*, particularly the protection of life (*ḥifẓ al-nafs*), to evaluate the proportionality between criminal prohibition and public welfare (*maṣlaḥat al-'ammah*). The findings show that abortion in medical emergencies is legally and theologically defensible, and that MUI fatwas, read through *maqāṣid*, justify three categories: threats to the mother's life, severe irreversible genetic defects, and pregnancy from rape. Even after the New Criminal Code, the framework still under-protects *ḥifẓ al-nafs*: mental health threats are not expressly covered, the fourteen-week limit ignores late-detected pregnancies, and penalties deter physicians. The study recommends a legal reasoning model bridging religious and state law through *maqāṣid* grounded in *ḍarūrah*, while advancing women's substantive equality in reproductive health

Info Artikel

Kata Kunci:
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Abstrak

Penelitian ini meneliti rekonstruksi hukum aborsi di Indonesia melalui ketegangan antara larangan pidana dan kebutuhan medis untuk menyelamatkan nyawa perempuan. Kitab Undang-Undang Pidana 1946 mengkriminalisasi aborsi tanpa pengecualian, sementara Kitab

Hak Kesehatan Reproduksi Perempuan	Undang-Undang Pidana Baru (Undang-Undang No. 1 tahun 2023, berlaku sejak Januari 2026) membebaskan keadaan darurat medis dan kehamilan akibat kekerasan seksual dalam waktu empat belas minggu, namun tetap memberikan sanksi. Sementara itu, Dewan Ulama Indonesia (MUI), melalui Fatwa No. 4 tahun 2020, mengakui aborsi dalam kasus keadaan darurat medis dan cacat genetik berat. Dengan menggunakan penelitian hukum normatif dengan pendekatan undang-undang, fatwa, dan konseptual, studi ini menganalisis Undang-Undang No. 1 tahun 2023, Undang-Undang No. 17 tahun 2023, Peraturan Pemerintah No. 28 tahun 2024, dan MUI Fatwa No. 4 tahun 2020, dilengkapi dengan perbandingan dengan Amerika Serikat dan Belanda. Istilah ini menerapkan *maqāṣid al-syarī'ah* pada tingkat *ḍarūriyyāt*, khususnya perlindungan jiwa (*ḥjikaẓ al-nafs*), untuk mengevaluasi proporsionalitas antara larangan pidana dan kesejahteraan umum (*maṣlaḥat al-'āmmah*). Temuan menunjukkan bahwa aborsi dalam keadaan darurat medis dapat dipertahankan secara hukum dan teologis, dan fatwa MUI, jika dibaca melalui *maqāṣid*, membenarkan tiga kategori: ancaman terhadap nyawa ibu, cacat genetik berat yang tidak dapat diperbaiki, dan kehamilan akibat pemerkosaan. Bahkan setelah Kitab Undang-Undang Pidana Baru, kerangka kerja masih kurang melindungi *ḥjikaẓ al-nafs*: ancaman kesehatan mental tidak secara eksplisit dicakup, batas empat belas minggu mengabaikan kehamilan yang terdeteksi terlambat, dan hukuman menghalangi dokter. Studi ini merekomendasikan model penalaran hukum yang menjembatani hukum agama dan negara bagian melalui *maqāṣid* yang berlandaskan pada *ḍarūrah*, sekaligus memajukan kesetaraan substantif perempuan dalam kesehatan reproduksi

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INTRODUCTION

Abortion refers to the termination of pregnancy before the fetus is capable of independent survival outside the womb, normatively before twenty weeks of gestation or before the fetus reaches 500 grams (Abdullah, 2021). In the Indonesian context, abortion constitutes a highly complex issue involving intersecting legal, medical, religious, and ethical dimensions that frequently stand in tension with one another (Triandani et al., 2024). The World Health Organization estimates that approximately 45 million abortions occur annually worldwide, of which nearly 45% are classified as unsafe, contributing to around 67,000 maternal deaths each year approximately 13% of global maternal mortality (WHO, 2025). In Indonesia specifically, complications from unsafe abortion contribute approximately 17.1% to the national maternal mortality rate, with 36% of abortions performed by non-medical personnel and 95% of rural abortion services occurring within unregulated private sectors (Giorgio et al., 2020; Ratna Kusumawati et al., 2023). These

figures expose a fundamental contradiction: while abortion is criminalized in the name of protecting life, restrictive legal policies simultaneously create structural conditions that endanger women's lives through unsafe practices (Bearak et al., 2020).

Normatively, Indonesian abortion regulation is fragmented across several layers of legislation. The colonial-era Criminal Code (Law Number 1 of 1946), Law Number 36 of 2009 concerning Health, and Government Regulation Number 61 of 2014 concerning Reproductive Health long generated ambiguity regarding criminal liability for healthcare providers, pregnant women, or both (Rosnani et al., 2025; Winoto, 2020). This framework has since been reformed. The New Criminal Code (Law Number 1 of 2023, in force since 2 January 2026) retains abortion as an offense but exempts medical emergencies and pregnancies resulting from rape or other sexual violence within fourteen weeks, while Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024 replace the earlier health-law instruments. Yet the exceptions remain narrow and criminal penalties are retained. Against this statutory landscape, MUI Fatwa Number 4 of 2020 offers a contrasting normative logic by permitting abortion under conditions of *ḍarūrah* (emergency necessity), including threats to the mother's life and severe irreversible fetal abnormalities, reflecting a contextual and purposive Islamic legal reasoning that continues to diverge from the punitive orientation of state law (Rizani et al., 2024).

Existing scholarship has largely approached this tension through doctrinal and procedural lenses. Abdullah, Ratna Kusumawati et al., and Sakti et al. focus predominantly on criminal sanctions and comparative statutory analysis (Abdullah, 2021; Ratna Kusumawati et al., 2023; Sakti et al., 2024). Arif examines procedural requirements under the now-replaced Government Regulation No. 61/2014 (Rosnani et al., 2025). Although Uthman Mehdad Al-Turabi and Auda gesture toward Islamic jurisprudential considerations, no study has systematically employed *maqāṣid al-syarī'ah* as a reconstructive framework to resolve the normative contradiction between criminal prohibition, public health imperatives, and Islamic legal principles within the Indonesian context (Uthman Mehdad Al-Turabi & Auda, 2025). Without a *maqāṣid*-grounded reconstruction, the legal system remains anchored in a punitive paradigm that, despite recent reforms, fails to fully accommodate contemporary medical realities and constitutional obligations toward women as independent legal subjects.

Building upon this background, this article formulates two research questions. First, how does the structural dichotomy between the criminal prohibition retained in Law

Number 1 of 1946 and Law Number 1 of 2023 and the medical exceptions recognized in MUI Fatwa Number 4 of 2020 generate normative tension within Indonesia's abortion law framework?. Second, how can *maqāṣid al-syarī'ah*, particularly the principle of *ḥifẓ al-nafs* at the level of *ḍarūriyyāt*, serve as a reconstructive framework for resolving the contradiction between criminal prohibition and medical necessity in Indonesian abortion law?. In addressing these questions, this article also examines the abortion law frameworks of the United States and the Netherlands as comparative legislative models in order to identify alternative approaches that are more proportionate in balancing criminal prohibition with medical necessity and women's reproductive rights. Based on these considerations, this article seeks to reconstruct abortion law in Indonesia through the perspective of *maqāṣid al-syarī'ah* by positioning the protection of human welfare as the primary objective of legal regulation (Zaprulkhan, 2020).

This article argues that, even after the New Criminal Code, Indonesian abortion law remains caught between narrow criminal exceptions and the broader medical-necessity grounds recognized by MUI Fatwa Number 4 of 2020, and that *maqāṣid al-syarī'ah*, particularly *ḥifẓ al-nafs*, justifies abortion in medical emergencies, severe irreversible genetic defects, and pregnancy resulting from rape. It contributes by positioning *maqāṣid al-syarī'ah* as a reconstructive framework, rather than a merely descriptive lens, for bridging religious and state law in Indonesia's abortion regulation. The article is organized into five sections: this introduction, the research method, the structure of abortion regulation and the MUI Fatwa, the *maqāṣid*-based analysis with comparative perspectives and the proposed reconstruction, and the conclusion.

RESEARCH METHOD

This study employs a normative legal research method with a qualitative approach. Normative legal research refers to research focused on legal norms embodied in statutory regulations, judicial decisions, and legal literature. The qualitative approach is employed to obtain an in-depth and holistic understanding of the meanings, contexts, and interpretations embedded within various primary and secondary legal sources, as well as to uncover the normative nuances underlying the interaction between positive law and Islamic law (Bisri, 2004). The research data are derived from primary and secondary legal documents. Primary data consist of: (1) Law Number 1 of 1946 concerning the Indonesian Criminal Code (Articles 346–350) and Law Number 1 of 2023 concerning the Criminal

Code (Articles 463–465); (2) Law Number 36 of 2009 concerning Health (Articles 15, 75, 80, and 194), Law Number 17 of 2023 concerning Health (Articles 60, 428, and 429), and Government Regulation Number 28 of 2024 (Articles 116–124); and (3) the Indonesian Ulema Council Decree Number 4 of 2020 concerning Abortion of Fetuses with Genetic Disease Indications. Secondary data include: (1) fiqh literature, health law literature, and academic journals discussing abortion from legal, medical, and ethical perspectives; (2) reports issued by the WHO and other international health institutions concerning the epidemiology of abortion; and (3) comparative legal materials on abortion regulation in the United States and the Netherlands.

The first stage involved statutory interpretation. Articles 346–350 of the 1946 Criminal Code, Articles 463–465 of the New Criminal Code, Articles 75, 80, and 194 of the 2009 Health Law, Articles 60, 428, and 429 of the 2023 Health Law, and Articles 116–124 of Government Regulation Number 28 of 2024 were examined using grammatical, systematic, and teleological methods of interpretation to identify the scope, limitations, and remaining contradictions of each provision. Particular attention was given to the transition from the old to the new framework, the narrowness of the statutory exceptions, and the absence of a mechanism that fully reconciles criminal prohibition, health-law exceptions, and religious norms.

The second stage involved fatwa analysis. At this stage, MUI Fatwa Number 4 of 2020 was examined through its doctrinal structure by identifying the Islamic jurisprudential categories that underpin its legal reasoning, namely *ḍarūrah* (necessity) and *ḥājah* (pressing need). The fatwa was analyzed with reference to classical Islamic legal sources, particularly *al-Muwāfaqāt* by al-Shāṭibī, to assess the extent to which its reasoning is consistent with the established hierarchy of *maqāṣid al-syarī'ah*, namely *ḍarūriyyāt* (primary necessities), *ḥājiyyāt* (complementary needs), and *taḥsīniyyāt* (refinements or embellishments).

The third stage involved *maqāṣid* mapping. At this stage, the legal provisions and fatwa rulings were systematically evaluated based on the five fundamental objectives of Islamic law (*al-maqāṣid al-khamsah*), namely *ḥifẓ al-dīn* (protection of religion), *ḥifẓ al-nafs* (protection of life), *ḥifẓ al-'aql* (protection of intellect), *ḥifẓ al-nasl* (protection of lineage), and *ḥifẓ al-māl* (protection of property). The prohibitions contained in the Criminal Code (KUHP), the exceptions provided under the Health Law, and the provisions of the MUI Fatwa were each mapped against these five *maqāṣid* dimensions to produce a comparative

normative matrix (As-Syatibi, 2004). It is then supplemented by a comparative legal analysis that compares abortion regulations in the United States and the Netherlands. These two countries were chosen because they represent different regulatory models in balancing criminal prohibitions, medical needs, and reproductive rights. This analysis aims to identify regulatory practices that can serve as a reference for abortion law reform in Indonesia.

RESULTS AND DISCUSSION

Indonesian Abortion Law: The Architecture of Prohibition and Its Contradictions

Indonesia's abortion law operates under a prohibition model directly inherited from the Dutch Penal Code of 1881, codified in Law No. 1 of 1946 (the Criminal Code or Kitab Undang-Undang Hukum Pidana/KUHP). Articles 346–350 establish a framework of absolute prohibition that fails to distinguish between different circumstances (Ashady & Dudy, 2023). Article 346 prohibits abortion without distinction, while Articles 347–349 stratify penalties based on consent and professional status:

Table 1. Criminal Provisions on Abortion under Articles 346–349 of the Indonesian Criminal Code

Article	Provision
346	General prohibition on abortion "Whoever intentionally causes a miscarriage without the woman's consent is threatened with a maximum prison sentence of twelve years."
347	Aggravated offense if woman dies maximum 12 years imprisonment.
348	Abortion with consent 5.5 years maximum 7 years if death results.
349	Enhanced penalties for medical professionals original penalty increased by one-third, plus revocation of medical license.

Source: Compiled by the author based on Articles 346–349 of the Indonesian Criminal Code (KUHP).

This framework operates under classical penology principles: the absence of exception clauses renders all abortion unlawful perse, regardless of medical necessity, fetal viability, or threat to maternal life. The KUHP mechanism presumes that legal differentiation is impossible, that if any abortion were permitted, it would undermine the deterrent effect of the prohibition. This reflects 19th-century positivist criminal theory; contemporary jurisprudence, however, recognizes necessity-based exceptions as consistent with rule of law principles.The prohibition model has not eliminated abortion in Indonesia; rather, it has displaced it into informal, unsafe channels. Data reveals the paradox at the

heart of absolute prohibition: women continue to seek abortion services, but through unregulated practitioners and unsafe methods, creating public health crises that the prohibition ostensibly aims to prevent (F. Firdaus et al., 2021).

The Ministry of Health estimates that unsafe abortion procedures result in 800,000 to 1.2 million cases annually in Indonesia a figure that dwarfs legal procedures under any proposed liberalized framework. Mortality data from the 2017 Indonesian Demographic and Health Survey (IDHS) indicates that complications from unsafe abortion remain among the top five causes of maternal death, alongside postpartum hemorrhage, infection, and hypertensive disorders. The World Health Organization classifies Indonesia as a high-burden country for unsafe abortion-related mortality(Saraswati, 2022).

The geographic distribution of these harms concentrates in rural and economically disadvantaged areas where:

1. Healthcare infrastructure is limited: Many regions lack access to emergency obstetric care, forcing women with pregnancy complications into delay-to-treatment patterns that increase mortality risk.
2. Information asymmetries are acute: Women in remote areas lack reliable knowledge of safe abortion options, turning instead to traditional healers (*dukun*), herbal practitioners, and informal medical networks.
3. Economic barriers compound access: Even where safe services exist, cost barriers prevent access leading women to seek cheaper, unregulated alternatives (Kuntari et al., 2010).

Demographic and Health Survey data across 44 countries, estimated that Indonesia experiences 32 unsafe abortions per 1,000 women of reproductive age annually among the highest rates globally. Critically, the prohibition has not reduced these rates; it has merely ensured they occur outside medical supervision. This empirical reality creates a moral and legal paradox the KUHP's prohibition, designed to protect fetal life, systematically undermines *hifẓ al-nafs* (protection of life) by exposing mothers to preventable mortality. From both constitutional and Islamic jurisprudential perspectives, this represents a failure to fulfill state obligations toward both mother and fetus (Rosnani et al., 2025).

In 2009, Law No. 36 on Health (*Undang-Undang Kesehatan*) introduced the first statutory exception to absolute prohibition, codified in Article 75(2):

> "Prohibitions as referred to in paragraph (1) may be excluded based on: (a) indications of medical emergencies detected from an early age of pregnancy, both

those that threaten the lives of mothers and/or fetuses, who suffer from severe genetic diseases and/or congenital defects, or which cannot be repaired making it difficult for the baby to live outside the womb; or (b) pregnancy due to rape which can cause psychological trauma to rape victims."

This provision represents significant doctrinal movement, a statutory recognition that absolute prohibition is unjust in medical emergencies and cases of sexual violence. However, the exception remains structurally insufficient for three reasons:

First, Jurisdictional Ambiguity: Article 75(2) operates within the Health Law framework, but Articles 346-350 of the KUHP remain simultaneously in force. No legal hierarchy explicitly subordinates KUHP prohibitions to Health Law exceptions. Consequently, a physician who performs abortion under Article 75(2) Health Law authority faces potential prosecution under Articles 347-349 KUHP, creating what legal theorists term "jurisdictional collision" two statutes issuing contradictory commands (F. Firdaus et al., 2021).

In 2009, Law No. 36 on Health (Undang-Undang Kesehatan), since replaced by Law No. 17 of 2023, introduced the first statutory exception to absolute prohibition, codified in Article 75(2):

1. Pregnancies involving severe fetal abnormalities detected after the narrow window of emergency definition.
2. Cases where the fetus, though not immediately life-threatening, will be born with conditions incompatible with extrauterine survival (such as anencephaly or severe renal agenesis)
3. Severe mental health crises in the pregnant woman (beyond immediate life threat).
4. Multiple pregnancies where fetal reduction is medically indicated to preserve maternal survival (Sihvo et al., 2003).

Third, Implementation Deficiency: Article 75(4) mandated that "further provisions regarding indications of medical emergencies and rape" be regulated by Government Regulation (Peraturan Pemerintah/PP). For roughly fifteen years after the Health Law's enactment, no such PP was issued, leaving the exception operationally incomplete. This created what Indonesian legal scholars term ius incertum: law whose precise content remains undefined. The result was a bifurcated and contradictory legal landscape in which one statute (KUHP) prohibited absolutely while another (Health Law) permitted narrowly and ambiguously, in tension with the constitutional principle of lex certa (legal certainty),

which requires that penal statutes be clear, definite, and not subject to arbitrary interpretation (Ashady & Dudy, 2023). The Health Law was eventually replaced by Law No. 17 of 2023, and Government Regulation No. 28 of 2024 finally supplied implementing rules, but this came only after years of uncertainty for both physicians and patients.

The enactment of Law No. 1 of 2023 on the Criminal Code (the "New KUHP"), which took effect on 2 January 2026, marks a significant shift from the colonial-era prohibition model. Articles 463–465 retain abortion as a criminal offense but, for the first time, write exceptions directly into the criminal code itself. Article 463 sets a maximum penalty of four years' imprisonment for a woman who undergoes abortion, while Article 464 punishes any person who performs abortion with the woman's consent (up to five years) or without it (up to twelve years), with heavier penalties if the woman dies. Article 465 adds a further penalty for medical personnel who perform an unlawful abortion. Crucially, the New KUHP exempts abortion carried out on the basis of a medical emergency or on a pregnancy resulting from rape or other sexual violence, provided the gestational age does not exceed fourteen weeks. This responds to the "jurisdictional collision" criticized above, because the exceptions now sit in the same statute that defines the offense.

However, the New KUHP resolves the conflict only in part. Its exceptions largely mirror those of the Health Law (now Law No. 17 of 2023 and its implementing regulation, Government Regulation No. 28 of 2024), so the grounds for lawful abortion remain narrow. Severe fetal anomalies incompatible with life outside the womb and serious threats to the woman's mental health are still not clearly covered, even though the MUI Fatwa recognizes such cases under the principle of *hajah*. The fourteen-week limit also raises practical problems, since many rape survivors only report or realize the pregnancy after that window, and many fetal anomalies are detected later. In addition, the retained criminal penalties for women and providers continue to create a chilling effect, so physicians may still hesitate to act even where the law permits. The New KUHP therefore improves legal certainty but does not eliminate the structural tension between criminal prohibition, health-law exceptions, and the *maqasid*-based reasoning of Islamic jurisprudence.

On August 26, 2020, the Indonesian Ulema Council (*Majelis Ulama Indonesia*/MUI) issued Fatwa No. 4 of 2020 on Fetal Abortion Indicated by Genetic Defect. This fatwa represents the most authoritative contemporary Islamic legal pronouncement on abortion in Indonesia and deserves detailed analysis for its doctrinal sophistication and explicit

maqasid framework (Rizani et al., 2024). The MUI Fatwa establishes permissibility under two distinct grounds, each with explicit maqasid basis:

Table 2. Classification of Abortion Permissibility Based on the Principles of Darūrah and Ḥājah in Islamic Jurisprudence

Category	Condition	Doctrinal Authority
Darurat (Emergency)	Advanced malignancy (cancer), severe cavitary tuberculosis, or serious illness directly threatening maternal life	Qur'an 2:185; consensus on dharurat exceptions
Darurat	Pregnancy itself directly and imminently threatens maternal life/health	Maslahah principle; MUI precedent
Hajah	Fetus diagnosed prenatally with severe genetic/congenital defect incompatible with extrauterine life	Ibn al-Qayyim; contemporary Maliki scholarship
Hajah	Pregnancy resulting from rape, verified through authorized process (family council, medical evaluation, Islamic authority	MUI Fatwa 2005 (rape); consensus principle

Source: Compiled by the author based on classical and contemporary Islamic jurisprudential doctrines, the principles of ḍarūrah and ḥājah, and Indonesian Council of Ulama (MUI) Fatwa No. 4 of 2005 concerning Abortion.

The Fatwa's significance lies in its explicit recognition of *hajah* as a distinct permissibility ground distinct from, but related to, *dharurat* (emergency)(Rohim, 2022). This represents sophisticated Islamic jurisprudence:

1. Dharurat (emergency/necessity): The principle permitting what is otherwise prohibited (*haram*) when life itself is at imminent risk. This derives from Qur'anic principle (*Qur'an* 2:173; 5:3; 6:119): prohibition is lifted when death or severe harm is certain.
2. Hajah (hardship/substantial need): A broader principle recognized by scholars across Hanafi, Maliki, and contemporary Islamic jurisprudence, permitting what is normally prohibited when failure to permit would cause substantial harm even if not immediately life-threatening. Ibn al-Qayyim al-Jawziyyah's formulation of *hajah* as a category distinguishable from *dharurat* became foundational to modern Islamic legal theory (Rizani et al., 2024).

The MUI's adoption of both categories demonstrates jurisprudential maturity: it acknowledges that Islamic law contains resources to address not merely life-or-death emergencies, but also cases of severe hardship and foreseeable substantial harm precisely the category of therapeutic abortion encompassing severe fetal abnormalities and rape-related pregnancies.

Indonesian abortion law presents a triadic structural contradiction. This triadic structure creates what legal theorist H.L.A. Hart termed "rule uncertainty": practitioners and citizens lack clarity about what the law actually permits (Masood, 2023). Consider a physician treating a woman carrying a fetus with anencephaly, or one suffering a severe mental health crisis from pregnancy. The criminal code, even in its 2023 form, still threatens imprisonment and does not clearly recognize these grounds. The Health Law framework permits abortion only for medical emergencies and rape within a limited gestational window. The MUI Fatwa, by contrast, recognizes such cases as Islamically permissible under the principle of *hajah*. Although the New KUHP and Law No. 17 of 2023 have narrowed the earlier conflict between statutes, the absence of a coherent hierarchy between criminal law, health law, and religious-ethical authority still creates systemic harm: physicians avoid medically indicated procedures for fear of criminal liability, women resort to unsafe alternatives, and the state falls short of its constitutional duty to protect maternal health (Ansori et al., 2021).

Comparative Perspective: How Different Legal Systems Address Abortion in Emergency

Understanding Indonesia's legal reform possibilities requires situating current doctrine within global jurisprudential trajectories. The United States (common law tradition) and the Netherlands (civil law tradition Indonesia's own legal ancestry) both evolved from absolute prohibition toward regulated permission (Amar, Zahrah, et al., 2024). Analyzing these trajectories illuminates both the contingency of prohibition models and the feasibility of reform consistent with constitutional principles (Nggilu et al., 2025). English common law, inherited by the United States, developed the doctrine of *quickening* the mother's sensation of fetal movement, occurring approximately at 16-20 weeks gestation. Under this doctrine:

1. Pre-quickening abortion was treated as minor offense (*misdemeanor*)
2. Post-quickening abortion was treated as felony (*capital crime*)(Gibson, 1995)

The quickening doctrine rested on a false empirical premise, that fetal life begins with

maternal perception of movement. As 19th-century medical science advanced particularly through embryology and obstetrics this premise collapsed. Fetal development, scientists demonstrated, occurs as continuous biological process life does not begin at quickening but at conception, with differentiation occurring progressively through gestation. By the mid-20th century, American medical practice recognized that quickening reflected only maternal sensory threshold, not biological reality. Yet criminal law continued to treat quickening as legally dispositive creating a divergence between law and medical reality(Kulczycki, 2011).

A critical catalyst for American abortion law change was religious doctrine. The Catholic Church historically distinguished between *embryo inanimatus* (unsouled fetus, before ensoulment) and *embryo animatus* (ensouled fetus). Abortion of an unsouled fetus, while sinful, carried different moral weight than abortion of an ensouled being. In 1869, Pope Pius IX eliminated this distinction through papal declaration (*ex cathedra*), establishing that all abortion at any stage incurs automatic excommunication (Atmadja, 2020). This represented not merely theological evolution but institutional pressure on American political systems: Catholic institutional influence, particularly through hospital networks and political organization, amplified anti-abortion advocacy. Paradoxically, this religious intensification created countervailing pressure: secular legal theory increasingly questioned whether religious doctrine should determine criminal law. This tension between religious authority and secular legal rationality became central to American abortion jurisprudence (Roth, 2023).

On June 24, 2022, the U.S. Supreme Court, through Dobbs v. Jackson Women's Health Organization, overturned the precedent established in Roe v. Wade by holding that the United States Constitution does not confer a fundamental right to abortion, thereby returning the authority to regulate abortion to individual states. In the aftermath of *Dobbs*, abortion law in the United States became highly fragmented: thirteen states with "trigger laws" immediately criminalized abortion some with little or no exceptions while twenty-four states continued to permit abortion with varying restrictions, particularly based on gestational limits, and other states maintained more liberal access to abortion (Zeng, 2024). This fragmentation demonstrates that both prohibition and permissibility models are legally contingent; *Roe* was not an inevitable consequence of common law tradition, but rather a judicial construction of constitutional doctrine. Its reversal further illustrates that even long-established precedents may be overturned when the ideological orientation of the courts shifts. For Indonesia, this development provides an important lesson that the U.S.

legal system evolved from an absolute prohibition model in the eighteenth and nineteenth centuries toward a regulated permissibility framework grounded in privacy rights during the 1973–2022 period, before transforming into a fragmented post-2022 regime, thereby revealing that the evolution of abortion law always contains both possibilities for reform and risks of normative instability(Arceneaux, 2002).

The Netherlands, in 1881, enacted a Penal Code (Articles 295-298) that criminalized abortion absolutely identical to provisions later adopted by Indonesia through Law No. 1 of 1946. The Dutch model was:

> "Article 295: A woman who intentionally causes herself to miscarry or procures this, or requests or accepts gifts for this purpose, shall be punished with imprisonment of not more than three years or a fine of not more than three hundred guilders."

This Dutch framework inherited the same 19th-century prohibition logic as Indonesia adopted. Yet the Dutch legal system's subsequent evolution provides critical comparative evidence: a jurisdiction sharing Indonesia's legal ancestry recognized that absolute prohibition caused greater harm than regulated permission (Atmadja, 2020).

Dutch legal scholars, particularly Van Tienhoven and later Bogaard, criticized the absolute prohibition of abortion on both practical and moral grounds. They argued that criminalization had empirically failed because it did not reduce abortion rates, but merely displaced abortion into unsafe and clandestine channels. They further contended that sanctions of up to three years' imprisonment were grossly disproportionate compared to other criminal offenses, while the prohibition itself generated systemic harm by encouraging unsafe medical practices that contributed to preventable maternal mortality. In addition, physicians who were legally unable to perform safe abortion procedures were often forced either to refer women to unsafe practitioners or to allow medical complications to develop without adequate treatment. Bogaard consequently concluded that penalties for abortion should not exceed one month's imprisonment, a dramatic reduction that implied that absolute criminalization had itself become a form of injustice rather than protection (Surjadjaja, 2008).

Following seven parliamentary bills introduced between 1970 and 1979, the Netherlands enacted the *Abortion Disbursement Act* (*Wet Afbreking Zwangerschap*), which came into force on May 1, 1981 (Stb. 1981:257). The statute decriminalized abortion up to twelve weeks of gestation without requiring therapeutic justification, while simultaneously establishing procedural safeguards such as mandatory waiting periods, counseling, and

physician verification. The law also annulled Articles 295–298 of the Dutch Penal Code, thereby abolishing a prohibition regime that had existed for nearly a century, and further permitted abortion beyond twelve weeks in cases of medical necessity or severe fetal abnormality. Although the twelve-week limit broadly corresponds with Islamic doctrines concerning ensoulment, this alignment was historically coincidental rather than intentionally theological, reflecting instead obstetric consensus regarding the stage at which pregnancy becomes medically established and women's autonomous decision-making capacity is most significant (Atmadja, 2020).

A subsequent amendment in 1997 expanded the permissibility of late abortion in cases of severe fetal abnormality or maternal medical emergency. Internationally, Dutch abortion law is categorized as a "privacy model," which permits abortion upon request during an early gestational period on the basis that reproductive decisions constitute part of bodily autonomy and privacy rights. Similar frameworks exist in countries such as Germany, France, Singapore, China, Russia, and Japan. According to the comparative analysis conducted by Rahman et al. in 2008, approximately forty-nine countries worldwide around 27 percent of United Nations member states have adopted variants of this privacy model, placing the Netherlands among the progressive pioneers of global abortion regulation (Suryana & Sani Utami, 2024).

Reconstructing Abortion Law Through Maqāṣid al-Syarī'ah

The Maqasid al-Shariah (objectives of Islamic law) constitutes the primary analytical framework of this study. Maqasid jurisprudence evaluates legal questions against the broader objectives of preserving human welfare (Amar, Pratama Dharma, et al., 2024). The framework operates through two key doctrines darurat (necessity) where an act otherwise prohibited becomes permissible to avert greater harm and hajah (hardship) where difficulty creates an exception even absent life-threatening danger. The classical principle of akhaffudh dharurain (choosing the lesser of two harms) directly governs the mother-fetus conflict (H. Firdaus, 2017).

On one hand, the prohibition retained in the Criminal Code (KUHP) aims for *hifẓ al-nasl* (protection of lineage/fetal life), yet its actual effect violates *hifẓ al-nafs* (protection of life) by driving women toward unsafe procedures (Rohim, 2022). From a jurisprudential standpoint, this prohibition defeats its own purpose; when two *maqāṣid* conflict, the protection of the mother's life as a fundamental necessity must supersede the derivative

protection of the fetus. While the New Criminal Code, Law Number 17 of 2023 on Health, and Government Regulation Number 28 of 2024 attempt to bridge this gap through medical emergency and sexual-violence exceptions, they remain an incomplete operationalization of *Maqāṣid* because the grounds stay narrow, serious mental health threats are not expressly covered, and the fourteen-week limit is rigid, leaving uncertainty in practice (Nasution et al., 2026).

In contrast, the MUI Fatwa demonstrates a more sophisticated and integrated *Maqāṣidī* reasoning by accommodating both emergency and substantial hardship grounds. By allowing abortion under specific criteria, the fatwa aligns with *ḥifẓ al-nafs* through maternal protection and addresses *ḥifẓ al-nasl* and *ḥifẓ al-'aql* by considering the quality of life in cases of severe fetal impairment (Rizani et al., 2024). It further reflects *ḥifẓ al-māl* (protection of property) by mitigating extreme economic burdens and promotes *maṣlaḥah al-'āmmah* (public welfare) through regulated medical practice (Amar, Maulidan, et al., 2024). Ultimately, the core issue is not a deficiency in Islamic jurisprudence, but rather the disconnect between these nuanced religious rulings and a restrictive secular criminal law that fails to mirror such comprehensive ethical reasoning (Sakti et al., 2024).

Based on the *maqāṣid* analysis, this study proposes an integrated reconstruction of the existing framework consisting of four principal elements. The first element is the decriminalization of therapeutic abortion within clearly defined parameters. This reconstruction proposes amending Article 463(2) of the New Criminal Code, with corresponding alignment of Article 60 of Law Number 17 of 2023 and Articles 116–118 of Government Regulation Number 28 of 2024, so that abortion remains prohibited except under conditions determined by qualified medical authorities and Islamic legal authorities, and performed by licensed healthcare providers in accredited medical facilities (Suwandono & Busyra, 2025). The first condition concerns medical emergencies (*dharūrah*), namely circumstances in which pregnancy poses a genuine and imminent threat to the life or severe health of the mother, verified through consultation with at least two qualified physicians and where no alternative treatment with comparable efficacy is available. In such cases, no gestational limit is imposed because the principle of *dharūrah* applies throughout the entire duration of pregnancy (Triandani et al., 2024).

The second condition concerns severe fetal abnormalities (*ḥājah* grounded in genetic or congenital factors), namely situations in which the fetus is prenatally diagnosed with

abnormalities incompatible with extrauterine survival or likely to cause profound suffering if born, such as anencephaly, severe renal agenesis, severe cardiac defects incompatible with corrective surgery, or severe genetic disorders leading to early death. Such diagnoses must be confirmed by two qualified specialists with relevant expertise, and the gestational limit for this indication is set at twenty weeks (Dayan et al., 2020). The third condition concerns pregnancies resulting from rape or incest (*ḥājah* grounded in psychological and social considerations), verified through either a criminal complaint submitted to law enforcement authorities or determination by an authorized family council in consultation with Islamic legal authorities and healthcare providers. In addition, a psychological assessment conducted by a qualified mental health professional must demonstrate a substantial risk of severe psychological harm should the pregnancy continue. In such circumstances, the gestational limit is restricted to sixteen weeks (Mohammed, 2020).

This reconstructive proposal is grounded upon several rationales. First, the decriminalization of therapeutic abortion resolves the current legal ambiguity that forces healthcare providers to choose between medical ethics and criminal liability. Second, the framework operationalizes the maqāṣid al-syarīʿah by balancing the protection of *ḥifẓ al-nafs* and *ḥifẓ al-nasl* through structured legal exceptions. Third, the proposed gestational limits are aligned with both the Islamic doctrine of ensoulment and contemporary international medical standards. Fourth, procedural verification mechanisms are designed to prevent arbitrary abortion decisions and minimize the potential for abuse. Fifth, the framework maintains fidelity to Islamic jurisprudence by explicitly grounding permissibility within the principles of *dharūrah* and *ḥājah* (Rohim, 2022).

The second element concerns statutory harmonization. The New Criminal Code now places the exceptions within the criminal code itself (Article 463(2)), and Article 60 of Law Number 17 of 2023 refers back to it. The remaining problem is therefore less about which statute prevails than about the mismatch between narrow criminal exceptions, the implementing rules in Government Regulation Number 28 of 2024, and religious-ethical norms. This reconstruction proposes expanding the exceptions in Article 463(2) to mirror the three conditions above, and adding a provision that healthcare providers acting in accordance with those conditions and procedures shall not be prosecuted under Articles 463–465. This seeks to eliminate double criminalization, strengthen *lex certa*, and ensure that the exceptions function in practice rather than remaining merely normative (Anindya Prima Digantari, 2021; Ariyad & Masyhar, 2020a).

The third element involves the establishment of a procedural framework operationalizing consultation and informed consent. This reconstruction proposes the issuance of a Government Regulation as mandated by Article 75 paragraph (4) of the Health Law. The regulation should establish a verification team consisting of two qualified physicians, namely the primary attending physician and an independent specialist relevant to the medical indication, such as obstetrics, perinatology, or psychiatry (Ariyad & Masyhar, 2020b). In addition, consultation with Islamic legal authorities, including imams, fatwa council members, or qualified Islamic jurists, is required to confirm that therapeutic abortion falls within the scope of permissibility under the principles of *dharūrah* and *ḥājah* (Jayadimuda & Amar, 2024). In rape-related cases, psychological counseling and verification by an authorized family council or relevant authority regarding the psychological impact on the victim are also required. All procedures must be comprehensively documented, including medical diagnoses, diagnostic procedures undertaken, risk assessments, alternative treatments considered, consultation findings, psychological evaluations, and written informed consent obtained from the pregnant woman without coercion (Gultom & Maryani, 2024). Furthermore, gestational age verification through ultrasonography or other recognized medical methods is necessary to ensure compliance with the legally permitted gestational limits. Following the procedure, the patient must receive psychological counseling and medical follow-up to prevent post-procedural complications, while aggregate non-identifying data should be reported to the Ministry of Health for monitoring purposes (Leksono et al., 2025).

The fourth element concerns legal protection and professional standards for healthcare providers. This reconstruction proposes a statutory provision stipulating that healthcare providers performing abortion pursuant to Article 75 paragraph (2) of the Health Law and in accordance with established protocols shall not incur criminal liability or professional sanctions solely on the basis of performing abortion (Ratna Kusumawati et al., 2023). Legal responsibility shall arise only where the procedure is conducted outside the permitted gestational limits or indications, where consultation and verification procedures are not followed, where informed consent is improperly obtained, where medical negligence causes injury, or where fraud or misrepresentation occurs in determining the medical indication. This provision is intended to eliminate the current legal uncertainty that discourages physicians from performing medically necessary procedures, encourage ethical and safe medical practice, and align Indonesian law with international medical standards

recognizing therapeutic abortion as legitimate healthcare(Winoto, 2020).

The reconstructive framework systematically integrates the principles of maqāṣid al-syarī'ah. From the perspective of *ḥifẓ al-nafs* (protection of life), the medical emergency exception directly operationalizes the protection of life through the principle of *dharūrah*. The decriminalization of therapeutic abortion also removes structural incentives driving women toward unsafe abortion practices, thereby protecting women's lives not only at the individual level but also within the legal system as a whole. Strict medical regulation further ensures that abortion procedures are conducted safely and professionally in order to preserve maternal health and life (Jalili et al., 2024). With respect to *ḥifẓ al-nasl* (protection of lineage), the framework does not permit unrestricted abortion on demand, but instead maintains protection of fetal life through gestational limitations, the requirement of genuine medical necessity, and rigorous medical and genetic consultation procedures. The recognition of severe fetal abnormalities as grounds for therapeutic abortion reflects the Islamic understanding that life should not be condemned to profound suffering. Accordingly, compelling the continuation of pregnancies involving severe and fatal fetal abnormalities may itself contradict the objective of protecting lineage and human dignity (Ramadhita et al., 2023).

The principle of *ḥifẓ al-'aql* (protection of intellect) is implemented through counseling and informed consent mechanisms that respect women's intellectual autonomy and rational decision-making capacity. The requirement of consultation with multiple authorities medical, psychological, and Islamic also reflects the Islamic principle of *shūrā*, emphasizing collective deliberation and prudent decision-making. In rape-related pregnancies, the framework protects the psychological integrity and mental well-being of women, thereby further operationalizing *ḥifẓ al-'aql* (F. Firdaus et al., 2021). Meanwhile, the principle of *ḥifẓ al-māl* (protection of property) is indirectly reflected in the permissibility of therapeutic abortion in cases involving severe fetal abnormalities. This consideration relates to the possibility of severe economic devastation experienced by families required to bear extraordinary medical expenses associated with profound and terminal disabilities. Although economic considerations do not constitute the primary justification, they remain a legitimate maqāṣidī consideration within the framework of *ḥājah*. Finally, the principle of *ḥifẓ al-dīn* (protection of religion) is preserved through the explicit grounding of abortion decision-making within Islamic jurisprudential principles, including *dharūrah*, *ḥājah*, *shūrā*,

and *maṣlaḥah*. Consequently, this reconstructive framework does not merely import Western liberal abortion paradigms, but rather achieves comparable legal outcomes through an Islamic normative framework (Mudawam, 2021). Accordingly, the proposed reconstruction builds upon, rather than replaces, the exceptions already recognized in the New Criminal Code and Government Regulation Number 28 of 2024.

CONCLUSION

This study has addressed its two research questions as follows. First, the structural dichotomy between the criminal prohibition retained in Law Number 1 of 1946 and Law Number 1 of 2023 and the medical exceptions recognized in MUI Fatwa Number 4 of 2020 produces normative tension through three principal mechanisms: the earlier jurisdictional collision between the Criminal Code and the Health Law, which the New Criminal Code resolves only in part; the definitional narrowness of the statutory exceptions, including the fourteen-week limit and the absence of an express mental health ground; and an implementation gap, since Government Regulation Number 28 of 2024 now exists but the exceptions still face practical barriers to application. Second, *maqāṣid al-syarī'ah*, particularly the principle of *ḥifẓ al-nafs* at the *ḍarūriyyāt* level, provides a coherent reconstructive framework by establishing that when criminal prohibition demonstrably endangers maternal life through unsafe abortion practices, the prohibition itself becomes *maqāṣid*-contradicting and must yield to the principle of *ḍarūrah*. The comparative analysis of the United States and the Netherlands further demonstrates that other jurisdictions have moved from absolute prohibition toward regulated permissibility models, indicating that analogous reform is feasible in Indonesia.

Based on these findings, this study advances three specific policy recommendations. First, the legislature should amend Article 463(2) of the New Criminal Code to expand the existing exceptions in line with the proposed reconstruction, so that abortion performed by a licensed healthcare provider under conditions of medical emergency, severe fetal abnormality, or pregnancy resulting from rape or other sexual violence does not constitute a criminal offense, with corresponding alignment of Article 60 of Law Number 17 of 2023. Second, the Government should revise and supplement Government Regulation Number 28 of 2024 to specify gestational limits for fetal indications, verification and documentation standards, referral pathways, and the designation of facilities authorized to provide abortion services, so that the exceptions function in practice rather than remaining merely

normative. Third, the Ministry of Health, in coordination with the Indonesian Ulema Council, should establish hospital-based shariah consultation committees (*tim konsultasi syariah*) within accredited obstetric facilities, providing an institutionalized mechanism through which Islamic jurisprudential assessment can be integrated into the medical verification process, thereby operationalizing the principles of *ḍarūrah* and *ḥājah* as recognized in MUI Fatwa Number 4 of 2020 within clinical practice.

This study acknowledges its principal limitations. First, as a normative legal study, the analysis is confined to statutory instruments, fatwa documents, and Islamic legal literature, and does not encompass empirical data on how healthcare providers, patients, or religious authorities navigate abortion decisions in practice. The study likewise does not examine the implementation gap between existing legal norms and actual clinical conduct. Moreover, because the New Criminal Code and Government Regulation Number 28 of 2024 are recent, little implementation data yet exists on how their exceptions operate in practice. Future research should therefore employ empirical methods including clinical surveys, judicial decision analysis, and ethnographic study of hospital-based decision-making, to assess the practical effectiveness of the reconstructive framework proposed here.

REFERENCES

Abdullah, R. A. R. (2021). Ethics and Legal Issues in the Abortion Case. *Semarang State University Undergraduate Law and Society Review*, *1*(2), 175–190. https://doi.org/10.15294/lsr.v1i2.50547

Amar, R., Maulidan, I., & Kurniawan, M. R. (2024). Kekerasan Dalam Rumah Tangga Sebagai Alasan Perceraiaan (Analisis Putusan Nomor 737/Pdt.G/2021/PA.TPI Perspektif Saddu Adz-Dzari'ah). *El-Faqih : Jurnal Pemikiran Dan Hukum Islam*, *10*(1), Article 1. https://doi.org/10.58401/faqih.v10i1.1287

Amar, R., Pratama Dharma, A., Urrahman, M. A., & Kurniawan, M. R. (2024). Kedudukan Pencatatan terhadap Keabsahan Perkawinan: Telaah Pencatatan Perkawinan. *Jurnal Tana Mana*, *5*(2), 217–226. https://doi.org/10.33648/jtm.v5i2.486

Amar, R., Zahrah, J., & Hertiana, L. (2024). Perceraian dan Penguatan Hak-hak Perempuan: Reformasi Hukum Keluarga di Mesir, Indonesia dan Pakistan: *BUSTANUL FUQAHA: Jurnal Bidang Hukum Islam*, *5*(1), Article 1. https://doi.org/10.36701/bustanul.v5i1.1388

Anindya Prima Digantari. (2021). Abortion Perspective of Rape Victims Criminal Law Study. *Focus Journal Law Review*, *1*(1). https://doi.org/10.62795/fjl.v1i1.6

Arceneaux, K. (2002). Direct Democracy and the Link between Public Opinion and State Abortion Policy. *State Politics & Policy Quarterly*, *2*(4), 372–387. https://doi.org/10.1177/153244000200200403

Ariyad, F., & Masyhar, A. (2020a). Abortion by Rape Victim: A Dilemma in the Drat of Penal Code and Indonesian Health Law. *Journal of Law and Legal Reform*, *1*(4), 631–640. https://doi.org/10.15294/jllr.v1i4.39659

Ariyad, F., & Masyhar, A. (2020b). Abortion by Rape Victim: A Dilemma in the Drat of Penal Code and Indonesian Health Law. *Journal of Law and Legal Reform*, *1*(4), 631–640. https://doi.org/10.15294/jllr.v1i4.39659

Ashady, S., & Dudy, A. A. (2023). ABORSI: ANTARA DIALEKTIKA MORAL DAN KEBIJAKAN HUKUM PIDANA INDONESIA. *GANEC SWARA*, *17*(4), 2146. https://doi.org/10.35327/gara.v17i4.681

As-Syatibi, A. I. (2004). *Al-Muwāfaqāt Fī Uṣūl Al-Syarī'ah*. Dar Al-Kutub Al-Ilmiyah.

Atmadja, S. (2020). "Halal" Abortion in Perspective Common Law system,Civil Law System and Ius Constituendum: Towards Legality and Safety. *The Avicenna Medical Journal*, *1*(2), 17–24. https://doi.org/10.15408/avicenna.v1i2.17657

Bearak, J., Popinchalk, A., Ganatra, B., Moller, A.-B., Tunçalp, Ö., Beavin, C., Kwok, L., & Alkema, L. (2020). Unintended pregnancy and abortion by income, region, and the legal status of abortion: Estimates from a comprehensive model for 1990–2019. *The Lancet Global Health*, *8*(9), e1152–e1161. https://doi.org/10.1016/S2214-109X(20)30315-6

Bisri, H. (2004). *Pilar-pilar penelitian hukum Islam dan pranata sosial* (Cet. 1). Divisi Buku Perguruan Tinggi, RajaGrafindo Persada.

Dayan, F., Sheraz, M. M., Mahmood, M. R., Mahmood, A. K. A., & Islam, S. (2020). A Medico-legal Perspective on the Termination of Pregnancies Resulting from Wartime-Rape. *Bangladesh Journal of Medical Science*, *19*(3), 372–385. https://doi.org/10.3329/bjms.v19i3.45852

Firdaus, F., Nelly, J., Elimartati, E., & Hamdani, H. (2021). Abortion Due to Unwanted Pregnancy: Perspective of Islamic Law and Positive Law. *Al-Qisthu: Jurnal Kajian Ilmu-Ilmu Hukum*, *19*(2), 188–201. https://doi.org/10.32694/qst.v19i2.851

Firdaus, H. (2017). *Ushul Fiqh Metode Mengkaji dan Memahami Hukum Islam Secara Komprehensif*. Rajawali Pers.

Gibson, B. (1995). The Termination of the Quickening Doctrine: American Law, Society, and the Advent of Professional Medicine in the Nineteenth Century. *Masters Theses & Specialist Projects*. https://digitalcommons.wku.edu/theses/910

Giorgio, Utomo, Soeharno, Aryanty, Besral, Stillman, Philbin, Singh, & Sedgh. (2020). Estimating the Incidence of Induced Abortion in Java, Indonesia, 2018. *International Perspectives on Sexual and Reproductive Health*, *46*, 211. https://doi.org/10.1363/46e0220

Gultom, F. P., & Maryani, H. (2024). CRIMINAL LEGAL POLICY ON ABORTION DUE TO RAPE FROM THE PERSPECTIVE OF LAW NO. 36 OF 2009 CONCERNING HEALTH. *Jurnal Meta Hukum*, *4*(1), 29–38. https://doi.org/10.47652/metahukum.v4i1.662

Jalili, I., Syaifuddin, H., Ulfa, F., Gusmansyah, W., & Zaim, M. A. (2024). The Legitimacy of Abortion: A Socio-Legal Analysis of Islamic Jurisprudence and Indonesian Law. *De Jure: Jurnal Hukum Dan Syar'iah*, *16*(2), 382–405. https://doi.org/10.18860/j-fsh.v16i2.29077

Jayadimuda, Y. A., & Amar, R. (2024). SYAR'U MAN QABLANA SEBAGAI METODE HUKUM ISLAM DAN APLIKASINYA DALAM HUKUM PERKAWINAN. *YUSTISI*, *11*(3), Article 3. https://doi.org/10.32832/yustisi.v11i3.17887

Kulczycki, A. (2011). Abortion in Latin America: Changes in Practice, Growing Conflict, and Recent Policy Developments. *Studies in Family Planning*, *42*(3), 199–220. https://doi.org/10.1111/j.1728-4465.2011.00282.x

Kuntari, T., Wilopo, S. A., & Emilia, O. (2010). Determinan Abortus di Indonesia. *Kesmas: National Public Health Journal*, *4*(5), 223. https://doi.org/10.21109/kesmas.v4i5.173

Leksono, T. M., Yusuf Albar, M. H., & Bramantyo, R. Y. (2025). Problems of Medical Emergency Law from the Perspective of Abortion Crimes (Government Regulation Number 28 of 2024): Abortion Crimes. *Journal of Law, Politic and Humanities*, *5*(6), 4580–4589. https://doi.org/10.38035/jlph.v5i6.2099

Mohammed, A. J. (2020). Abortion from an Islamic Perspective: Permission and Prohibition Positions. *International Journal of Innovative Research in Medical Science*, *5*(07), 225–228. https://doi.org/10.23958/ijirms/vol05-i07/906

Mudawam, S. (2021). The Uṣūl al-Fiqh Approach on the Understanding of Islamic Law in Contemporary Era: Source and Contextualization. *Asy-Syir'ah: Jurnal Ilmu Syari'ah Dan Hukum*, *55*(2), 315. https://doi.org/10.14421/ajish.v55i2.1004

Nasution, S., Mumtaza, A. H., Jamal, M., Awalia, F. T. M., & Mahadir, M. (2026). The Legal Ruling on Abortion for Rape Victims from a Maqāṣid al-Sharīʿah Perspective in Government Regulation Number 28 of 2024 on Health. *AHKAM*, *5*(1), 567–584. https://doi.org/10.58578/ahkam.v5i1.9203

Nggilu, N. M., Zulkifli, Z., Chami, Y., Perwira, I., & Abdurahman, A. (2025). The Absence of Judicial Review on Constitutional Amendments in Indonesia: Urgency and Legal Reform for Constitutional Safeguards. *Journal of Law and Legal Reform*, *6*(2), 659–692. https://doi.org/10.15294/jllr.v6i2.20888

Ramadhita, R., Hamidah, T., Arfan, A., & Badruzzaman, B. (2023). Decriminalisation Against Women Who Perform Illegal Abortions From the Islamic law Perspective. *Al-Qadha : Jurnal Hukum Islam Dan Perundang-Undangan*, *10*(2). https://doi.org/10.32505/qadha.v10i2.6867

Ratna Kusumawati, L., Nurdin, B., & Santiago, F. (2023). Regulation on Abortion Without a Medical Diagnosis in the Law of Crimes Performed By Medical Personnel. *Edunity Kajian Ilmu Sosial Dan Pendidikan*, *2*(1), 172–179. https://doi.org/10.57096/edunity.v1i05.49

Rizani, A. K., Pelu, I. E. A. S., & Darojat, M. H. (2024). Abortion in Review of the Fatwa of the Indonesian Ulema Council (MUI). *FENOMENA*, *16*(2), 165–185. https://doi.org/10.21093/fj.v16i2.7527

Rohim, A. N. (2022). Dharurah and the Realization of Maqashid Sharia: Analysis of the Implementation of Islamic Legal Maxims on Emergency. *Nurani: Jurnal Kajian Syari'ah Dan Masyarakat*, *22*(1), 63–80. https://doi.org/10.19109/nurani.v22i1.11449

Rosnani, R., Pradipta, R. O., Wiratama, B. S., Fauk, N. K., Ward, P. R., Kuswanto, H., Sitorus, N., Haryanto, J., & Arifin, H. (2025). Pregnancy Termination Among Women of Reproductive Age: Evidence from the Indonesian Demographic and Health Survey. *International Journal of Environmental Research and Public Health*, *22*(4), 564. https://doi.org/10.3390/ijerph22040564

Roth, C. (2023). Abortion access in the Americas: A hemispheric and historical approach. *Frontiers in Public Health*, *11*, 1284737. https://doi.org/10.3389/fpubh.2023.1284737

Sakti, R. K., Shodiq, J., & Isnaini, E. (2024). ABORTION IN INDONESIA ON POSITIVE LAW AND MASLAHAH THEORY PERSPECTIVE. *JISRAH: Jurnal Integrasi Ilmu Syariah*, *5*(2), 183. https://doi.org/10.31958/jisrah.v5i2.12963

Saraswati, P. W. (2022). Saving more lives on time: Strategic policy implementation and financial inclusion for safe abortion in Indonesia during COVID-19 and beyond. *Frontiers in Global Women's Health*, *3*, 901842. https://doi.org/10.3389/fgwh.2022.901842

Sihvo, S., Bajos, N., Ducot, B., & Kaminski, M. (2003). Women's life cycle and abortion decision in unintended pregnancies. *Journal of Epidemiology & Community Health*, *57*(8), 601–605. https://doi.org/10.1136/jech.57.8.601

Surjadjaja, C. (2008). Policy Analysis of Abortion in Indonesia: The Dynamic of State Power, Human Need and Women's Right. *IDS Bulletin*, *39*(3), 62–71. https://doi.org/10.1111/j.1759-5436.2008.tb00463.x

Suryana, I. M., & Sani Utami, P. A. (2024). Contradictions in Indonesia's Legal Approach To Abortion: A Study of Reproductive Health Law and The Criminal Code. *Eduvest - Journal of Universal Studies*, *4*(6), 5040–5054. https://doi.org/10.59188/eduvest.v4i5.1341

Suwandono, A. & Busyra. (2025). Abortion: Ethical and Legal Perspectives in Indonesia. *Asian Bioethics Review*, *17*(3), 535–543. https://doi.org/10.1007/s41649-024-00322-4

Triandani, S., Windiahsari, W., Masyhar, A., Niravita, A., & Naelufar, R. (2024). Abortion Laws in Indonesia and Islam: A Clash of Morality, Religion, and Rights. *Contemporary Issues on Interfaith Law and Society*, *3*(2), 283–308. https://doi.org/10.15294/ciils.v3i2.31407

Uthman Mehdad Al-Turabi, & Auda, J. (2025). Toward a Maqāṣid-Based Legal Reform: Systemic Thinking for Social Transformation in the Modern Muslim World. *Indonesian Journal of Islamic Law*, *8*(2), 209–228. https://doi.org/10.35719/fhw10v84

WHO. (2025, December 8). *Abortion*. WHO. https://www.who.int/news-room/fact-sheets/detail/abortion

Winoto, E. (2020). Legal Review of Medical Emergency that Happened after a Failed Abortion Attempt. *Hang Tuah Law Journal*, *4*(1), 63. https://doi.org/10.30649/htlj.v4i1.140

Zaprulkhan. (2020). *Rekonstruksi Paradigma Maqashid Asy-Syari'ah Kajian Kritis dan Komprehensif*. IRCiSoD.

Zeng, Z. (2024). A Cross-National Examination of Abortion Politics: Contrasting Perspectives in the United States and France. *Lecture Notes in Education Psychology and Public Media*, *55*(1), 186–198. https://doi.org/10.54254/2753-7048/55/20240065