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# Balancing Reproductive Rights and Fetal Protection: Criminal Accountability of Doctors in Rape-Induced Abortions

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## Abstract

Unwanted pregnancies, particularly those resulting from rape, create complex legal and ethical conflicts in Indonesia, balancing a woman's reproductive autonomy and psychological health against fetal protection. This study analyzes criminal accountability and sentencing of doctors in rape-related abortion cases under Indonesian law. Using a normative juridical method, it examines secondary legal sources, including the Criminal Code, Law Number 17 of 2023 on Health Law, Government Regulation Number 2 of 2025 on Reproductive Health, and judicial precedents. Findings show that a doctor's liability depends on strict compliance with legal exceptions, including proof of rape, adherence to the fourteen-week gestational limit, and procedural standards such as competent medical teams and authorized facilities. Judicial evaluation emphasizes the presence or absence of justification or excuse, which can mitigate or aggravate penalties. The implementation of Criminal Code Number 1 of 2023 and Government Regulation Number 2 of 2025 provides clearer legal protection for medical professionals, resolving longstanding ethical and legal dilemmas. The legal framework now balances the rights of rape victims with the accountability of medical practitioners, ensuring proportional sanctions, safeguarding human rights, and enhancing legal certainty in reproductive health cases.

## Keywords

Abortion, Criminal Code, Health Law, Legal Exceptions, Medical Professionals, Rape Victims.

## 1. Introduction

The advent of life is widely celebrated, yet unwanted pregnancies particularly those arising from sexual violence force Indonesian law into a direct confrontation between competing fundamental rights. Although childbirth is generally valued, economic hardship, non-marital conception, and especially rape-related pregnancies drive individuals to seek abortion (Wulandari, 2019; Arsalna & Susila, 2021; Rahayu, 2025). Abortion, defined as the medical termination of a pregnancy before fetal viability, presents profound legal and ethical challenges. Indonesian positive law adopts a predominantly prohibitive stance, grounded in the protection of life as a fundamental human right and enforced through strict criminal provisions, notably Articles 346–349 of the former Criminal Code (*Kitab Undang-Undang Hukum Pidana/KUHP*), which historically regulated and sanctioned abortion (Chazawi, 2011; Suriartini et al., 2024).

The core legal conflict lies between the constitutional right to life and the victim's right to bodily integrity and mental health. The 1945 Constitution affirms the right to live, a mandate interpreted to include fetal protection (Sinambela & Melatyugra, 2022; Raffi & Juarsa, 2023). At the same time, the state must protect citizens from severe psychological trauma and social stigmatization associated with forced continuation of rape-induced pregnancies (Lestari, 2020). This duty is reflected in the Health Law, which carved out narrow exceptions to the general prohibition. Under Article 60 of Law Number 17 of 2023 on Health, abortion is permitted in two circumstances: a medical emergency posing danger to the mother or fetus, or pregnancy resulting from rape or sexual violence, further regulated by Government Regulation Number 2 of 2025 on Reproductive Health.

This legal dichotomy places physicians in a position of professional and legal vulnerability. Bound by the Hippocratic Oath and the Indonesian Doctor's Oath to respect human life doctors simultaneously carry humanitarian and legal obligations to relieve suffering and preserve the patient's life or health, even when this requires terminating a severely distressing or non-viable pregnancy (Ekotama, 2001; Adisaputra et al., 2024). Compliance with all procedural and substantive requirements of the Health Law is essential for the act to qualify as abortus *provocatus medicinalis*. Any deviation lack of proper consent, exceeding gestational limits, or inadequate competence renders the procedure abortus *provocatus criminalis* (Wulandari, 2019).

Historically, the absolute prohibition in the old Criminal Code created fear and legal uncertainty, as physicians risked aggravated penalties under Article 349 for procedures that were medically necessary or ethically compelled. Justification defenses were often precarious and judicial precedents tended toward strict interpretation, frequently convicting non-compliant practitioners (Hanafi & Ali, 2015; Sanita & Novianto, 2018; Laturette, 2023).

The legal framework is now undergoing significant restructuring through Law Number 17 of 2023 on Health and the new Criminal Code (Law Number 1 of 2023), effective in 2026. Article 465(3) of the 2023 Criminal Code provides explicit protection by exempting doctors, midwives, and paramedics from criminal liability when performing abortions under the rape exception or medical emergency. This marks a major legislative clarification, strengthening justification defenses and resolving *lex generalis–lex specialis* tensions in favor of human rights and public health (Budoyo et al., 2023).

Nonetheless, the protection is conditional. In rape cases, abortion must be performed within 14 weeks of gestation as required by Article 463(2), and the rape must be verified through a formal statement from a police investigator, psychologist, or other qualified experts in accordance with Article 61 of Government Regulation

Number 2 of 2025. While intended to prevent abuse, these requirements pose practical challenges, especially given the time-sensitive nature of the 14-week limit.

This research aims to conduct a rigorous analysis of the criminal accountability and sentencing standards applied to doctors in rape-related abortion cases under Indonesian positive law. Accordingly, the study formulates three core research questions covering the legal relationship between abortion prohibition, professional liability and statutory justification, the judicial assessment of compliance, the evaluation of justification and fault, and the proportionality of sanctions, along with the emerging direction of future judicial developments in rape-related abortion cases. The findings are intended to enhance legal certainty for the medical profession and support a more just application of the law in these highly sensitive human rights issues.

## **2. Methods**

This research employs a normative juridical method, focusing on the internal coherence and application of legal norms concerning criminal abortion involving medical professionals in Indonesia. The study's object is the analysis of statutory law, judicial doctrine, and case precedents to determine the legal standards for imposing criminal sanctions.

The primary data sources comprise core legal materials, including the 1945 Constitution, the Criminal Code (Law Number 1 of 2023) and its predecessor, Law Number 17 of 2023 on Health, as well as Government Regulation Number 2 of 2025 on Reproductive Health, supplemented by key judicial decisions such as Judgment Number 252K/Pid/2017. Secondary legal materials encompass legal literature, scholarly journals, and expert opinions that provide analysis and commentary on the primary laws, particularly concerning the concepts of justification and fault in medical criminal law. Data collection was carried out through an extensive documentary study using library research.

The analysis technique utilized is qualitative legal analysis, focusing on systematic and grammatical interpretation, to define the scope of the rape exception and the precise requirements for a doctor's legal protection. Teleological interpretation, to assess the legislative intent behind the new Criminal Code and Health Law, namely, the commitment to balance fetal rights with the human rights of rape victims, to guide the interpretation of the procedural requirements for legal compliance. The aim is to clarify the conditions under which a doctor's conduct is either justified or subject to criminal accountability.

## **3. Results and Discussion**

### **3.1 Legal Nexus of Prohibition, Liability, and Justification**

The legal foundation for abortion in Indonesia reflects a tension between two legal domains: the Criminal Code and the Health Law. The Criminal Code, acting as *lex generalis*, historically treated abortion as a crime against life in Articles 346–349, imposing heightened sanctions on medical professionals who violated this prohibition (Soesilo, 2020; Yanti & Susanti, 2024). This framework underscores the moral and legal priority given to fetal life, establishing the baseline for professional liability in abortion cases.

The analysis begins by dissecting the fundamental legal nexus governing abortion, which places the medical professional at the intersection of a general criminal prohibition and a specialized health mandate (Sakir et al., 2024). Under the Indonesian legal system, the act of abortion is designated as a crime against life, established by the foundational principles of the Criminal Code. This framework not only criminalizes the act of abortion but also imposes aggravated liability on doctors, midwives, and paramedics, as reflected in Article 349 of the former Criminal Code

and Article 465(1) of the new Criminal Code Law Number 1 of 2023. This enhanced sanction reflects a judicial doctrine that views the doctor's involvement as a grave breach of professional trust, leveraging specialized medical knowledge to commit an unlawful act (Soesilo, 2020). The severity of this penal augmentation is critical: it signifies that, absent a legal defense, the non-compliant doctor incurs a greater degree of criminal fault than a layperson who performs the same act. The primary question for the judiciary, therefore, is not whether the act of abortion occurred, but whether the act, by virtue of its circumstances, has been stripped of its unlawful nature by the *lex specialis*.

This legal modification is introduced through Law Number 17 of 2023 on Health, which serves as the statutory gateway for recognizing justification (Tamon et al., 2025). The law establishes explicit exceptions to the criminal prohibition, particularly in situations of medical emergency and in pregnancies resulting from rape or other forms of sexual violence as set out in Article 60. This legislative action is a direct response to constitutional human rights obligations, recognizing that compelling a rape victim to carry the pregnancy to term constitutes an egregious violation of her physical and psychological integrity (Lestari, 2020; Nugraha et al., 2023; Nurhuda, 2023). The legal protection for the doctor who performs such an abortion, therefore, is not derived from a humanitarian plea but from their role as an agent executing a statutorily justified act in the public interest.

The most significant legal development in this context is the codification of the justification defense in Article 465(3) of the Criminal Code Law Number 1 of 2023, which explicitly grants legal immunity to medical professionals who perform abortions under the legally prescribed medical emergency or rape exceptions. This provision is pivotal, as it legally resolves the historical conflict between the KUHP and the Health Law. The judiciary is now legally required to accept this defense if the doctor can prove meticulous procedural and substantive compliance. The legal scrutiny of a doctor's action has consequently narrowed, focusing less on the moral status of the act and entirely on the factual adherence to the regulatory checklist. Any act of abortion carried out beyond the parameters set by the Health Law such as termination for non-medical reasons including poverty or extramarital conception is categorically treated as an unlawful act, automatically failing the justification test and exposing the medical professional to the heightened criminal sanctions prescribed by the Criminal Code (Sampebulu, 2019; Laturette, 2023; Rahayu, 2025).

### 3.2 Judicial Assessment of Compliance: The Pillars of Justification and Fault

The Health Law functions as *lex specialis*, providing necessary exceptions to the general prohibition. Law Number 17 of 2023 on Health explicitly allows abortion in cases of medical emergency and pregnancies resulting from rape (Article 60), recognizing the victim's reproductive rights and protection from compounded trauma (Lestari, 2020; Haryanto et al., 2025). Government Regulation Number 2 of 2025 further details procedural requirements, including verification of rape, adherence to professional competence standards, and use of designated healthcare facilities. The critical legal concept governing a doctor's liability involves criminal accountability, which requires proof of both the act's unlawful nature and the presence of fault (Hanafi & Ali, 2015).

The core challenge for a doctor facing prosecution, even under the new, protective legal regime, lies in presenting conclusive evidence that their act fulfilled the stringent conditions required to invoke the justification defence. The judicial assessment focuses on three critical pillars of compliance, which simultaneously address the elements of unlawful nature and criminal fault (Budoyo et al., 2023). First, the courts rigorously assess the substantive conditions, particularly gestational age and the authenticity of the medical or rape indication. For rape-related abortions, the new Criminal Code Law Number 1 of 2023 establishes a

maximum limit of fourteen weeks of gestation as stipulated in Article 463(2). This time limit is treated by the judiciary as a strict and non-negotiable boundary. A termination performed even one day beyond this period, regardless of the genuine rape indication, would render the act criminally unlawful, as the statutory condition for justification has been violated. Furthermore, the indication itself must be authentic and directly linked to the trauma of the criminal act. Past judicial precedents show that the defense consistently fails when abortions are performed for reasons of moral or social expediency, such as non-marital pregnancy, which are not recognized as legal justification grounds. The courts have upheld convictions for doctors who perform procedures solely based on the patient's request without a medical or legal indication, confirming the restricted and technical interpretation of the Health Law exceptions.

Second, procedural conditions, verification and competence. The procedural requirements are critical legal safeguards designed to prevent abuse and ensure patient safety, and non-compliance with them is a powerful indicator of unlawful professional conduct. Government Regulation Number 2 of 2025 requires that the occurrence of rape be substantiated through a formal statement issued by a police investigator, a psychologist, or other qualified experts as provided in Article 61. This documentary verification is a procedural condition precedent to the legality of the abortion. A doctor who proceeds without this documentation, particularly outside a clear medical emergency, runs a significant risk, as they assume the burden of proof for the justification defense, which is inherently difficult to discharge without official evidence. Furthermore, the procedure must be performed by a competent medical team in a designated and Standardized Healthcare Facility (*Fasilitas Kesehatan Tingkat Lanjutan/FKTL*) as required under the Reproductive Health Regulation, Article 58. Judicial decisions have shown that breaches of procedural requirements, including performing the procedure without the necessary specialist competence or in an unauthorized clinic, are sufficient to nullify the justification defense, thereby establishing the act as unlawful (Nurhafifah & Rahmiati, 2015; Sanita & Novianto, 2018; Laturette, 2023; Nabila, 2023).

Third, the determination of fault. If the justification defense fails, the court must confirm the existence of fault on the doctor's part. In almost all instances of criminal abortion involving a doctor, fault is found to be intentional (*dolus*). This is based on the legal doctrine that the professional knew and willed the consequence of their specialized medical actions the termination of the pregnancy. The deliberate choice to administer medication or use instruments to induce fetal expulsion, as documented in judicial facts, satisfies the element of *dolus*. Claims that the act was motivated by humanitarian sympathy or done at the patient's request are consistently rejected as potential excuse grounds. The judiciary maintains that a medical professional, due to their training and ethical code, possesses a higher degree of legal responsibility and control over their actions, thus preventing the mitigation of culpability based on subjective emotional factors (Hanafi & Ali, 2015; Wulandari, 2019).

### **3.3 Proportionality of Sanctions and Future Judicial Trends**

When doctors perform abortions outside the legally stipulated conditions, the act is considered materially unlawful and intentional, triggering aggravated criminal sanctions (Sanita & Novianto, 2018). In contrast, performing an abortion strictly within the rape or medical emergency exception satisfies the criteria for justification, rendering the act legally necessary and aligned with public health objectives, thereby negating unlawfulness (Sutono et al., 2023). The new Criminal Code Law Number 1 of 2023 formally codifies this justification defense (Article 465(3)), providing explicit protection for compliant doctors and marking a significant step toward resolving the historical legal vulnerability of medical professionals in such sensitive cases.

The final stage of the legal inquiry involves the proportionality of sanctions, which is now significantly shaped by the explicit legal protection offered to compliant professionals and the severity of the penalties reserved for the non-compliant. The key policy objective of the new Criminal Code Law Number 1 of 2023 is to provide clear and unambiguous legal certainty. The immunity granted under Article 465(3) serves as the strongest safeguard against the criminalization of professional medical actions. This legal shift mandates that future judicial analysis must prioritize the finding that the doctor is an agent of the *lex specialis*, acting within the scope of a legally justified public health and human rights mandate. This explicit protection is intended to encourage doctors to provide timely, safe, and legal services to rape victims without the fear of criminal prosecution, thereby resolving a long-standing ethical and legal dilemma within the profession (Irwanto, 2024; Santoso, 2025).

Conversely, for the doctor found guilty of criminal abortion, the courts apply sentencing based on a stringent weighing of aggravating and mitigating factors. Aggravating factors consistently include abuse of professional capacity, intentional violations of health and penal codes, and the severity of the act. Mitigating factors, such as the defendant's expression of remorse or a clean prior record, are often deemed insufficient to substantially reduce the penalty given the gravity of the offense (Budoyo et al., 2023). This results in severe sentences, as seen in various judicial precedents that imposed substantial imprisonment on medical professionals. Crucially, in addition to the primary criminal sentence, a doctor is also subject to the mandatory additional penalty of revocation of their professional practice license as stipulated in Article 465(2) of the Criminal Code Law Number 1 of 2023. This supplementary sanction underscores the judicial intent to not only punish the criminal act but also to strip the individual of the professional privilege they misused, serving as a powerful warning to the entire medical community.

The future judicial trend will inevitably focus on procedural rigor and documentation. The introduction of the 14-week limit and the mandatory police/psychological verification shifts the evidentiary burden. Future prosecutions of doctors in rape-related cases will likely hinge on whether the prosecution can prove the doctor failed one of the specific procedural conditions (e.g., lack of verification or violation of the gestational age limit). This places a significant institutional challenge on the state, which must ensure that all elements of the necessary documentation are accessible to the rape victim within the critical time frame to enable the doctor to fully invoke the justification defense. The judiciary's task moving forward is to interpret these strict legal boundaries with a teleological sensitivity that upholds the spirit of human rights protection for the victim without compromising the legal safeguards intended to regulate the procedure, thereby ensuring that the imposition of sanctions remains proportional and just (Sanita & Novianto, 2018). The clear message is that compliance equals immunity, but non-compliance equals professional and criminal catastrophe.

From a policy perspective, the strengthened justification framework in the Health Law and the new Criminal Code requires complementary regulatory guidance to ensure consistent interpretation and implementation at the operational level. Clear technical standards, particularly regarding verification procedures, documentation, gestational age assessment, and facility requirements, are essential to prevent discrepancies between legal norms and clinical practice. Judicial bodies also need to cultivate consistent jurisprudence that clarifies evidentiary thresholds and the scope of permissible medical judgment in rape-related abortions. For medical practitioners, these developments underscore the importance of institutional legal support, standardized protocols, and enhanced legal literacy to ensure that justified medical actions receive full protection. Together, these measures can reinforce legal certainty and safeguard both patient rights and professional security.

#### **4. Conclusion**

The legal determination of a doctor's criminal liability in abortion cases resulting from rape in Indonesia is now rigorously defined by their strict adherence to the legal exceptions provided by the Health Law. The core legal principle is that the act of abortion is rendered lawful, and therefore not criminally punishable, if the doctor successfully invokes the statutory justification ground. This defense requires conclusive proof of the criminal act of rape, that the procedure is performed within the fourteen-week gestational limit as stipulated in the Criminal Code Law Number 1 of 2023, and that a competent medical team conducts the procedure in an authorized facility with appropriate counselling as mandated by Government Regulation Number 2 of 2025. The most significant legal protection is provided under Article 465(3) of the Criminal Code Law Number 1 of 2023, which explicitly grants immunity to medical professionals who comply with these conditions. Conversely, any failure to meet these substantive or procedural requirements immediately invalidates the justification defense, subjecting the doctor to aggravated sanctions due to the established intentionality and breach of professional trust.

The new legal instruments necessitate a judicial focus on factual and documentary compliance to ensure that the responsible professional achieves legal certainty while upholding the victim's human rights. The implications of these developments are substantial, offering clearer guidance for medical practice and stronger protections for both professionals and patients. However, there are notable limitations, including practical challenges in obtaining timely verification of rape cases, disparities in access to authorized healthcare facilities, and potential inconsistencies in judicial interpretation, which may affect the uniform application of the law across regions. Future research could investigate the real-world implementation of these legal provisions, examine the consistency of judicial decisions, and assess the broader social and ethical impacts on healthcare delivery.

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### ***Data Disclosure Statement***

The data that support the findings of this study are available from the corresponding author upon reasonable request.



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