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Analyzing Indonesia's Abortion Legal Policy through Robert K. Merton's Structural Functionalism

Analisis Kebijakan Hukum Aborsi di Indonesia dalam Perspektif Struktural Fungsionalisme Robert K. Merton

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Abstract

This study aims to analyze Indonesia's abortion policy through the perspective of Robert K. Merton's structural functionalism theory. The study employed normative legal research using statutory and conceptual approaches, with qualitative analysis based on the concepts of manifest functions, latent functions, and dysfunctions. The findings indicate that Indonesia's abortion policy performs manifest functions by protecting fetal life, safeguarding maternal health under specific circumstances, and providing legal certainty for healthcare professionals. However, it also generates latent functions, including the persistence of illegal abortion practices, barriers to legal abortion services for rape victims, healthcare professionals' concerns over criminal liability, and intensified social stigma toward women. A comparative analysis with the Netherlands demonstrates that different regulatory approaches produce distinct social consequences. The study highlights the need to reform abortion policy to balance legal certainty, human rights protection, and reproductive healthcare needs within contemporary society.

Keywords: Abortion; Structural Functionalism; Robert K. Merton; Manifest and Latent Functions; Dysfunction

Abstrak

Penelitian ini bertujuan untuk menganalisis kebijakan aborsi di Indonesia melalui perspektif teori fungsionalisme struktural Robert K. Merton. Penelitian ini menggunakan metode penelitian hukum normatif dengan pendekatan yuridis dan konseptual, serta analisis kualitatif yang didasarkan pada konsep fungsi manifes, fungsi laten, dan disfungsi. Temuan penelitian menunjukkan bahwa kebijakan aborsi di Indonesia menjalankan fungsi manifes dengan melindungi kehidupan janin, menjaga kesehatan ibu dalam keadaan tertentu, serta memberikan kepastian hukum bagi tenaga kesehatan. Namun, kebijakan tersebut juga menimbulkan fungsi laten, termasuk berlanjutnya praktik aborsi ilegal, hambatan dalam mengakses layanan aborsi legal bagi korban pemerkosaan, kekhawatiran tenaga kesehatan terkait pertanggungjawaban pidana, serta meningkatnya stigma sosial terhadap perempuan. Analisis komparatif dengan Belanda menunjukkan bahwa pendekatan regulasi yang berbeda menghasilkan konsekuensi sosial yang berbeda pula. Penelitian ini menyoroti perlunya mereformasi kebijakan aborsi untuk menyeimbangkan kepastian hukum, perlindungan hak asasi manusia, dan kebutuhan layanan kesehatan reproduksi dalam masyarakat kontemporer.

Kata Kunci: Aborsi; Fungsionalisme Struktural; Robert K. Merton; Fungsi Terang-terangan dan Tersembunyi; Disfungsi



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INTRODUCTION

Abortion remains one of the most debated legal and social issues worldwide, including in Indonesia.¹ The controversy extends beyond medical considerations to encompass moral, religious, human rights, and broader societal dimensions that often intersect. From a legal perspective, abortion refers to the deliberate termination of a pregnancy before the fetus is capable of surviving outside the womb, making it an issue with complex legal consequences.² In Indonesia, abortion is regulated under Law No. 1 of 2023 on the Criminal Code,³ Law No. 17 of 2023 on Health,⁴ and Government Regulation No. 61 of 2014 on Reproductive Health.⁵ These legal instruments fundamentally prohibit abortion while providing limited exceptions for medical emergencies and pregnancies resulting from rape. Accordingly, Indonesia adopts a restrictive legal framework that seeks to balance the protection of fetal life with limited recognition of women's reproductive rights under specific circumstances.

Despite the existence of a relatively comprehensive legal framework, the implementation of Indonesia's abortion policy continues to face significant challenges. Illegal abortion remains prevalent due to the high incidence of unintended pregnancies, limited access to reproductive healthcare services, complex administrative procedures, and persistent social stigma directed toward women experiencing unwanted pregnancies.⁶ These conditions indicate that the existence of legal regulations does not necessarily produce the outcomes intended by policymakers. While the policy is designed to protect fetal life and maintain legal order, it may simultaneously generate unintended social consequences, including unsafe abortion practices, barriers to accessing reproductive healthcare, and reluctance among healthcare professionals to provide legally permitted abortion services because of concerns over potential criminal liability. These realities demonstrate that the effectiveness of abortion policy cannot be evaluated solely through its legal objectives but must also be assessed in terms of its broader social consequences.

These circumstances suggest that the effectiveness of abortion policy cannot be adequately understood through a purely normative legal perspective that focuses only on statutory provisions. Instead, abortion policy should also be examined as part of a broader social system that produces multiple intended and unintended consequences within society. Robert K. Merton's structural functionalism offers an appropriate analytical framework through its concepts of manifest functions, latent functions, and dysfunctions.⁷ According to Merton, every social institution is established to achieve particular objectives; however, its implementation may generate both anticipated and unanticipated consequences, some of which may undermine the very goals the institution seeks to accomplish. Consequently, Merton's framework provides a more comprehensive perspective for understanding how Indonesia's abortion policy operates while simultaneously explaining the social consequences arising from its implementation.

1 Triantonio et al., "When the Law Fails the Victim: Deconstructing the Criminalization of Abortion for Rape Survivors in Indonesia," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 38, no. 7 (October 20, 2025): 2445–69, <https://doi.org/10.1007/s11196-025-10279-8>.

2 Fredrik Svenaeus, "Phenomenology of Pregnancy and the Ethics of Abortion," *Medicine, Health Care and Philosophy* 21, no. 1 (March 1, 2018): 77–87, <https://doi.org/10.1007/s11019-017-9786-x>.

3 "Undang-Undang Republik Indonesia Nomor 1 Tahun 2023 Tentang Kitab Undang-Undang Hukum Pidana."

4 "Undang-Undang Republik Indonesia Nomor 17 Tahun 2023 Tentang Kesehatan." (n.d.).

5 "Peraturan Pemerintah Republik Indonesia Nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi."

6 Anibal Faundes et al., "Preventing Unsafe Abortion: Achievements and Challenges of a Global FIGO Initiative," *Best Practice & Research Clinical Obstetrics & Gynaecology* 62 (January 2020): 101–12, <https://doi.org/10.1016/j.bpobgyn.2019.05.016>.

7 Robert King Merton, *Social Theory and Social Structure* (Simon and Schuster, 1968).

Previous studies on abortion policy in Indonesia have examined the issue from various perspectives. Existing research has demonstrated that Indonesia's abortion regulations continue to face challenges in reconciling the protection of fetal life with women's reproductive rights, particularly in cases involving rape victims.⁸ Other studies have found that administrative requirements and legal procedures often impede women's access to lawful abortion services; however, these studies primarily emphasize positive law and human rights perspectives.⁹ Additional research has highlighted the social stigma experienced by women undergoing abortion, yet such studies generally do not analyze these consequences within a sociological framework that explains how legal policies generate intended and unintended social outcomes.¹⁰ Consequently, previous scholarship has predominantly adopted normative legal or human rights approaches, while studies employing Robert K. Merton's concepts of manifest functions, latent functions, and dysfunctions to analyze Indonesia's abortion policy remain limited.

Based on these considerations, this study aims to analyze Indonesia's abortion policy through the perspective of Robert K. Merton's structural functionalism theory. Specifically, it seeks to identify the manifest functions underlying the formulation of abortion regulations, examine the latent functions emerging from their implementation, and analyze the dysfunctions that contribute to the policy's inability to fully address contemporary social problems. In addition, this study compares Indonesia's abortion policy with the legal framework of the Netherlands to illustrate how different regulatory approaches produce distinct social consequences. The findings are expected to contribute to the development of socio-legal scholarship by extending the application of Merton's structural functionalism to abortion policy analysis while providing recommendations for developing abortion policies that are more responsive to social realities without compromising legal certainty and the protection of human rights.

Method

This study employed normative legal research using a statutory approach and a conceptual approach. Normative legal research was selected because the object of analysis focuses on the legal norms governing abortion policy in Indonesia, particularly Law No. 1 of 2023 on the Criminal Code, Law No. 17 of 2023 on Health, and Government Regulation No. 61 of 2014 on Reproductive Health.¹¹ These primary legal materials were complemented by secondary legal materials, including scholarly books, peer-reviewed journal articles, and relevant previous studies to enrich the analysis. The conceptual approach was applied to examine theoretical perspectives on legal functions, public policy, and Robert K. Merton's structural functionalism, which served as the primary analytical framework for interpreting the social consequences of Indonesia's abortion policy.

The analysis was conducted through the identification, classification, and interpretation of the collected legal materials. Subsequently, the data were analyzed qualitatively using Robert K. Merton's concepts of manifest functions, latent functions, and dysfunctions as the principal analytical framework. This approach enabled the study to identify the normative objectives

8 Maulidya Rezqinna and Wawang S Sukarya, "Legal Analysis of Abortion in Cases of Anencephaly: A Study of Moral, Criminal Law, and Health Perspectives," *Intellectual Law Review (ILRE)* 2, no. 1 (April 15, 2024): 23–31, <https://doi.org/10.59108/ilre.v2i1.59>.

9 Antonella F. Lavelanet, Brooke Ronald Johnson, and Bela Ganatra, "Global Abortion Policies Database: A Descriptive Analysis of the Regulatory and Policy Environment Related to Abortion," *Best Practice & Research Clinical Obstetrics & Gynaecology* 62 (January 2020): 25–35, <https://doi.org/10.1016/j.bpobgyn.2019.06.002>.

10 Shelly Makleff et al., "Exploring Stigma and Social Norms in Women's Abortion Experiences and Their Expectations of Care," *Sexual and Reproductive Health Matters* 27, no. 3 (November 29, 2019): 50–64, <https://doi.org/10.1080/26410397.2019.1661753>.

11 Marjan Miharja, *Buku Ajar Metode Penelitian Hukum* (Bandung: CV Cendekia Press, 2023).

underlying Indonesia's abortion regulations while simultaneously evaluating the intended and unintended social consequences arising from their implementation. To strengthen the analysis, the study also undertook a limited comparative examination of abortion regulations in the Netherlands, providing a broader understanding of how different legal approaches produce distinct social consequences. This analytical framework allows the study to connect normative legal provisions with their practical implications within society, thereby offering a more comprehensive socio-legal interpretation of abortion policy in Indonesia.

RESULTS AND DISCUSSION

The Reality of Abortion Legal Policy in Indonesia

The existence of legal policy on abortion cannot be separated from the various social conditions that influence its implementation and effectiveness in society. As a state governed by law, Indonesia has established various regulations that can govern abortion practices with the aim of maintaining order and guaranteeing protection of the right to life.¹² Unfortunately, the implementation of this policy is often confronted with complex social conditions, giving rise to dynamics between applicable legal provisions and the reality that occurs in the field. Indonesia's legal provisions on abortion are set out in Law No. 17 of 2023 on Health, which stipulates that abortion is fundamentally prohibited, but may be performed under certain conditions in accordance with an indication of medical emergency or pregnancy resulting from a criminal act of sexual violence, provided that the requirements set out in the laws and regulations are met. This provision shows that the law seeks to protect the right to life while also considering certain conditions that require exceptions on humanitarian and medical grounds. Therefore, we need to understand that Indonesia's abortion legal policy cannot be understood only through written rules, but must also be seen through the realities that emerge in its implementation. So, does this reality align with the purpose behind the policy's formation, or does it instead show a different dynamic?

When someone is sick, medicine is often the first hope for recovery. However, the healing process does not depend on the medicine alone, since other factors also determine whether treatment succeeds. The same is true of law created to address problems that arise in society. Not all problems can be resolved simply by relying on a single regulation, because under certain conditions, the very problem the regulation seeks to address can change and create new challenges that make enforcement of the existing law more difficult.¹³ One issue that continues to generate much discussion and gives rise to negative views toward victims is abortion, particularly when it is linked to pregnancy resulting from the criminal act of rape. Rape is a serious violation of human rights that can cause physical, mental, and psychological trauma, and victims not infrequently face intimidation and difficulty in obtaining justice.¹⁴ This condition then creates a dilemma between the continuation of the pregnancy experienced by the victim and differing perspectives on the reality faced by the victim regarding abortion. On one hand, there is a view that protecting the life of the fetus being carried deserves great attention, but on the other hand, time constraints and strict legal procedures can limit victims' access to legal

12 Sherly Widya Rahmawati et al., "Analisis Hak Asasi Manusia Terhadap Kebijakan Aborsi: Studi Kasus Aborsi Di Indonesia Tahun 2023," *Jurnal Ilmiah Multidisipin* 3, no. 5 (2025): 221–27, <https://doi.org/10.60126/jim.v3i5.929>.

13 Dinda Anisa Salsabila, Mohammad Ekaputra, and Putri Rumondang Siagian, "Analisis Yuridis Perlindungan Hukum Terhadap Korban Pemerkosaan Yang Melakukan Aborsi Legal," *Jurnal Ilmiah Bidang Sosial, Ekonomi, Budaya, Teknologi, Dan Pendidikan* 5, no. 3 (2026): 1423–36, <https://doi.org/https://doi.org/10.54443/sibatik.v5i3.4492>.

14 Melina Dwi Sevia et al., "Perlindungan Hukum Bagi Perempuan Yang Melakukan Pengguguran Kandungan (Aborsi)," *Jurnal Hukum* 4, no. 1 (2025): 45–66, <https://doi.org/10.56013/welfarestate.v4i1.3338>.

abortion, and the experience they face can worsen the mental burden caused by the unwanted pregnancy.¹⁵ This situation reminds us that Indonesia's abortion legal policy should not only regulate the boundary between permitted and prohibited acts, but must also address how far the existing policy is able to meet the needs, protect the rights, and provide certainty for women facing pregnancy resulting from undesired circumstances.

In addition to facing various challenges in obtaining protection of their rights, women who experience unwanted pregnancy also often confront strong social stigma. This is familiar to us because society often judges a situation only by what is visible on the surface, without understanding the background factors that may have caused the event to occur. This condition is strongly felt by women who experience unwanted pregnancy, where society often associates this condition with a violation of social and moral norms without first understanding the factors that may have caused the problem to arise; whether coercion, threats, sexual violence, inability to refuse, fear, or pressure from the surrounding environment. As a result, women affected by social stigma become more vulnerable to mockery, negative labeling, and even social exclusion.¹⁶ This stigma can also create social pressure that leads to feelings of shame, decreased self-confidence, and difficulty in carrying out daily social life. This situation further worsens the conditions they face, since they must bear a social burden amid an already difficult situation. This shows that the burden faced by women does not only come from the pregnancy situation itself, but also from society's response and judgment. According to the 2017 Indonesia Demographic and Health Survey (SDKI), 15% of pregnancies in Indonesia fall into the category of unwanted pregnancy, with 8% being truly unwanted pregnancies and 7% being pregnancies that occurred at an unplanned time.¹⁷

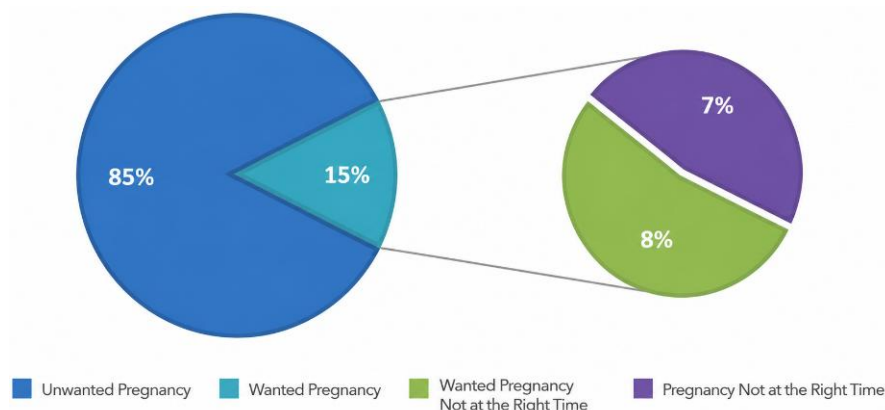


Figure 1. Chart of Pregnancy Data Based on Women's Intentions

Source: Indonesia Demographic and Health Survey (SDKI), 2017¹⁸

Based on Figure 1, we can see that women occupy a very distinctive position within society and among nations around the world. However, there are many cases that greatly harm women, forcing them to experience pregnancy resulting from rape or other unwanted events, placing

15 Clara Oktaviana Ayuningrum, Andika Wijaya, and Satriya Nugraha, "Problematika Kriminalisasi Aborsi Dalam Perspektif Hak Asasi Perempuan Dan KUHP Nasional," *Journal of Social Science Research* 5, no. 4 (2025): 371–85.

16 Elvira Damayanti et al., "Mengkaji Praktik Aborsi Di Indonesia: Penyebab, Dampak, Dan Stigma Masyarakat," *Journal of Law and Syariah* 2, no. 02 (2024): 166–75, <https://doi.org/10.54298/tarunalaw.v2i02.199>.

17 Rofifatun Nisa, Atik Mawarni, and Sri Winarni, "Hubungan Beberapa Faktor Dengan Kehamilan Tidak Diinginkan Di Indonesia Tahun 2017 (Analisis Data Sekunder SDKI Tahun 2017)," *Jurnal Riset Kesehatan Masyarakat* 1, no. 2 (2021): 1–10, <https://doi.org/10.14710/jrkm.2021.13314>.

18 Statistics Indonesia (BPS), "Indonesia Demographic and Health Survey 2017" (Jakarta, 2018), <https://dhsprogram.com/pubs/pdf/FR342/FR342.pdf>.

them in a vulnerable position and creating a boomerang effect against themselves in the form of various obstacles to obtaining their rights.¹⁹ Unfortunately, the rights contained within legal provisions are sometimes not yet fully fair or equitably beneficial for women. From this condition, we must become more sensitive and caring toward events occurring around us, particularly regarding women's human rights. As human beings, we must also view every individual around us fairly, possessing dignity and rights that must be respected, so that we can protect one another without being provoked. It should be understood that women's human rights are rights held by a woman both because she is a human being and because she is a woman. By respecting women's rights, we not only uphold the principle of justice but also help create a more humane, inclusive, and just society for all.²⁰

Indonesia's Abortion Legal Policy in the Perspective of Robert K. Merton's Structural Functionalism Theory

Merton argued that every social institution has consequences that can be divided into manifest functions and latent functions. Manifest functions focus on the consequences that are intended and recognized by policymakers, while latent functions are unplanned consequences that emerge as a result of the policy's implementation. Beyond producing the normative goals expected by lawmakers, a regulation also indirectly produces various evolving social impacts. This proves that regulation plays a very important role in social practice, particularly in Indonesia's abortion legal policy, which fundamentally adopts a principle of prohibiting abortion with limited exceptions under certain circumstances. In Indonesia, there is a law that in principle opposes abortion practices in accordance with the policy set out in Articles 463 through 467 of Law No. 1 of 2023 on the Criminal Code. However, in accordance with Law No. 17 of 2023 on Health, this prohibition is not absolute, as there are certain conditions requiring special attention, such as medical emergencies or unwanted pregnancy resulting from the criminal act of rape or sexual violence.²¹ Ultimately, this policy helps the state balance the protection of women's reproductive health rights against the fetus's right to life.²²

The manifest function of this policy can be seen in the protection of the fetus's right to life, where the state views the fetus as potential life that must receive legal protection from the time it is in the womb. This is because Indonesia's criminal law regime treats abortion as a criminal act that threatens life. However, there are certain exceptional conditions that require the state to pay full attention to the recognition of human rights, particularly in the context balancing reproductive health rights with women's right to dignity.²³ Linked to Merton's framework, this goal represents a manifest function focused on protecting rape victims, and the state also acknowledges that rape resulting in pregnancy will trigger severe physical and psychological trauma for the victim. Accordingly, victims should be given full access to safe and legal abortion as long as the requirements meet applicable laws and regulations. The government prohibits

19 Fransiska Novita Eleanor et al., *Hukum Perlindungan Anak Dan Perempuan* (Mdza Media, 2021).

20 Maidina Rahmawati and Adhigama Budiman, *Kerangka Hukum Tentang Aborsi Aman Di Indonesia*, *Institute for Criminal Justice Reform*, 2023.

21 Novendra Fajar Mulyono and Sri Endah Wahyuningsih, "Legal Analysis of Legal Protection for Children as Victims of Incest Criminal Acts," *Jurnal Hukum Khaira Ummah* 5, no. 3 (2025): 1623–35, <https://doi.org/10.38035/jlph.v5i3.1117>.

22 Lindawati, Arief Suryono, and Ahmad Makbul, "Abortion Law in Rape Victims' Cases: Perspective of the KUHP and Indonesia's Health Law," *Jurnal Ilmu Kepolisian* 19, no. 2 (2025): 38–45, <https://doi.org/10.35879/jik.v19i2.665>.

23 Renih Setiawan and Syarif Saddam Rivanie, "Restorative Legal Challenges of Abortion for Rape Victims in Indonesia," *Pandecta Research Law Journal* 20, no. 2 (2025): 779–822, <https://doi.org/10.15294/pandecta.v20i2.22726>.

illegal abortion practices with the aim of protecting women from health risks such as hemorrhage, infection, or death resulting from unsafe abortion. This policy is not only for patients but also for medical personnel, relating to another manifest function; namely, medical personnel who perform abortion procedures are given legal certainty as long as the procedure follows applicable legal provisions. This regulation is designed so that medical personnel do not face the threat of criminalization and can continue to carry out their duties professionally, protected by law.²⁴

This policy can also be analyzed through its latent function, which is a consequence of legal uncertainty in implementing abortion policy. The Criminal Code (KUHP) and other related laws both regulate exceptions to the prohibition of abortion, but the level of regulation between the two differs. The Health Law regulates specific matters such as the healthcare facilities provided, the gestational age limit, and the authorized medical personnel who may perform the procedure, while the Criminal Code only regulates the exception in general terms. In practice, the requirements set according to the official purpose that restrict legal abortion practices produce a latent function in the form of increasing illegal and unsafe abortion practices. This occurs because women who become pregnant outside of marriage due to their own circumstances seek alternatives through illegal abortion outside official facilities, which can endanger reproductive health and trigger complications or even the mother's death, since they know that there are strict restrictions on abortion practices that carry penalties if violated.²⁵

Another latent function is the barrier to access faced by rape victims. Although the law provides an exception for this situation, in practice victims face obstacles in the form of administrative barriers to obtaining legal abortion services. These barriers include medical examinations, proof of gestational age, and the need for supporting documents from law enforcement to prevent falsification.²⁶ However, this is also caused by weak coordination between police institutions, healthcare institutions, and victim protection agencies, making it difficult for victims of sexual violence to access legal abortion services.²⁷

Next, a "chilling effect" emerges among medical personnel who fear criminal threats related to abortion procedures. Doctors often find themselves in a dilemma between fulfilling their professional obligation to help victims and the risk of criminalization if the procedure performed is deemed by certain parties not to meet applicable legal requirements.²⁸ This causes medical personnel to delay procedures even when the patient meets the criteria for legal abortion services. Society itself lacks adequate education on this matter, so abortion is still considered an act that violates religious and moral norms. This is what causes strong social stigma against women who experience pregnancy; victims also experience discrimination, negative labeling, and even social exclusion, causing them to become reluctant to seek legal medical assistance for

24 Nadiyahatul Khairiah, "Tindak Pidana Aborsi Dalam Perspektif Hukum Pidana Indonesia: Antara Larangan Dan Pengecualian," *Amandemen: Jurnal Ilmu Pertahanan, Politik Dan Hukum Indonesia* 2, no. 3 (2025): 115–25, <https://doi.org/https://doi.org/10.62383/amandemen.v2i3.1003>.

25 Engga Lift Irwanto and Khairani, "Tinjauan Yuridis Terhadap Perbuatan Aborsi Akibat Pemerkosaan Berdasarkan Ketentuan Peraturan Perundang-Undangan," *Unes Journal of Suara Justisia* 7, no. 4 (2024): 1294–1307, <https://doi.org/10.31933/ujsj.v7i4.441>.

26 Setiawan and Rivanie, "Restorative Legal Challenges of Abortion for Rape Victims in Indonesia."

27 Emirza Nur Wicaksono, "Konstruksi Hukum Aborsi Bagi Korban Perkosaan Dalam Perspektif Hak Asasi Manusia Dan Hukum Nasional Di Indonesia," *Indonesian Journal of Law and Justice* 3, no. 2 (2025): 1–16, <https://doi.org/10.47134/ijlj.v3i2.5076>.

28 Firdaus Pria Pradana, "Legal Protection of Abortion Abusers in the Pregnancy of Rape in Indonesia," *UMPurnwokerto Law Review* 1, no. 1 (2020): 9, <https://doi.org/10.30595/umplr.v1i1.8053>.

abortion and instead seek illegal alternatives that endanger reproductive health.²⁹ Indonesia's abortion legal policy demonstrates that a legal institution can carry out both a manifest function and a latent function simultaneously. This regulation essentially succeeds in protecting the fetus's right to life, providing health protection for the mother, and providing a safe space for rape victims. However, on the other hand, the implementation of the same policy also produces consequences in the form of unsafe abortion practices, inter-institutional barriers that make things difficult for victims, fear among medical personnel of criminalization threats, and social stigma against women who undergo abortion. Therefore, the manifest function must remain more dominant than the latent function in order to prevent the emergence of social dysfunction.³⁰

Every social system is formed with the goal of creating order and meeting society's needs. Unfortunately, in practice, not all functions carried out are able to provide the intended benefits. There are times when a social structure instead produces harmful impacts on individuals or society. This relates to Robert K. Merton's thinking on dysfunction, which he considered to be a condition in which a social structure or institution, while serving to maintain the continuity of the social system, can also produce negative consequences for the system in operation.³¹ Thus, Merton's concept became a critique of structural functionalist views that tend to assume every social structure always benefits society. According to Merton, in reality not all policies or institutions are able to carry out their functions optimally, because under certain circumstances a rule can instead give rise to new problems that were not planned from the outset. For example, a school implements a rule prohibiting mobile phones so students can focus better on learning. However, under certain circumstances, this rule instead makes it difficult for students to contact their parents in an emergency. This example shows that a rule can have a good purpose but still produce negative impacts for some people. Therefore, the concept of dysfunction is often used to assess a policy not only by the goals it aims to achieve but also by the consequences that emerge in social life.

Indonesian law fundamentally prohibits abortion except under certain conditions intended to protect the fetus's right to life while also maintaining legal order in society. However, the reality in practice differs, as various obstacles remain that prevent this goal from being fully achieved. Some women who experience unwanted pregnancy or find themselves in difficult circumstances have trouble accessing safe healthcare services due to fairly complicated procedures. As a result, some choose to undergo illegal abortion, increasing the risk to their health and safety.³² This condition shows that the policy has not yet provided balanced protection, since it focuses more on law enforcement while the social and psychological condition of women also needs attention. From a dysfunction perspective, this situation shows that a policy intended to protect society can produce other unplanned consequences if its implementation has not been able to meet needs in the field.

An example that can be analyzed is the case of Tika Mentari binti Susilo in Jambi, who underwent an abortion after becoming a rape victim. Research discussing abortion law

29 Ibnu Fadli, "Legalitas Aborsi Bagi Korban Perkosaan (Tinjauan Menurut Hukum Positif Dan Hukum Islam)," *Jurnal Lex Renaissance* 7, no. 3 (2022): 559–70, <https://doi.org/10.20885/jlr.vol7.iss3.art8>.

30 Ciek Julyati Hisyam, *Perilaku Menyimpang: Tinjauan Sosiologis* (Bumi Aksara, 2021).

31 Nisrina M Adam, Nur Mohamad Kasim, and Weny Almoravid Dunga, "Disfungsi Perlindungan Hukum Terhadap Hak Anak Akibat Dampak Perkawinan Di Bawah Umur," *Jurnal Ilmu Hukum, Humaniora, Dan Politik* 6, no. 3 (2026): 1945–1954, <https://doi.org/https://doi.org/10.38035/jihhp.v6i3>.

32 Beni Uldin et al., "Penegakan Hukum Pidana Terhadap Tindak Pidana Aborsi Dalam Perspektif Hukum Positif Dan Hukum Islam Di Polresta Jambi" 1, no. 3 (2025): 937–46, <https://doi.org/https://doi.org/10.62567/ijosse.v1i3.1395>.

enforcement at the Jambi City Police Precinct explains that this case shows a dilemma between law enforcement and a sense of justice. Although abortion regulations are already set out in positive law, their implementation is not always straightforward because victims also face psychological pressure and social criticism. Viewed from Merton's dysfunction perspective, this condition shows that a legal policy intended to protect life can produce other unintended impacts. Women in similar situations may fear seeking medical help or reporting their condition due to concern about facing legal proceedings.³³ As a result, some choose to act secretly, which is actually more dangerous for their safety. This condition is a form of dysfunction because a rule created to protect society can instead create new risks if it is not balanced with protection for victims. Therefore, law enforcement should not only focus on imposing sanctions but should also consider humanitarian aspects so that the law's purpose can be achieved more fairly.

Comparison of Abortion Legal Regulation between Indonesia and Other Countries

Having examined how Indonesia's abortion legal policy can be understood through the perspective of Robert K. Merton's structural functionalism, the discussion needs to be broadened by comparing it with regulations in other countries, since such a comparison helps show that abortion legal regulation does not emerge in a vacuum but is influenced by each country's historical background, culture, and evolving values. History and culture are two factors that greatly influence the formation of abortion legal policy in various countries. These differing backgrounds cause each country to adopt a different approach to regulating abortion practices, whether in terms of scope, requirements, or regulatory purpose. One interesting comparison can be made between Indonesia and the Netherlands. Abortion policy in Indonesia is set out in the 2023 Criminal Code (KUHP), particularly Articles 463 through 465, which is a revision of the older Criminal Code inherited from the Dutch. Abortion is fundamentally considered a strictly prohibited criminal act, with the fetus regarded as a living being based on the religious and moral values held by the majority of society. In the Netherlands, meanwhile, abortion policy differs from Indonesia's because it is governed by two interrelated legal provisions: the Criminal Code, which generally prohibits abortion, and the *Wet afbreking zwangerschap* (WAZ, the Termination of Pregnancy Act),³⁴ which was established in 1981 and came into force as an exception law in 1984.³⁵

The history of the WAZ's formation in the Netherlands began with the feminist women's movement of the late 1960s and 1970s, which used the slogan "baas in eigen buik", meaning that a woman is the boss of her own body.³⁶ This movement emerged because of the high-risk illegal abortion practices that frequently occurred, victimizing many women. After a fairly long parliamentary debate, the WAZ was finally passed into law by a very narrow margin—38 votes to 37. The political compromise reached was to keep abortion within the criminal code while adding special provisions allowing abortion to be performed if certain requirements were met. This system was specifically designed to balance two opposing interests: a woman's right to control her own body and the protection of fetal life. The WAZ does not grant full freedom to undergo abortion but establishes requirements and procedures that must be met before the

33 Syahrifah Aima and Dadan Erwandi, "Pelayanan Kesehatan Reproduksi Remaja Di Indonesia: Sistematis Review," *Jurnal Ners Universitas Pahlawan* 8, no. 2 (2014): 1447–52, <http://journal.universitaspahlawan.ac.id/index.php/ners>.

34 "Wet Afbreking Zwangerschap (Termination of Pregnancy Act). Stb. 1981, 257." (n.d.).

35 Yulia Rizki Widiarti and Imelda Kusuma Sari, "Analisis Perbandingan Alasan Penghapus Pidana Di Negara Indonesia Dan Belanda," *Jurnal Media Akademik (Jma)* 2, no. 6 (2024): 1–14, <https://doi.org/10.62281>.

36 "Wetboek van Strafrecht (Dutch Criminal Code)."

procedure can be carried out. This shows that Dutch abortion legal policy is the result of a compromise between protecting women's reproductive rights and the state's interest in protecting fetal life.

This stands in stark contrast to Indonesia, where protecting the fetus as potential life is the highest priority, so that a woman's authority to determine her reproductive rights becomes limited. In rape cases, abortion may only be performed if the gestational age does not exceed 14 weeks and must be accompanied by a police report or medical certificate. Meanwhile, in the Netherlands, women's autonomy is considered a very important value, based on the principle that the decision to terminate a pregnancy lies entirely with the woman herself. The Netherlands also applies increasing protection for the fetus as gestational age advances, while still respecting the woman's decision. The requirements for abortion in the Netherlands include the woman's own decision being sufficient reason, a maximum permitted gestational age of 24 weeks, and the procedure must be performed in a state-licensed clinic or hospital.³⁷ The Netherlands also imposes no restriction based on specific reasons, so abortion may be performed for social, economic, or psychological reasons of any kind. Doctors in the Netherlands must provide counseling so that the decision is made with careful consideration, but they may not refuse a woman's request merely because of their personal beliefs.

Minimum fetal age, the government's role, and social stigma are three factors that reinforce the differences in how Indonesia and the Netherlands approach this issue. The gestational age limit for abortion in Indonesia is 14 weeks, but this only applies to cases involving rape victims.³⁸ In the Netherlands, meanwhile, the time limit for abortion is 24 weeks, the point at which a baby is considered capable of surviving outside the womb. This difference reflects differing views on when a person's life is considered to deserve full protection from the government. In Indonesia, the government's role is very important as supervisor and regulator, with law enforcement agencies and health institutions tasked with ensuring that abortion is only performed under permitted circumstances. Indonesia also requires the husband's consent (except for rape victims), showing that the decision to undergo abortion does not lie entirely with the woman herself. In the Netherlands, on the other hand, the government's role is to help the public gain access to safe and legal abortion services while ensuring that such services remain confidential and available to many people. The Dutch government even subsidizes abortion services so that all Dutch residents can use the service free of charge, without going through an insurance claim process that could expose the patient's identity.

The social stigma against abortion in Indonesia remains very strong; many women feel that abortion is shameful or sinful, so they often undergo abortion illegally and in secret. This creates health risks for women due to the use of inadequate medical equipment. In the Netherlands, abortion is considered a routine medical procedure, so women can obtain services without feeling anxious or judged by those around them. This difference in perspective also causes access to reproductive healthcare services in the two countries to operate very differently. In Indonesia, fear of social judgment often causes women to delay seeking medical help. This ultimately increases the risk of health complications that could actually have been prevented. In the Netherlands, meanwhile, openness and social acceptance help women obtain faster and safer services in accordance with applicable procedures.

37 Jenifer Sitanaya, Jemmy Sondakh, and Harly Stanly Muaja, "Tindak Pidana Aborsi Dan Pengecualiannya Menurut Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan," *Jurnal Fakultas Hukum, UNSRAT* 2, no. 4 (2024): 306–312.

38 Sabila Nithaqaini Gaffar and Rani Apriani, "Abortus Provocatus Dalam Perspektif Lex Specialis: Perlindungan Hukum Bagi Perempuan Korban Kekerasan Seksual," *JUSTITIABLE - Jurnal Hukum* 8, no. 1 (2025): 87–98, <https://doi.org/10.56071/justitable.v8i1.1351>.

Table 1. Comparison of Abortion Legal Regulations between Indonesia and the Netherlands

Aspect	Indonesia	The Netherlands
Legal Basis	Law No. 1 of 2023 on the Criminal Code, Law No. 17 of 2023 on Health, and Government Regulation No. 61 of 2014 on Reproductive Health	Dutch Criminal Code and the <i>Wet afbreking zwangerschap</i> (WAZ, Termination of Pregnancy Act)
General Legal Principle	Abortion is generally prohibited, with limited legal exceptions.	Abortion is legally permitted under regulated medical procedures.
Permitted Circumstances	Medical emergencies and pregnancies resulting from rape.	Social, economic, psychological, and medical reasons based on the woman's decision.
Gestational Age Limit	Up to 14 weeks for pregnancies resulting from rape.	Up to 24 weeks of pregnancy.
Decision-Making Authority	Subject to statutory requirements; spousal consent is generally required except for rape victims.	Primarily determined by the pregnant woman after medical consultation.
Government's Role	Regulates, supervises, and restricts abortion according to statutory provisions.	Ensures safe, accessible, confidential, and publicly funded abortion services.
Role of Healthcare Professionals	Medical personnel must comply with strict legal requirements and may face criminal liability if procedures fall outside legal provisions.	Physicians provide counseling and medical services but cannot refuse eligible requests solely on the basis of personal beliefs.
Social Context	Strong social and religious stigma contributes to illegal and unsafe abortion practices.	Abortion is generally regarded as a healthcare service with relatively low social stigma.
Policy Orientation	Prioritizes protection of fetal life while allowing limited exceptions.	Balances women's reproductive autonomy with protection of fetal life through regulated access.

Source: Compiled by the authors based on Law No. 1 of 2023 on the Criminal Code, Law No. 17 of 2023 on Health, Government Regulation No. 61 of 2014 on Reproductive Health, and the Wet afbreking zwangerschap (WAZ) of the Netherlands.

As presented in Table 1, Indonesia and the Netherlands adopt fundamentally different approaches to abortion regulation. Indonesia applies a restrictive legal framework that prioritizes the protection of fetal life by allowing abortion only under limited circumstances, particularly medical emergencies and pregnancies resulting from rape. In contrast, the Netherlands adopts a more permissive regulatory model that emphasizes women's reproductive autonomy while maintaining procedural safeguards through medical counseling and regulated healthcare services. The comparison further demonstrates differences in gestational age limits, decision-making authority, governmental responsibilities, and the social acceptance of abortion. These distinctions illustrate how historical, cultural, and legal contexts shape abortion policy and produce different social consequences, supporting Robert K. Merton's argument that legal institutions generate both intended functions and unintended outcomes depending on the social environment in which they operate.

CONCLUSION

Indonesia's abortion regulations, set out in Law No. 1 of 2023, Law No. 17 of 2023 on Health, and Government Regulation No. 61 of 2014 on Reproductive Health, fundamentally represent the state's commitment to reconciling two opposing interests—protection of the fetus's right to life and fulfillment of women's reproductive rights. When examined using Robert K. Merton's structural functionalism framework, this regulation has explicit manifest functions, including maintaining fetal survival, protecting maternal safety in medical emergencies, and accommodating the rights of women who are victims of sexual violence. In addition, this policy also provides a clear legal foundation for healthcare workers so they can carry out their professional responsibilities without facing legal threats. However, in practice, the implementation of this policy has also produced a number of unplanned latent functions, including the spread of illegal abortion practices that endanger women's safety, complicated administrative procedures that hinder rape victims from accessing legal abortion services, unease among medical personnel due to fear of criminalization, and the increasingly entrenched negative stigma in society against women who experience unwanted pregnancy. When these latent functions grow stronger and come to dominate over the intended manifest functions, this abortion legal policy can be said to be experiencing social dysfunction in Merton's sense—a condition in which an institution, rather than strengthening social order, instead creates new social problems that further complicate the situation. The comparison with the Netherlands' regulatory system further confirms that an overly restrictive legal approach, without being balanced by adequate access to services, tends to produce various dysfunctional impacts within society. Therefore, efforts to reform Indonesia's abortion legal policy should not rely solely on law enforcement and the imposition of sanctions, but must also place the humanitarian dimension, reproductive health, and the social and psychological condition of affected women as primary considerations in future policymaking.

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