



Formulative Policy on the Regulation of Abortion Crimes in the National Criminal Code: Normative Analysis and Its Implications for the Penal System in Indonesia

¹Cherry Laurencia Sinukaban, ²Rachmad Abduh

^{1,2}Universitas Muhammadiyah Sumatera Utara

E-mail: ¹cherrylaw.renciaa@gmail.com, ²rachamadabduh@umsu.ac.id

| Info Articles | Abstract |
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| Article History Received: 2026-01-10 Revised: 2026-01-26 Published: 2026-01-30 | The regulation of the crime of abortion in the National Criminal Code (KUHP) is part of a formulative policy of criminal law that aims to balance the protection of the right to fetal life, the interests of women's reproductive health, and moral and social values living in Indonesian society. This study aims to analyze the formulative policy of regulating the crime of abortion in the National Criminal Code and its implications for the penal system in Indonesia. The research method used is normative legal research with a statutory approach, a conceptual approach, and a comparative approach. The results of the study show that the National Criminal Code reformulates the abortion offense with a more systematic and progressive regulation, especially through the recognition of certain exceptions based on medical and emergency reasons, in line with the principles of health protection and human rights. However, the policy still maintains the criminal character as the ultimate remedium through proportionate criminal threats. The implications of this regulation on the penal system can be seen in the shift in orientation from a purely repressive approach to a more humanistic and just approach, by providing space for consideration of the perpetrator's subjective condition and the purpose of correctional punishment. Therefore, this formulative policy is expected to be able to create a balance between legal certainty, justice, and usefulness in criminal law enforcement in Indonesia. |
| Keywords: <i>Formulative policies; abortion rights; Penal system</i> | |

I. INTRODUCTION

The reform of the national criminal law is a strategic agenda in legal development in Indonesia that aims to realize a legal system that is responsive to the development of societal values, social dynamics, and human rights principles (Nadianti & Kusumo, 2025). One of the concrete forms of the reform is the enactment of the National Criminal Code (KUHP) as a replacement for the Dutch colonial legacy of the Criminal Code (Calvin & Azizah, 2024). The National Criminal Code is not only intended as a codification of the new criminal law, but also as an instrument of criminal policy (*Criminal Policy*) that reflects the nation's identity and the orientation of the criminal justice system that is more humane, fair, and oriented towards the protection of social interests (Srivastava, 2025).

Among the various content materials in the National Criminal Code, the regulation of the crime of abortion is one of the most complex and

sensitive legal issues. This complexity is due to the fact that abortion is at the intersection of criminal law, ethics, morality, religion, health, and human rights. On the one hand, the state has an interest in protecting the right to life of the fetus as part of universally recognized human values. But on the other hand, there are certain conditions that require the protection of women's rights and safety, especially in the context of medical emergencies, victims of sexual violence, and reproductive health aspects (Firmansyah et al., 2020).

Regulating the crime of abortion in the old Criminal Code (*Criminal Code*) tends to be repressive and absolute, by making almost all forms of abortion a criminal act without providing adequate room for exceptions. Such an approach is considered no longer in line with the development of science, modern medical practice, and the principles of human rights protection. In addition, this provision is also considered to have

the potential to encourage the practice of illegal abortion which actually endangers women's safety and causes wider social problems (Sakir et al., 2024).

The National Criminal Code is here by reformulating the regulation of abortion crimes through a more contextual and balanced formulative policy approach. Formulative policies in criminal law are essentially the stage of formulating criminal norms by lawmakers, which reflect the choices of values, goals, and strategies of the state in tackling crime (Calvin & Azizah, 2024). In the context of abortion, the formulative policy is reflected in the formulation of delicacies, the determination of legal subjects, the regulation of certain exceptions, and the determination of the type and severity of criminal sanctions.

However, the reformulation of criminal policy on abortion in the National Criminal Code is inseparable from various academic and social debates. Some argue that the new regulation has been more progressive and humane because it provides limited legal space for abortion based on medical reasons and certain circumstances. Meanwhile, others consider that the regulation still holds the potential for excessive criminalization, especially against women, and does not fully reflect the principles of restorative justice and *ultimum remedium* in criminal law.

The implications of this formulative policy regulating abortion crimes not only have an impact on the normative aspects of criminal law, but also on the criminal system as a whole. The penal system adopted by the National Criminal Code emphasizes a more comprehensive penal goal, including community protection, perpetrator development, crime prevention, and the restoration of social balance. Therefore, it is important to examine the extent to which the regulation of abortion crimes in the National Criminal Code is in line with the philosophy and direction of the reform of the penal system in Indonesia.

Based on this description, the study of the formulative policy on the regulation of abortion crimes in the National Criminal Code is relevant and urgent to be carried out. Normative analysis of the formulation of articles related to abortion

and its implications for the criminal system is expected to make an academic contribution to the development of criminal law, as well as a critical evaluation material for the direction of national criminal law policy in the future.

II. RESEARCH METHODS

This study uses the literature study method as the main part of normative legal research which focuses on the study of positive legal norms and legal doctrines that are relevant to the formulative policy of regulating the crime of abortion in the National Criminal Code (Mahmud Marzuki, 2005). Literature studies are carried out by browsing, inventorying, and analyzing various written legal sources related to research topics, both primary, secondary, and tertiary. Primary legal materials include relevant laws and regulations, including the National Criminal Code, the 1945 Constitution of the Republic of Indonesia, as well as related regulations in the field of health and human rights related to abortion regulation. In addition, official documents such as minutes on the discussion of the law and academic texts of the National Criminal Code are also used as important sources to understand the direction of formulatory policies taken by lawmakers.

Secondary legal materials are used to enrich normative analysis, which consists of criminal law textbooks, scientific journals, research results, academic papers, and expert opinions discussing criminal policy, material criminal law, abortion issues, and the penal system in Indonesia (Rizkia & Fardiansyah, 2023). Through this secondary legal material, the researcher obtained a conceptual and theoretical framework used to assess the rationality, consistency, and relevance of the regulation of the crime of abortion in the National Criminal Code. The tertiary legal materials in the form of legal dictionaries, encyclopedias, and other supporting sources are used to clarify the terminology and legal concepts used in the research.

All the literature materials that have been collected are then analyzed qualitatively using normative-prescriptive analysis techniques, namely by interpreting legal norms, examining the relationship between the provisions of laws and

regulations, and evaluating the implications of formulative policies regulating the crime of abortion on the penal system in Indonesia. This approach allows researchers to draw systematic and argumentative conclusions about the extent to which the formulaic policies in the National Criminal Code reflect the goals of criminal law reform as well as the principles of justice, utility, and legal certainty.

III. RESULTS AND DISCUSSION

A. Formulative Abortion Policy in the National Criminal Code

Formulative policies are the main foundation in criminal law policy because at this stage the state consciously determines the limits of criminalization, the direction of criminal responsibility, and the criminal model to be applied. The formulative choice is never neutral, but always reflects the values, ideology, and orientation of legal policies adopted by the lawmakers. In the context of the crime of abortion, formulative policies become very sensitive because they directly intersect with issues of life protection, reproductive health rights, public morality, and the position of women in the criminal law system (Liana et al., 2024). Therefore, the formulation of abortion norms cannot be placed solely as a normative prohibition, but must be understood as the result of a compromise between various legal interests and human values that face each other.

The formulation of the abortion offense in modern criminal law has always been in a dilemma between the interest of protecting the life of the fetus and the state's obligation to ensure the safety, dignity, and autonomy of the female body (Simbolon, 2025). An overly repressive approach has the potential to give birth to excessive criminalization and substantive injustice, while an overly permissive approach risks eroding the value of life protection. It is this tension that demands formulative policies that are proportionate, contextual, and responsive to social realities. This view emphasizes that criminal law cannot be separated from the dynamics of human values that develop in society,

while rejecting the use of criminal law as a rigid instrument of morality.

The National Criminal Code through Law Number 1 of 2023 shows a significant paradigm shift in the regulation of abortion crimes. Article 463 of the National Criminal Code still qualifies abortion as a prohibited and criminally threatened act, but the prohibition is no longer formulated in absolute terms as in the old Criminal Code. The exception is expressly accommodated in Article 464 of the National Criminal Code, which opens up space for abortion to be performed under certain conditions, especially on indications of medical emergencies and pregnancy due to rape, as long as it meets the time, procedures, and medical provisions set by laws and regulations. This formulation shows that lawmakers no longer place criminal law as a means of imposing values alone, but rather as an instrument of legal protection oriented towards substantive justice (Ayuningrum et al., 2025).

The approach is in line with the principles *Ultimum Remedium* which is one of the pillars in the reform of the national criminal law. Barda Nawawi Arief emphasized that criminal law should be used selectively and carefully, considering its repressive nature and the potential to cause suffering (Kamalludin & Arief, 2018). In the regulation of abortion, the application of this principle is reflected in efforts to limit the space for criminalization to only acts that are truly punishable, while providing legal protection for women who are in emergency situations or do not have a free choice. Such a formulation shows the orientation of criminal policy that focuses not only on enforcement, but also on the prevention and protection of vulnerable groups.

The most progressive dimension of this formulaic policy can be seen in the regulation of abortion for rape victims. Rape victims experience multiple layers of victimization, including physical suffering, psychological trauma, and prolonged social stigma (Sihombing & Nuraeni, 2022). The absolute criminalization of abortion in this situation actually has the potential to make the criminal law an instrument that perpetuates injustice. The provisions in the National Criminal Code that synergize with the Health Law show the

adoption of an approach *Victim-oriented justice*, which is a paradigm that places the victim as the main subject of legal protection (Amelia, 2024). This approach is in line with the principle of victim protection and the principle of justice, which demands that the criminal law does not aggravate the suffering of victims of crime.

A formulative policy regulating the crime of abortion must be understood as an integral part of national criminal law reform. The goals of modern punishment are no longer solely retribution-oriented, but rather include the protection of victims, the prevention of crime, and the restoration of social balance (Angwarmasse, 2025). This direction appears to be consistent with various other criminal policies in the National Criminal Code, including in the regulation of narcotics crimes and information technology-based crimes, both of which show an effort to balance the public interest with respect for human rights. The regulation of abortion in the National Criminal Code ultimately reflects the transformation of Indonesia's criminal policy from a repressive paradigm to a more rational, humane, and just penal system, while affirming the role of formulative policies as determinants of the direction and face of national criminal law in the future.

B. Implications of Abortion Formulary Policies on the Criminal System and Human Rights Protection

The formulative policy of regulating the crime of abortion in the National Criminal Code has direct implications for the direction and character of the penal system in Indonesia. The penal system is no longer understood narrowly as a punishment mechanism, but as an instrument to realize substantive justice that takes into account the humanitarian dimension, the subjective condition of the perpetrator, and the position of the victim. This orientation reflects a shift from a retributive paradigm to a corrective and rehabilitative approach that characterizes modern criminal law. Rachmat emphasized that the development of Indonesian criminal law shows a tendency to strengthen victim protection and prevent further victimization, including by limiting

criminalization to parties in emergency situations or structural vulnerabilities (Munir, 2014).

The provisions in Article 463 and Article 464 of Law Number 1 of 2023 concerning the Criminal Code confirm that abortion is still qualified as a criminal offense, but is no longer formulated absolutely. The norms of exceptions granted, especially in the case of medical emergencies and pregnancies due to rape, indicate that punishment is not placed as the ultimate goal, but rather as a last resort to maintain a balance between the protection of legal interests and respect for human dignity. The formulation is in line with the principle of proportionality and the principle of *Ultimum Remedium*, which demands that the criminal justice system be used selectively and rationally, given its repressive impact on individual freedom (Candra & Abrian, 2025).

The implications of this formulative policy are also closely related to the principle of human rights protection as guaranteed in Article 28A of the 1945 Constitution of the Republic of Indonesia. The guarantee of the right to life, the right to health, and the right to fair treatment before the law requires that every criminal policy be tested from a humanitarian perspective. The classical criminal law approach that places the fetal right to life in absolute terms has begun to be criticized for ignoring the complexity of women's conditions, both medically, psychologically, and socially. Within this framework, the formulaic policy of the National Criminal Code can be understood as a form of normative compromise between the protection of life and the protection of women's rights, without negating the moral values that live in society (Fatmawati, 2016).

The position of women is a crucial point in the analysis of the implications of this policy. The practice of criminalizing abortion has so far shown a tendency to make women the most vulnerable subjects to criminal sanctions, as well as victims of unsafe illegal abortion practices. Pregnancy due to rape puts women in the position of multiple victims, as argued by various feminist criminal law scholars, because physical and psychological suffering is exacerbated by social pressures and the threat of criminalization. The exception arrangement in the National Criminal Code shows

the state's recognition of these structural vulnerabilities and at the same time adopts an approach *Victim-oriented justice* which places victim protection as the main orientation of criminal policy (Amelia, 2024).

The concept of victimization becomes relevant in reading the implications of this policy. Victimization does not only originate from the original criminal act, but can also arise as a result of the application of criminal law that is insensitive to the condition of the victim. Rachmat reminded that *secondary Victimization* often occurs when the law actually prolongs the victim's suffering. The formulation of the abortion exemption in the National Criminal Code serves as a preventive mechanism to minimize further victimization, while maintaining the legitimacy of the criminal law as a means of justice, not a new source of injustice (Munir, 2014).

Consistency of this formulative policy with the principle of *Ultimum Remedium* shows a more mature direction of criminal law reform. Adhi and Wibowo, even in the context of cybercrime, emphasized that excessive criminalization has the potential to weaken the effectiveness of the law and encourage illegal practices (Candra & Abrian, 2025). This argument is relevant in the context of abortion, because an absolute ban risks encouraging unsafe abortion practices that endanger women's health and safety. The placement of the criminal law as the last instrument shows that the National Criminal Code seeks to balance the preventive and repressive functions of the criminal law in a proportionate manner.

The main challenge of this formulative policy lies in the implementation stage. Differences in the interpretation of law enforcement officials, social stigma against abortion, and weak coordination between the criminal justice system and health services have the potential to hinder the application of norms fairly (Ayuningrum et al., 2025). Without a comprehensive understanding and adequate technical regulation, pre-formulated exceptions risk being ineffective in practice. This condition confirms that the success of formulative policies is determined not only by the quality of

norms, but also by the readiness of institutions and the legal culture that supports them.

From a political and legal perspective, the regulation of abortion in the National Criminal Code reflects a moderate and compromising policy choice. The values of Pancasila, especially the One Godhead and a Just and Civilized Humanity, remain the main foundation so that abortion is not freely legalized. The shift from absolute prohibition to conditional prohibition demonstrates the state's efforts to establish a point of balance between social morality, public health interests, and the development of human rights discourse. This kind of legal politics places the National Criminal Code as a reform product that is not extreme, repressive or permissive, but oriented towards contextual justice and humanity (Nadianti & Kusumo, 2025).

Overall, the implication of the formulative policy of regulating abortion in the National Criminal Code confirms the transformation of Indonesia's penal system towards a paradigm that is more humanistic, proportional, and responsive to social realities. Criminality is positioned as a means of protection and correction, not just retaliation, so that criminal law remains relevant as an instrument of justice in a plural and dynamic society.

C. Normative Consistency and Direction of Abortion Criminal Policy in the Indonesian Legal System

Normative consistency is an important parameter in assessing the success of criminal law formulative policies, because the quality of a norm is not only determined by the content of its regulation, but also by its conformity with the entire legal system. The regulation of the crime of abortion in the National Criminal Code needs to be read systemically with other sectoral regulations, especially the Health Law and the human rights protection framework recognized in national law. This approach is crucial to prevent disharmony of norms that have the potential to cause legal uncertainty and injustice in law enforcement practices (Simbolon, 2025).

Law Number 1 of 2023 concerning the Criminal Code through Articles 463 and 464 places

abortion as an act that is prohibited in principle, but explicitly recognizes exceptions under certain conditions. The arrangement is in line with the Health Law, which earlier recognized the possibility of abortion on indications of medical emergency and pregnancy due to rape. The existence of the National Criminal Code in this context serves as a normative umbrella for criminal law that emphasizes the limits of criminalization while preventing the abuse of abortion practices (Liana et al., 2024). This harmonization shows the awareness of lawmakers to build a legal system that complements each other, not affirms each other, so that the principle of legal certainty and the principle of harmony of the legal system can be maintained.

The dimension of normative consistency is also closely related to the theory of the purpose of punishment. Modern criminal law is no longer oriented solely towards retribution, but is directed towards crime prevention, community protection, rehabilitation of perpetrators, and restoration of social balance. This approach is reflected in the National Criminal Code which formulates criminal sanctions in a more proportionate and non-extreme manner in the context of abortion. Fitri emphasized that the formulation of the crime must be in line with the purpose of criminalization so that the criminal law does not lose its social legitimacy. Abortion arrangements that take into account the conditions of women, the family, and the broader social impact show that the formulaic policies of the National Criminal Code have sought to internalize substantive and humane penal goals (Yuliana, 2016).

The risk of overcriminalization is one of the important issues in the analysis of abortion criminal policy. Overly broad criminalization has the potential to push the practice of abortion into the realm of illegal and unsafe, as demonstrated by empirical experiences in many countries. This condition actually increases public health risks and increases maternal mortality. Criminalizing only abortions performed outside of specified conditions and procedures reflects the application of the principle *Ultimum Remedium* and the

principle of proportionality (Candra & Abrian, 2025). The importance of criminalization selectivity in the context of cybercrime is relevant to be drawn into the abortion arrangement, as overused criminal laws risk undermining the effectiveness of law enforcement itself.

Criminal law also contains a symbolic function as a means of expressing moral and social values of society. In the regulation of abortion, this symbolic function is reflected in the maintenance of the qualification of abortion as a criminal act. This step shows the country's commitment to the protection of life and human values. The flexibility granted through certain exceptions reflects the moral adaptation of criminal law to complex social realities. This balance between symbolic and instrumental functions is important to maintain the legitimacy of criminal law, so as not to be trapped in permissive and repressive extremes (Marbun, 2019).

The biggest challenge of this formulaic policy arises at the law enforcement stage. Differences in interpretations of exclusion norms, limited understanding of law enforcement officials, and social stigma against abortion have the potential to cause unfair criminalization. The discretion of law enforcement officials and judges plays a strategic role in ensuring that criminal norms are applied in a contextual and fair manner. The principle of substantive justice and the principle of protection of vulnerable groups are important guidelines in the use of discretion, so that the criminal law does not turn into an instrument of further victimization.

In the perspective of progressive criminal law, the formulative policy of regulating abortion in the National Criminal Code shows strong relevance (Nurpasha et al., 2024). Criminal law is no longer positioned as a mere tool of coercion, but as a means of liberation from structural injustice. Recognition of the condition of rape victims and medical emergencies affirms the legality of human values. This paradigm places substantive justice above formal certainty, without ignoring the social control function of criminal law.

Critical evaluation is still needed to ensure the effectiveness of these formulaic policies. The potential for multiple interpretations of norms,

limited access to health services, and social and cultural pressures on women are still real challenges. Not yet optimal integration between the criminal law system and the health system risks hindering the implementation of the policy as a whole. This condition shows that formulative policies must be followed by sustainable implementive and evaluative policies so that the goals of justice, humanity, and legal certainty can truly be realized in practice.

IV. CONCLUSION AND SUGGESTIONS

A. Conclusion

The formulative policy on the regulation of abortion crimes in the National Criminal Code (Law No. 1 of 2023) reflects a new direction of Indonesian criminal law politics that no longer relies on an absolute repressive approach, but on a balance between the protection of life, the interests of health, and respect for human dignity. The formulation of Articles 463 and 464 of the National Criminal Code shows that lawmakers consciously shifted the criminalization paradigm towards a more contextual and equitable approach, especially by recognizing the existence of exceptional conditions based on indications of medical emergencies and pregnancy due to rape.

This formulation affirms that criminal law cannot be separated from social and humanitarian reality. By accommodating the interests of victims, especially women in vulnerable situations, the National Criminal Code internalizes the principle of victim-oriented justice and the principle of ultimum remedium, so that crime is not used as a mere instrument of morality, but as a means of proportionate legal protection. This approach also avoids criminal law from potential substantive injustices due to the application of rigid and ahistorical norms.

Furthermore, the formulative policy shows consistency with the goals of modern punishment, namely crime prevention, victim protection, and restoration of social balance. Thus, the regulation of the crime of abortion in the National Criminal Code is not only a normative change, but part of a grand design of national criminal law reform oriented towards rationality, humanism, and

respect for human rights without ignoring moral values and public interests.

B. Suggestion

The government needs to ensure consistent harmonization between the National Criminal Code and health sector regulations so that the abortion exemption does not create legal uncertainty at the implementation level. Law enforcement officials also need to be equipped with a victim protection perspective so that law enforcement does not lead to the criminalization of women. In addition, a follow-up empirically-based study is needed to assess the effectiveness of these formulative policies in practice and their impact on access to justice, especially for vulnerable groups.

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