



# THE CONFLICT BETWEEN ABORTION LEGALITY AND INTERNATIONAL HUMAN RIGHTS PRINCIPLES

**Indah Wati Dwi Rini, Yuliani, Didit Darmawan, Rafadi Khan Khayru,  
Andri Subiakso**

University of Sunan Giri, Surabaya

correspondence: [dr.diditdarmawan@gmail.com](mailto:dr.diditdarmawan@gmail.com)

## **Abstract**

This research examines the clash between the legality of abortion within the human rights framework and the imposition of the death penalty for abortion-related actions. Employing normative legal research methods, the study elucidates discrepancies in perspectives on abortion at both national and international levels. Despite the acknowledgment of abortion as an international human right by the ICCPR, and CEDAW, certain nations still consider abortion illegal, potentially resulting in the imposition of the death penalty. Within the context of international norms, outlined in the ICC Statute, there arises a question regarding whether abortion can be deemed the most serious crime. The majority of human rights laws, including the UDHR and the ICCPR, affirm the right of every human being to life and protection. Therefore, the legality of the death penalty for abortion contradicts international norms that emphasize the need to respect and safeguard the human right to life. This study employs a normative legal approach to articulate this conflict.

**Keywords:** abortion, human rights, human rights legal conflicts, legality of abortion, international law.

## Introduction

The debate over abortion has been a source of controversy throughout history, raising issues between religious values, morality, and ethics. Conversations around abortion create complex conflicts between individual rights, community morality, medical aspects, religion, family, and personal ethics. The issue of the legality of abortion opens up space for a variety of views that reflect a diversity of values and beliefs. The most striking problem occurs between groups that defend the right to safety of mothers carrying fetuses and those who affirm the entitlement to the existence of the unborn child. Although pregnancy is often considered a condition that requires primary attention, in the case of abortion, this view can be reversed (Issalillah, 2021).

In the United States, polarization of views regarding abortion is manifested in two camps known as pro-life (against abortion) and pro-choice (pro against abortion). Pro-life emphasizes the importance of protecting the right to life of the fetus as part of its moral and religious views, while pro-choice focuses on the personal right of a woman to make choices about her own body, encompassing decisions related to pregnancy.

Tensions between the two camps escalated as they competed over their points of view in the name of the principle of "Human Rights." Proponents of the pro-life stance ground their assertions on the recognition and protection of human life as an inherent right, beginning at the point of conception. On the other hand, pro-choice groups articulate that human rights also consist of a woman's right to control her body and make decisions regarding pregnancy.

The debate surrounding abortion creates a confusing environment and fuels conflict in society, with opposing parties detailing their views with moral, religious, medical, and human rights arguments (Fenwick, 2012; Puppinck, 2013). This issue continues to be one of the most sensitive topics in United States policy and culture.

Human rights refer to the rights inherent in every individual from birth, are inherent, and must not discriminate based on race, nation, religion, gender, or certain groups. The notion of human rights is viewed as a fundamental entitlement universally inherent in every individual, integral to human dignity. In the context of human rights, it is important to remember that these rights apply to all, regardless of particular groups or individuals.

A contemporary issue within the sphere of human rights, particularly regarding women's reproductive rights, is tackled in the Protocol on the Rights of Women in Africa. This protocol recognizes abortion as a human right and emphasizes that women's reproductive rights are an integral part of human rights. This perspective underscores the right of women to make choices regarding their bodies and reproductive health without facing discrimination. This concept aligns with the promotion of women's autonomy and liberty in handling their reproductive well-being.

Recognition of human rights in women's reproductive rights ensures that decisions regarding abortion, contraception, and other reproductive health services can be taken with full knowledge and freedom. By emphasizing human rights, efforts are made to achieve gender equality and justice, as well as protect the dignity and integrity of every individual, regardless of gender or background (Erdman, 2014). The role of protocols and other laws that recognize human rights, especially reproductive rights, is a positive step towards a more just society. Through this recognition, human rights, including reproductive rights, can be widely respected and protected, creating an environment where every individual can live with dignity and equality.

Abortion regulations vary around the world, as seen in a comparison between Singapore and El Salvador. In Singapore, abortion is only available to Singapore citizens, wives of Singapore citizens, and women who have lived there for at least 4 months. This procedure is limited to 24 weeks of pregnancy. On the other hand, El Salvador has strict rules under which abortion is considered illegal without exception, with a prison sentence of between two and eight years. Some cases can even carry the death penalty. Differences in abortion regulations between countries reflect variations in societal views, cultural values, and legal norms. Singapore takes a more open approach and considers women's special conditions, while El Salvador takes a tougher approach without making any exceptions. The debate surrounding reproductive rights and women's freedom continues to be a sensitive topic globally.

The legal status of abortion within the global human rights framework presents a clash between the right to life and women's reproductive rights. International legal texts, such as the Universal Declaration of Human Rights, affirm the right to life for every individual. Simultaneously, the rights

related to reproductive choices and autonomy over one's body are also acknowledged as fundamental human rights. The primary source of contention arises from the delicate balance between a woman's entitlement to control her body and the right to life of the fetus. Some countries and societal groups support protecting the rights of the fetus, meanwhile, some underscore the significance of a woman's entitlement to decide the destiny of her own body. Laws in many countries regulate abortion with certain limitations, reflecting ethical dilemmas in the law. Some countries allow abortion in certain cases, such as threats to the mother's health or rape, while others limit or prohibit it completely. The debate involves the question of whether bans or restrictions on abortion violate women's human rights. Human rights activists say that banning abortion could harm women's health and rights. However, there are views that emphasize the right to life of the fetus as part of human rights, and countries that prohibit abortion link it to the right to life guaranteed by human rights conventions. Over time, this debate continues to evolve, reflecting the diversity of values and norms around the world.

Therefore, it becomes imperative to examine the degree to which the legality of abortion contradicts international human rights principles and to scrutinize how abortion is governed within the framework of international law. Additionally, the study aims to assess the legality of the death penalty for individuals involved in abortion within the realm of international human rights law. This serves as the primary objective of the research.

## Method

Legal research is a systematic effort that aims to discover legal rules, principles and doctrines in order to provide answers to the legal problems faced. In order to write this study, the author chose a normative legal research method. This method involves library research, where the necessary data is obtained through a review of relevant literature. The type of data used in this research is called secondary data. This research focuses on analyzing the legality of abortion in international human rights. By using conceptual, legislative and literature approaches (library search), this research aims to investigate and understand various human rights aspects related to the legality of abortion within the structure of global human rights principles. A conceptual approach is used to explore key concepts

related to this issue, while legislative analysis is aimed at applicable legal norms. Library research is also the main instrument in collecting information and arguments that support analysis. Through this normative legal research method, the author attempts to present a solid and in-depth argument regarding the legality of abortion in international human rights. By combining various perspectives from legal concepts, statutory norms, and literature findings, this research can provide a complete human understanding of the legal issues discussed.

## Result and Discussion

Abortion is a complex and controversial topic, particularly within the sphere of principles governing global human rights. In some aspects, the legality of abortion can be considered to violate international human rights principles which protect an individual's right to life. However, it is important to recognize that views on abortion vary across countries and cultures.

International human rights principles, as outlined in diverse instruments focused on global human rights, assert the entitlement of each person to life, freedom, and personal security (Kälin & Künzli, 2019). In the context of abortion, this implies that the unborn child also possesses the right to life from the point of conception.

Some viewpoints see abortion as a violation of the unborn individual's right to life. According to this standpoint, abortion is seen as the termination of a life in its early stages of development, constituting a breach of international human rights principles (Paultk, 2013).

Nevertheless, there are perspectives contending that the reproductive rights of women are integral to the broader spectrum of human rights. These factions contend that women should possess the autonomy to govern their own bodies and should have secure and lawful access to abortion should they opt for it. They argue that banning abortion or making it illegal could be a violation of women's reproductive rights.

Views on abortion are greatly influenced by cultural values, religion and societal views in various countries. Some countries allow abortion under certain conditions, for example, a pregnancy stemming from sexual assault or posing a danger to the mother's well-being. In other countries, abortion is illegal and punishable. A conflict arises between the right to

life of the unborn individual and the reproductive rights of women. This issue is still being debated and has not yet reached a consensus at the international level.

### **Abortion Regulations According to International Law**

Abortion, according to the definition of the World Health Organization (WHO), refers to an action or procedure carried out with the intention of terminating a pregnancy or fetus that cannot survive (Van Look & Cottingham, 2013). WHO focuses on termination of pregnancy as the core of this definition, including medical and non-medical actions that can stop fetal development. On the other hand, according to Black's Law Dictionary, abortion is defined as the miscarriage of an embryo which not only occurs naturally, but can also be intentional or provoked by human intervention. This definition highlights the legal and ethical aspects related to abortion, emphasizing that not all miscarriages are considered abortions, but only those caused by human actions that deliberately provoke miscarriage.

The differences in views between health and legal perspectives regarding abortion reflect different understandings. The health perspective, as expressed by WHO, emphasizes medical and health aspects, while Black's Law Dictionary highlights the legal and ethical dimensions. Thus, a more comprehensive human rights perspective on abortion needs to consider the perspective used, both from a health and legal perspective.

In France, abortion law is regulated by a number of laws, including Law Number 75-17 of January 1975 Regarding Voluntary Interruption of Pregnancy and the Public Health Code. The country adheres to a relatively progressive approach to the issue of abortion, giving women the right to have an abortion until the end of the twelfth week of pregnancy, which is equivalent to the end of the first trimester. However, this time limit can be exceeded with certain conditions and procedures, such as confirmation from a doctor and consultation with a doctor. France allows abortion if the pregnancy endangers the mother's health or poses a significant risk to the health of the unborn child. This consultative approach involves the role of doctors in ensuring that decisions regarding abortion are taken carefully, striking a balance between a woman's autonomy over her body and ensuring the well-being of both the mother and the unborn child (Afita, 2020).

In Indonesia, abortion is actually prohibited according to the Criminal Code articles 299, 346, 347, 348 and 349, which classifies abortion as a crime and can be punished. However, there are exceptions regulated by Law Number 36 of 2009 concerning Health, and Article 31 of government regulation Number 61 of 2014 concerning Reproductive Health, which is generally referred to as the Reproductive Health Law. According to article 75 paragraph (2) of the Health Law, abortion can be carried out under certain conditions and this will be explained as follows:

1. In cases where there are signs of a medical crisis jeopardizing the life of the mother and/or the fetus
2. Abortion can be performed in cases of pregnancy resulting from rape.
3. Abortion may be allowed if the duration of pregnancy is not exceeding 40 days, calculated from the initial day of the last menstrual period

This means that although the Criminal Code generally prohibits abortion, the Reproductive Health Law provides exceptions in certain circumstances involving medical emergencies, pregnancies resulting from rape, and in the early stages of pregnancy.

The purpose of this exemption is to safeguard the life and well-being of mothers, granting women the authority to make choices concerning their bodies and health in challenging circumstances, (Roselvia, 2021).

The African Women's Protocol, officially titled "The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa," stands as a significant and legally binding Human Rights instrument on the African continent at the regional level. Adopted by the African Union on 11 July 2003, the protocol became effective in 2005. This tool underscores a critical aspect by underscoring the acknowledgment that the reproductive rights of women constitute an integral component of human rights.

The protocol offers explicit and unambiguous directives concerning women's rights to abortion under specific circumstances. While international law lacks specific regulations declaring abortion as a human right, the African Women's Protocol addresses this void by providing distinct guidance on a woman's entitlement to access abortion in particular contexts. The protocol explicitly indicates that member states must implement suitable measures to safeguard the reproductive rights of women.

This protocol grants authorization for medical abortion in specific circumstances, such as instances of sexual violence, rape, incest, and situations where pregnancy poses a threat to the mental and physical well-being of the mother or the life of the mother or fetus (Zampas & Gher, 2008). States parties are required to grant permission for medical abortion when the pregnancy results from sexual violence or rape, recognizing a woman's right not to be forced to maintain a pregnancy that is the result of an act of violence.

Furthermore, the protocol acknowledges the significance of permitting medical abortion in instances of incest, underscoring in terms of human rights that pregnancies stemming from illicit or unethical sexual relationships can adversely affect the mental and physical well-being of the women concerned. The protocol indicates that medical abortion is permissible in cases where the ongoing pregnancy poses a risk to the mental and physical well-being of the mother or jeopardizes the life of either the mother or the fetus.

Thus, the Protocol on the Rights of Women in Africa establishes a robust legal foundation for safeguarding women's reproductive rights, specifically the right to undergo safe and legal abortion as outlined in the provisions of this protocol. This underscores a profound commitment to women's reproductive rights and health within the framework of human rights law at the regional level in Africa.

On April 16 2008, marked a noteworthy advancement in Europe concerning women's abortion rights, as decided by the Parliamentary Assembly of the Council of Europe. The Council, encompassing 47 European states, witnessed a majority of Members of the European Parliament (MEPs) endorsing a report from the Committee on Equal Opportunities for Women and Men titled 'Access to Safe and Legal Abortion in Europe,' commonly referred to as 'the Report.' This document urges member states to decriminalize abortion, seeking to eliminate legal consequences imposed on women who opt for abortion (Faridah et al., 2021).

Moreover, the report underscores the significance of ensuring that women have the right to undergo abortions in a safe and lawful manner, involving aspects of the safety and legality of abortion procedures in order to protect women's health and rights. In addition to focusing on legal

aspects, the report also urges member nations to embrace strategies and policies related to sexual and reproductive health. This includes measures aimed at ensuring convenient and affordable access to contraception tailored to women's requirements. This report also recommends the adoption of policies supporting overall reproductive health, including comprehensive and supportive reproductive health services (Berer & Hoggart, 2019). Therefore, this breakthrough creates an impetus for member states to take concrete steps in supporting women's right to safe and legal abortion, with special emphasis on aspects of sexual and reproductive health in general (Smyth, 2023). The Report plays an important role in shaping views and policies at European level on this sensitive issue.

Conversely, General Comment Number 36 (2018) pertaining to Article 6 of the International Covenant on Civil and Political Rights (ICCPR) offers significant directives on the right to life, particularly concerning the secure, legal, and effective availability of abortion in cases where women's lives and human rights are at risk. This document underscores the obligation of member states to guarantee such access, particularly in situations where the continuation of a pregnancy jeopardizes the life or health of women. The emphasis is placed on safeguarding human rights, especially in instances of rape or incest.

This General Comment indicates the obligation of member states to establish a safe and legal legal framework for abortion. It is recognized that denying access to abortion in situations where the jeopardy to a woman's life or well-being can lead to profound physical and emotional distress. This document recognizes the importance of protecting women from the potential harms of unsafe abortion and the broader impact on their overall well-being.

In addition, this General Comment specifically highlights situations where access to abortion must be guaranteed, for instance, when the pregnancy originates from an act of rape or incest. In such instances, the emotional and psychological weight on the woman can be substantial, and compelling her to proceed with a pregnancy against her wishes may infringe upon her fundamental human rights. Therefore, this General Comment encourages legal provisions that take into account the unique

challenges faced by women in these situations, ensuring that they have the option to terminate a pregnancy safely and with dignity.

The Convention on the Elimination of All Forms of Discrimination Against Women is a human rights agreement that specifically underscores the reproductive rights of women. Within this convention, two articles support the human right of women to undergo an abortion, specifically Article 12, Paragraph (1), and Article 14, Paragraph (2), letters (a) and (b).

Article 12, Paragraph (1) of the Convention on the Elimination of All Forms of Discrimination Against Women asserts the obligation of states parties to eliminate discrimination against women in health services, including those related to family planning. The incorporation of the phrase "on the basis of equality of men and women" reflects a commitment to ensuring the recognition and safeguarding of women's reproductive rights without gender-based discrimination.

In the interim, Article 14, Paragraph (2), subparagraphs (a) and (b) of the Convention on the Elimination of All Forms of Discrimination against Women ensures women's entitlement to make choices about their reproductive health. This provision underscores the necessity for women to possess equal rights as men in family planning, along with equitable access to information, education, and reproductive health services.

Although the Convention on the Elimination of All Forms of Discrimination Against Women doesn't explicitly mention "abortion," the interpretation of human rights and gender equality within the convention can be interpreted to support women's right to access safe and legal reproductive healthcare, including abortion. The Committee on the Elimination of All Forms of Discrimination Against Women, tasked with monitoring the convention, emphasizes that the denial of certain medical procedures exclusive to women, such as abortion, is acknowledged as a manifestation of gender discrimination.

Moreover, Article 14, Paragraph (2), letters (a) and (b) of the Convention on the Elimination of All Forms of Discrimination Against Women protects the right of women in rural areas to participate in rural development, including access to health services. This incorporates the provision of information, counseling, and family planning services for women in rural regions.

This stipulation gains added significance when connected to General Comment Number 36 of the International Covenant on Civil and Political Rights, which implicitly elucidates women's reproductive health rights, encompassing family planning services. It underscores the crucial need to ensure uniform protection and availability of reproductive health services for women, even in rural areas, reflecting the global dedication to eradicating gender discrimination in health services.

Article 12(1) of the Committee on Economic, Social and Cultural Rights acknowledges the right of every person to experience the highest possible standard of physical and mental health. This right encompasses not only physical well-being but also mental well-being, underscoring the significance of overall health for individuals. The overseeing Committee on Economic, Social and Cultural Rights has interpreted and applied this right in diverse situations, including instances related to abortion.

For instance, the Beijing Platform for Action, stemming from the United Nations' Fourth World Conference on Women in 1995, recognized that women's ability to regulate their fertility is a fundamental cornerstone for the fulfillment of other rights. This acknowledgment aligns with the human rights perspective that authority over fertility empowers women to make choices about their bodies and lives. The right to control fertility serves as the basis for other rights, establishing a groundwork for the overall well-being of women.

The authorization of a woman's decision to proceed with or end a pregnancy is rooted in the entitlement to regulate fertility. This aligns with the perspective that women's health rights encompass the authority to make decisions about their bodies and reproduction. Hence, supporting the provision of safe and legal abortion can be seen as a step aligned with women's rights to health, striving for the highest attainable standards of physical and mental well-being.

Drawing from this human rights standpoint, it can be deduced that abortion is acknowledged as a human right within international law. Consequently, abortion should be recognized as a lawful entitlement for every woman globally and necessitates legal protection. The legality and acknowledgment of abortion align with the provisions outlined in frameworks such as the African Women's Protocol, official reports, the African Charter, the International Covenant on Civil and Political Rights,

the Convention on the Elimination of All Forms of Discrimination Against Women, and the Committee on Economic, Social and Cultural Rights. All of these legal instruments confirm that abortion is a legal right and has a supporting legal basis. Therefore, legal protection for the right to abortion needs to be maintained and regarded as an essential component of human rights that warrants acknowledgment and enactment.

Even though there are international regulations that guarantee the performance of abortion, some countries such as El Salvador and the Philippines still impose penalties, even up to the death penalty, on individuals who have abortions. This is contrary to the principles stated in the Universal Declaration of Human Rights which guarantees the right to life for every individual. Hence, it is essential to conduct additional research concerning the legality of the implementation of the death penalty in international law.

### **Legality of the Death Penalty for People Who Have Abortions in International Law Concerning Human Rights**

The legality of the death penalty in international law has become a controversial issue, especially when it is imposed as a consequence of abortion in some countries. Some perceive the imposition of the death penalty in abortion cases as a breach of international human rights. International human rights, in essence, encompass a set of rights acknowledged and safeguarded by international human rights treaties, along with well-established principles of international law.

Within this framework, the Universal Declaration of Human Rights is a key document that establishes human rights as "common standards of achievement for all people and all nations." The Universal Declaration of Human Rights encompasses fundamental human rights principles, including the right to life, freedom from torture, and personal liberty. Concerning the matter of the death penalty, many legal professionals and human rights advocates contend that the fundamental entitlement to life should not be disregarded. Imposing the death penalty for abortion in various countries is viewed as a measure inconsistent with international human rights principles. The right to life is perceived as an entitlement that member states of the international community are obligated to

safeguard and respect. Any infringement on this right, such as through the imposition of the death penalty, is considered a violation of universally recognized human rights principles.

The protection of international human rights concerning the death penalty related to abortion highlights the crucial role played by international human rights treaties. These treaties, including the International Covenant on Civil and Political Rights, uphold the fundamental rights of individuals and oppose the imposition of the death penalty, except in specific, highly restricted situations. Consequently, the application of the death penalty for abortion could be viewed as conflicting with the obligations of states under international human rights treaties, creating a divergence between domestic practices and human rights standards.

Failure to provide protection that respects the dignity of individuals sentenced to death is considered a violation of international standards that strictly prohibit torture or other forms of cruel, barbaric and degrading treatment or punishment. This norm is confirmed without conditions or exceptions in major human rights instruments, such as the Universal Declaration of Human Rights (UDHR), as well as the two main provisions of the International Covenant on Civil and Political Rights (ICCPR). In addition, several regional human rights instruments also highlight the prohibition of torture and cruel treatment. The Universal Declaration of Human Rights, considered "a common standard of attainment for all people and all nations," affirms the right of every individual not to be tortured or subjected to degrading treatment or punishment. This principle is considered a fundamental right and cannot be ignored, reflecting a universal value that must be respected by all countries.

In the International Covenant on Civil and Political Rights, Article 7 states that "no one shall be tortured or subjected to cruel, inhuman or degrading treatment or punishment." This article confirms international norms that prohibit the practice of torture or degrading treatment, and emphasizes that this prohibition is absolute and cannot be excluded. These clauses establish a robust foundation for safeguarding human rights from cruel treatment within the context of the death penalty.

By consulting these international human rights instruments, every nation is anticipated to guarantee that the imposition of the death penalty

aligns with globally acknowledged human rights standards, preserving the dignity of individuals facing such sentences. Breaches of these principles may result in legal and diplomatic accountability on the international stage, reinforcing the worldwide dedication to human rights and the prohibition of torture or degrading treatment.

Presently, international law does not enforce an unequivocal ban on the utilization of the death penalty that is universally binding on all states globally. Although several countries have signed agreements or expressed commitments not to impose the death penalty under any circumstances, there is still a small number of countries that defend and claim the legitimacy, legality and effectiveness of the death penalty. However, there are limitations set by international law, even for countries that still implement the death penalty.

The International Criminal Court (ICC) Statute, as an international legal instrument, stipulates that the death penalty can only be imposed for crimes that are considered the most serious crimes and are of concern to the international community as a whole. The four crimes are genocide, war crimes, crimes against humanity, and crimes of aggression. Therefore, it can be concluded that abortion, although it may be considered controversial in some cases, does not fall into the category of crimes so extraordinary and detrimental to many people that they deserve the death penalty.

The right to life is recognized as a fundamental right by the UN in the Universal Declaration of Human Rights (UDHR). Article 3 of the UDHR states that "everyone has the right to life, liberty and security of person." Apart from that, in article 6 paragraph (1) of the International Covenant on Civil and Political Rights (ICCPR), it is explained that "every human being has an inherent right to life. This right must be protected by law. No one will arbitrarily lose his life." Internationally recognized human rights principles emphasize that the right to life is a fundamental right that cannot be violated arbitrarily. Hence, implementing the death penalty for abortion cases contradicts human rights principles and prompts inquiries about the coherence of international law in upholding the individual's right to life.

The death penalty has consistently been at odds with fundamental human rights principles, particularly the right to life, as articulated in

Article 3 of the Universal Declaration of Human Rights (UDHR). This article unequivocally asserts that "everyone has the right to life, liberty and security of person." Consequently, the death penalty is regarded as a breach of the most fundamental human rights, as it directly involves the fundamental right of every individual to live their life.

The principle of human rights inherent in every individual, as recognized in the 3 Universal Declarations of Human Rights, shows that the right to life cannot be taken away by anyone, except God Almighty. The death penalty, especially in abortion, raises controversy because it is in conflict with this principle. Abortion, in some circumstances, is performed in response to a difficult medical situation or because of a woman's reproductive rights. The death penalty for abortion is seen as an act that not only destroys an individual's right to life, but is also a form of inhumane policy.

The right to life is not a right that can be negotiated or reduced, and any action that threatens this right is considered an attack on the most basic human rights. The imposition of the death penalty for abortion is not in line with the internationally recognized spirit of protecting human rights. Moreover, the death penalty in abortion cases creates serious risks to justice and humanity, as it can be applied without considering the complex nuances of each case and without providing an opportunity for rehabilitation. Opposition to the death penalty, particularly regarding abortion, reflects a commitment to fundamental human rights principles, which affirm that every individual has rights that cannot be violated by extreme measures such as the death penalty.

Based on the previous explanation, it can be concluded that every woman should not be sentenced to death for having an abortion, regardless of any reason. The death penalty in abortion is considered a violation of fundamental international human rights and standards. This is because every individual, including women, has the same human rights, as recognized by the Universal Declaration of Human Rights (UDHR). The Universal Declaration of Human Rights establishes the right to life as a basic right that must be respected and protected by states. This implies that implementing the death penalty for women who undergo abortions can be viewed as a policy that aligns with international human rights principles.

Additionally, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) underscores women's entitlement to autonomy over their reproductive organs, free from unwanted interference by external parties. Rejecting the death penalty in abortion cases can also be seen from the perspective that such punishment is considered inhumane and incompatible with humanitarian principles. Sentencing women with the death penalty is in line with the concept of human rights which adheres to the values of respect for human life and dignity.

Therefore, in the framework of international human rights, there is a strong basis for objecting to the imposition of the death penalty on women who choose to have abortions. This demonstrates a worldwide dedication to upholding the human rights of all individuals, irrespective of gender or particular situations. In summary, justifying the death penalty for women undergoing abortions is inconsistent with well-established international human rights standards, as outlined in the principles of the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination Against Women.

## Conclusion

Each country has different legal regulations for abortion. For example, France regulates it through the Public Health Code, while in Indonesia, it is regulated in the Criminal Code and Health Law. Abortion regulations are not only national, but also involve international legal regulations, as found in the documents African Women's Protocol, African Charter, International Covenant on Civil and Political Rights (ICCPR), Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Committee on Economic, Social, and Cultural Rights. The international legal perspective emphasizes that abortion is part of international human rights, giving women the right to undergo abortion if a risk to the woman's life and health exists, especially in cases of pregnancy that can cause suffering or disease to the woman. Human rights, especially if the pregnancy is caused by acts of rape or incest.

The Universal Declaration of Human Rights recognizes international human rights as common standards that can be achieved by every individual and all nations. International standards prohibit the

practice of torture, cruelty, barbarism, or degrading treatment or punishment, as stated in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and regional human rights instruments. The Statute of the International Criminal Court (ICC) confirms that the death penalty can only be applied for the most serious crimes. Citing Article 6, paragraph (1) of the International Covenant on Civil and Political Rights and Article 3 of the Universal Declaration of Human Rights, the right to life of every individual is acknowledged and ought to be safeguarded. Implementing the death penalty for women who undergo abortions is deemed a contravention of international human rights principles.

The research recommendations suggest creating specific regulations stating that reproductive and abortion rights are human rights, both at the international and regional levels. This aims to support legality, safety and procedural compliance in carrying out abortions for women. International law must produce cohesive regulations, in accordance with the differences in views between the death penalty and the Universal Declaration of Human Rights which emphasizes that the right to life is a human right.

## References

- Afita, C. O. Y. 2020. Pengaturan Aborsi dalam Perspektif Perundang-Undangan Indonesia. *Rio Law Jurnal*, 1(1), 1-15.
- Ayunda, R. & R. S. Roselvia. 2021. Kajian Perbandingan tentang Ketetapan Hukum Aborsi di Indonesia dan Chili. *Jurnal Supremasi*, 11(2) 48-62.
- Berer, M. & L. Hoggart. 2019. Progress Toward Decriminalization of Abortion and Universal Access to Safe Abortions: National Trends and Strategies. *Health and Human Rights*, 21(2), 79.
- Chamim, N., S. Zuhri, D. Darmawan, M. Yasif, & R. K. Khayru. 2023. Civil Law Analysis of the Use of Surrogate Mother for In-Vitro Fertilisation, *Studi Ilmu Sosial Indonesia*, 3(1), 49-62.
- Erdman, J. N. 2014. *Abortion in International Human Rights Law*. Abortion Care, Cambridge University Press, Cambridge.
- Faridah, H., D. S. H. Marpaung., & O. Senjaya. 2021. Pembaharuan Hukum Pidana Terhadap Tindak Pidana Aborsi di Indonesia. *Juncto Delictio*, 1(2), 132-145.
- Fenwick, D. 2012. The Modern Abortion Jurisprudence Under Article 8 of the European Convention on Human Rights. *Medical Law International*, 12(3-4), 249-276.
- Issalillah, F. 2021. Pandemic Covid 19, Social Psychology, and Pregnancy: Relatedness and Analysis. *Journal of Social Science Studies*, 1(1), 1-10.

- Issalillah, F. 2021. Potential of Curcumin in Turmeric as a Preventive Modality from Covid-19 in Pregnant Women. *Journal of Social Science Studies*, 1(2), 55-64.
- Issalillah, F. & R.K. Khayru. 2021. Social Perceptions of Domestic Violence and its Implications for the Mental Health and Recovery Process of Victims, *Journal of Social Science Studies*, 1(2), 125 - 130.
- Kälin, W., & J. Künzli. 2019. *The Law of International Human Rights Protection*. Oxford University Press, USA.
- Maffi, I. & L. Tønnessen. 2019. The Limits of the Law: Abortion in the Middle East and North Africa. *Health and Human Rights*, 21(2), 1-10.
- Nalin, C. 2021. Comprehensive Legal and Policy Approaches to Reproductive Health and Women's Rights in Access Equity, *Journal of Social Science Studies*, 1(2), 285-290.
- Paulk, L. B. 2013. Embryonic Personhood: Implications for Assisted Reproductive Technology in International Human Rights Law. *Am. UJ Gender Soc. Pol'y & L.*, 22, 781.
- Puppink, G. 2013. Abortion and the European Convention on Human Rights. *Irish Journal of Legal Studies*, 3(2), 142.
- Salsabila, J. P. & W. Fitri. 2022. Legalitas Aborsi Akibat Pemerkosaan Ditinjau dari Prespektif Korban Dan Hak Asasi Manusia. *Widya Yuridika: Jurnal Hukum*, 5(2), 375-388.
- Smyth, R. 2023. *Abortion in International Human Rights Law: Missed Opportunities in Manuela V El Salvador*. Feminist Legal Studies.
- Undang-Undang Nomor 36 Tahun 2009 tentang Kesehatan.
- Van Look, P. F., & J. Cottingham. 2013. The World Health Organization's Safe Abortion Guidance Document. *American Journal of Public Health*, 103(4), 593-596.
- Zampas, C. & J. M. Gher. 2008. Abortion as a Human Right—International and Regional Standards. *Human Rights Law Review*, 8(2), 249-294.