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Legal Classification of Female Circumcision under Indonesia's Legal Pluralism Framework

Debby Hasmita, Ratna Sugiati,
Krisnandifa Marshafira Riyandini, Marsudi Dedi Putra
Faculty of Law, Universitas Wisnuwardhana Malang, Malang, Indonesia
debbyhasmita0112@gmail.com

Abstract

This study aims to examine the legal implications of the categorical prohibition of female circumcision under Article 102(a) of Government Regulation No. 28 of 2024 and to formulate a legal classification framework capable of reconciling health protection objectives with Indonesia's constitutionally recognized legal pluralism. The urgency of this research arises from the regulation's failure to distinguish between invasive forms of female genital mutilation (FGM) that cause demonstrable physical harm and non-invasive symbolic cultural or religious practices, thereby generating legal uncertainty for healthcare professionals, customary communities, and policymakers. Employing a normative legal research method through statutory, conceptual, and case approaches, this study analyzes constitutional principles, health regulations, Islamic legal perspectives, and legal pluralism doctrines. The findings reveal that the current blanket prohibition creates normative tensions between public health protection, cultural rights, and religious practices, while exposing healthcare workers to disproportionate legal liability and potentially encouraging unregulated clandestine practices. To address these challenges, the study proposes a novel two-tier legal classification model that differentiates invasive FGM, which should remain subject to absolute prohibition, from non-invasive symbolic rituals that may be conditionally accommodated under strict regulatory safeguards. The novelty of this research lies in its reconstruction of Article 102(a) through a legal pluralism framework that integrates constitutional protection of cultural identity, reproductive health rights, and proportionality principles. This model contributes to the development of a more coherent and balanced regulatory framework that enhances legal certainty, protects women and children from harmful practices, and promotes harmonization between state law, religious norms, and customary law in Indonesia.
Keywords: *Female Circumcision; Health Protection; Legal Pluralism*

1. INTRODUCTION

Female genital mutilation (FGM) in Indonesia represents one of the most persistent and legally complex intersections of religious doctrine, customary norm, and modern health regulation, constituting a normative conflict that resists simple resolution through unilateral state intervention.[1] Communities that uphold this practice do not regard it merely as a physical act; rather, it functions as a transformative rite of passage that confers social legitimacy, moral identity, and spiritual purity upon women within their communities. The tension between medical and human rights perspectives, which emphasize physical and psychological risks, and traditional and religious perspectives, which frame circumcision as a moral or spiritual obligation, has sustained a prolonged normative debate.[2] This debate situates FGM at the

[1] Inna Noor Inayati, Agnes Widanti, and Alma Lucyati, "Ketentuan Tentang Sunat Perempuan Dikaitkan Dengan Asas Gender Dan Nondiskriminatif," *Soepra Jurnal Hukum Kesehatan* 2, no. 1 (2026): 61–73, https://doi.org/10.24167/shk.v2i1.810.

[2] Agus Hermanto, "Khitan Perempuan Antara Tradisi Dan Syari'ah," *Kalam* 10, no. 1 (2021): 257–94, https://doi.org/10.24042/klm.v10i1.343.

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critical intersection of health law, customary law, and human rights, rendering it one of the most contested regulatory challenges in contemporary Indonesia.[3]

The empirical dimension of this challenge is substantial. The 2021 National Survey on Women's Life Experiences (SPHPN) revealed that 21.6% of Indonesian women aged 19–45 have undergone some form of FGM, with practices varying considerably across regions, from religiously motivated purification rituals in Banten and puberty rites in Java to more invasive procedures in Madura.[4] This regional diversity reflects the broader phenomenon of legal pluralism in Indonesia, wherein state law, Islamic law (fiqh), and customary law (adat) operate simultaneously and often in conflict.[5] The absence of a shared normative framework across these legal orders generates structural legal uncertainty, particularly when a practice deemed culturally legitimate by indigenous communities is regarded as illegal or medically unsubstantiated by state authorities, thereby undermining effective protection of women's rights.[6]

The specific legal problem animating this research is the enactment of Government Regulation No. 28 of 2024 on the Implementation of Law No. 17 of 2023 on Health. Article 102 (a) of this regulation explicitly mandates the elimination of FGM as part of reproductive health services for infants and preschool-aged children, a categorical departure from the preceding framework established under Ministry of Health Regulation No. 1636/2010, which had authorized medical personnel to supervise female circumcision under controlled conditions as a harm-reduction measure.[7] The total prohibition under Article 102 (a), however, lacks definitional precision: it does not authoritatively distinguish between invasive procedures that cause demonstrable physical injury and non-invasive symbolic acts, such as the mere touching or cleansing of the external genitalia without incision, that carry no measurable medical risk. This interpretive gap generates three compounding practical harms: first, healthcare workers who accommodate culturally sensitive requests in good faith may face criminal or professional sanctions despite causing no physical harm; second, communities unable to access medically supervised symbolic practices may resort to unregulated traditional practitioners, thereby elevating actual medical risk; and third, a prohibition that fails to distinguish between categories of practice is likely to generate social resistance and drive more dangerous clandestine procedures.[8]

The practical consequences of this regulatory ambiguity are already discernible in documented field cases. At one university hospital, healthcare workers who performed only an external

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[3] Mela Lavenia, "Khitan Perempuan Dalam Perspektif Medis, Hukum Islam, Dan Hukum Negara Di Indonesia," *Inovasi Hukum: Jurnal Hukum Progresif* 7, no. 2 (2025): 22–31, https://journalversa.com/s/index.php/jhp/article/view/384.

[4] Rafidha Nur Alifah, "Female Genital Mutilation (FGM) in Indonesia: Systematic Review," *Media Publikasi Promosi Kesehatan Indonesia (MPPKI)* 7, no. 11 (2024): 2631–37, https://doi.org/10.56338/mppki.v7i11.6165.

[5] Evie Sulahyuningsih, Yasinta Aloysia Daro, and Alfia Safitri, "Analisis Praktik Tradisional Berbahaya: Sunat Perempuan Sebagai Indikator Kesetaraan Gender Dalam Perspektif Agama, Transkultural, Dan Kesehatan Reproduksi Di Kabupaten Sumbawa," *Jurnal Ilmu Keperawatan Dan Kebidanan* 12, no. 1 (2021): 134–48, https://doi.org/10.26751/jikk.v12i1.916.

[6] Gusnanda and Roma Wijaya, "Khitan Pada Wanita Dalam Tinjauan Hadis Dan Medis," *Al-Qudwah* 1, no. 1 (2023): 75–89, https://doi.org/10.24014/alqudwah.v1i1.22855.

[7] Dona Kaffi Ma Iballa, "Perspektif Kesetaraan Dan Keadilan Gender Husein Muhammad Dalam Silang Pendapat Khitan Perempuan," *Wahana Islamika Jurnal Studi Keislaman* 8, no. 1 (2022): 86–109, https://doi.org/10.61136/9k0y5096.

[8] Aisyatul Azizah, "Status Hukum Khitan Perempuan (Perdebatan Pandangan Ulama Dan Permenkes RI No. 1636/MENKES/PER/XI/2010)," *Musawa Jurnal Studi Gender Dan Islam* 19, no. 2 (2021): 173–86, https://doi.org/10.14421/musawa.2020.192.173-186.

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cleansing ritual on infants as a symbolic act of purification faced potential regulatory liability, despite causing no physical harm.[9] Similarly, in Pangkalanbun, a pediatrician employed turmeric in a symbolic circumcision ceremony to satisfy customary obligations and avert perceived misfortune, yet remained legally exposed under the new regulation.[10] These cases are diagnostic: they reveal that the boundary between prohibited FGM and permissible symbolic cultural practice has not been authoritatively delineated by the state, placing medical professionals in an untenable position between regulatory compliance and culturally sensitive practice.

Prior scholarship on FGM in Indonesia may be systematically organized into three thematic clusters, each illuminating a distinct dimension of the problem. To begin with, legal pluralism studies. The structural tension between state health law and indigenous legal traditions has been examined from multiple legal pluralism perspectives. Female circumcision has been analyzed through the lens of legal pluralism, with systemic conflict identified between state regulatory frameworks and Islamic legal traditions in Indonesia; however, their analysis predates and does not engage with the specific interpretive challenges posed by Article 102 (a) of Government Regulation No. 28/2024.[11] Similarly, legal contestation surrounding FGM in Islamic boarding schools has been examined from a legal pluralism perspective, though the scope remains confined to a specific institutional context and does not extend to the broader constitutional implications of the 2024 regulation.[12] Furthermore, the constitutional recognition of female circumcision traditions under Article 18B (2) of the 1945 Constitution has been examined, offering valuable insights into the harmonization of customary law and human rights, yet stopping short of providing actionable doctrinal or policy recommendations applicable to the current regulatory framework.[13] Finally, the foundational treatment of legal pluralism in Indonesia further establishes the theoretical substratum within which these regulatory conflicts must be understood.[14]

In addition, human rights and health perspectives from a second body of scholarship approach FGM through frameworks of human rights, reproductive health, and biopolitical analysis. A biopolitical framework has been applied to the regulatory ambiguity surrounding female circumcision in Indonesia, demonstrating that state policy oscillates between medicalization and prohibition without a coherent normative basis; however, this analysis does not address the constitutional dimensions of customary community rights under the 2024 regulation.[15]

[9] Azizah.

[10] Debby Hasmita, Imam Ropii, and Marsudi Dedi Putra, "Legal Analysis of Female Circumcision in The Context of Legal Pluralism in Indonesia," *AL-MANHAJ: Jurnal Hukum Dan Pranata Sosial Islam* 8, no. 1 (2026): 105–14, https://doi.org/10.37680/almanhaj.v8i1.8550.

[11] Hasmita, Ropii, and Putra.

[12] Fahruddin Ali Sabri and Walida Asitasari, "The Legal Contestation Surrounding Female Genital Mutilation in Islamic Boarding Schools: Perspective of Legal Pluralism and Its Impact on Women," *El-Mashlahah* 15, no. 2 (2025): 347–68, https://doi.org/10.23971/el-mashlahah.v15i2.9774.

[13] Alyza Lailyah Putri, "Rekognisi Tradisi Khitan Perempuan Dalam Hukum Konstitusi (Harmonisasi Hukum Adat Dan Perlindungan Hak Asasi Manusia Di Indonesia)," *Rewang Rencang: Jurnal Hukum Lex Generalis* 6, no. 12 (2025): 112–20, https://doi.org/10.56370/jhlg.v6i12.208.

[14] Marsudi Dedi Putra, *Pluralisme Hukum Di Indonesia* (Yogyakarta: Unidhapress, 2025).

[15] Aziza Nawra Pasya, Rachel Aulia, and Ika Arinia Indriyany, "Regulatory Ambiguity of Female Circumcision in Indonesia: A Biopolitical Analysis of the Role of the State," *Socius: Jurnal Penelitian Ilmu-Ilmu Sosial* 3, no. 8 (2026), https://doi.org/10.5281/ZENODO.19027714.

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Indonesia's FGM regulations have also been situated within international law and Islamic law frameworks, identifying state obligations under the Convention on the Rights of the Child and CEDAW, while leaving the domestic implementation challenges arising from the 2024 regulation unanalyzed.[16] A systematic review of FGM in Indonesia documents its prevalence and health consequences, providing an essential empirical baseline, albeit without doctrinal legal analysis.[17] In addition, critique of legalizing female circumcision of minors contributes a comparative normative framework grounded in bodily integrity principles.

Lastly, Islamic law perspectives form a third cluster of scholarship that examines FGM through the lens of Islamic jurisprudence and religious authority. MUI Fatwa No. 9A of 2008 and Ministry of Health Regulation No. 6 of 2014 have been analyzed through the framework of maqashid al-syariah, establishing the jurisprudential basis for understanding the directive that circumcision must not be excessive or damaging to the organ.[18] The progressiveness of Quranic interpretation in Muhammadiyah's fatwa on female circumcision has also been examined, highlighting internal diversity within Islamic legal reasoning on this issue.[19] In addition, Quranic indicators relevant to female circumcision practice have been explored, alongside the tension between shariah legal evidence and government prohibitions, each contributing to a richer understanding of the Islamic legal landscape.[20]

However, none of these studies—individually or in combination—address the central doctrinal question generated by the 2024 regulatory shift: how should Article 102 (a) of Government Regulation No. 28/2024 be interpreted and applied in a manner that meaningfully distinguishes physically harmful, invasive FGM from non-invasive symbolic practices that cause no demonstrable reproductive injury? The legal pluralism studies identify structural tensions but do not produce applicable legal classifications. The human rights and health studies establish normative standards but do not resolve the interpretive ambiguity of Article 102 (a) in the domestic constitutional context. The Islamic law studies illuminate jurisprudential diversity but do not engage with the specific compliance dilemma created by the 2024 total prohibition. This tripartite lacuna constitutes the central research gap of the present study.

The constitutional dimension of this gap is particularly acute. Article 18B (2) of the 1945 Constitution guarantees the state's recognition of and respect for customary law communities and their traditional rights, provided such rights do not conflict with statutory law and the principles of national unity.[21] The coexistence of this provision with Article 102 (a) creates a constitutional tension—between the state's obligation to protect children's bodily integrity and

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[16] Geofani Lingga and Shihaf Ismi Salman Najib, "The Female Genital Mutilation Regulations In Indonesia: The International Law, Human Rights, and Islamic Law Perspectives," *Uti Possidetis: Journal of International Law* 6, no. 1 (2025): 123–66, https://doi.org/10.22437/up.v6i1.40503.

[17] Alifah, "Female Genital Mutilation (FGM) in Indonesia: Systematic Review."

[18] Lukluil Maknun, "Khitan Perempuan Dalam Fatwa MUI No. 9A Tahun 2008 Dan Permenkes No. 6 Tahun 2014 Perspektif Maqashid Al-Syari'ah," *Egalita* 12, no. 2 (2021): 19–27, https://doi.org/10.21580/ahkam.2025.35.2.27814.

[19] Ahmad Mundzir, "Female Circumcision (Between Shariah Legal Evidence And Government Regulations)," *Istinbath* 24, no. 1 (2025): 97–109, https://doi.org/10.20414/ijhi.v24i1.923.

[20] Yusman Gunara, Nursalim Irsyad, and Eni Zulaiha, "Khitan Perempuan Dalam Isyarat Ayat Ayat Al Qur'an," *Spectrum: Journal of Gender and Children Studies* 4, no. 2 (2024): 124–35, https://doi.org/10.30984/spectrum.v4i2.1191.

[21] Hernadi Affandi, "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara," *Jurnal Hukum Positum* 4, no. 1 (2021): 36–56, https://doi.org/10.35706/positum.v4i1.3006.

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its concurrent duty to recognize legitimate expressions of customary identity—that existing scholarship has not resolved. A constitutionally coherent interpretation of Article 102 (a) must simultaneously account for both obligations rather than subordinating one to the other without analytical justification. Furthermore, MUI Fatwa No. 9A of 2008 classifies female circumcision as a makrumah (act of virtue) whose performance must not be excessive or result in organ damage—a standard that the total prohibition of Article 102 (a) does not accommodate, thereby producing a dualistic compliance dilemma for Muslim communities who adhere simultaneously to religious obligation and state law.[22]

Against this background, this study examines the legal implications of the prohibition of female circumcision under Article 102 (a) of Government Regulation No. 28 of 2024 within the framework of Indonesia's legal pluralism, develops a principled legal classification that distinguishes invasive forms of female genital mutilation from non-invasive symbolic cultural or religious practices, formulates a normative reconstruction of Article 102 (a) to achieve a balanced accommodation between public health protection and constitutionally recognized cultural and religious rights, and assesses the adequacy of legal protection as well as the scope of liability imposed on healthcare professionals under the current regulatory framework. Through these objectives, the study seeks to contribute to the development of a coherent and proportionate regulatory model that enhances legal certainty, safeguards women's reproductive health rights, and respects Indonesia's plural legal traditions. The novelty of this research lies precisely in this classification framework, which bridges the gap between health law unification and the pluralistic social reality of Indonesia's customary and religious communities—a dimension that remains undertheorized in the existing literature.

2. METHOD

This study employs a normative legal research design, which is methodologically appropriate given that the central research problem is fundamentally doctrinal in nature.[23] The absence of a definitional distinction within Article 102 (a) of Government Regulation No. 28 of 2024 constitutes a gap in the internal coherence of the Indonesian legal system that cannot be resolved through empirical sociological inquiry, but instead requires systematic legal argumentation and norm construction. As Marzuki asserts, normative legal research is the appropriate paradigm when the object of inquiry is legal norms themselves, encompassing their content, structure, consistency, and application, rather than the social behavior surrounding them.[24] The research design is descriptive-analytical, combining doctrinal description of existing legal norms with critical evaluation of their interpretive implications and policy consequences.

Three complementary legal approaches are integrated within this design. The statutory approach is employed to examine the hierarchical structure and legislative intent of the primary regulatory instruments, specifically Article 102 (a) of Government Regulation No. 28 of 2024, Law No. 17 of 2023 on Health, and Ministry of Health Regulation No. 1636/2010 as the preceding framework. This approach is operationalized through *ratio legis* analysis and the

[22] Hasmita, Ropii, and Putra, "Legal Analysis of Female Circumcision in The Context of Legal Pluralism in Indonesia."
[23] Zainuddin Ali, *Metode Penelitian Hukum* (Jakarta: Sinar Grafika, 2021).
[24] Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenadamedia Group, 2019).

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application of the principles of *lex superior derogat legi inferiori* and *lex posterior derogat legi priori*, with particular attention to whether the text of Article 102 (a) extends to non-invasive symbolic acts under a systematic reading of Article 18B (2) and Article 28H of the 1945 Constitution. The conceptual approach is then employed to construct the analytical framework undergirding the proposed two-tier legal classification, drawing upon doctrinal concepts including legal pluralism theory, the distinction between *lex scripta* and living law, the principle of bodily integrity, and the maqashid al-syariah framework in Islamic jurisprudence. The case approach examines documented instances in which the regulatory ambiguity of Article 102 (a) has produced concrete legal uncertainty, treating the symbolic circumcision practices documented at a university hospital and in Pangkalan Bun not as empirical data points, but as legal phenomena (*rechtsfenomeen*) that expose the practical inadequacy of the existing norm and thereby justify the proposed classificatory framework.

Legal materials are classified into three tiers. Primary legal materials comprise binding authoritative sources, including Government Regulation No. 28 of 2024, Law No. 17 of 2023, the 1945 Constitution, MUI Fatwa No. 9A of 2008, and relevant international instruments including the Convention on the Rights of the Child and CEDAW. Secondary legal materials comprise peer-reviewed scholarship, legal commentaries, and prior research findings that illuminate the interpretive landscape surrounding the primary sources, while tertiary legal materials include legal dictionaries and reference works used to clarify definitional questions. All materials were collected through systematic library research involving structured searches of legal texts, academic databases, and documentary sources.

The collected materials were subjected to prescriptive-analytical analysis, the dominant mode of reasoning in normative legal research, whereby the researcher does not merely describe what the law is, but critically evaluates what the law ought to be in light of identified inconsistencies. The analytical process proceeds through four sequential stages: identification, in which the normative gap between Article 102 (a) and the constitutional and customary law frameworks is mapped; systematization, in which applicable legal norms and doctrinal concepts are organized into a coherent analytical structure; interpretation, in which statutory, teleological, and systematic methods of legal interpretation are applied to determine the defensible scope of Article 102 (a); and construction, in which the proposed two-tier legal classification is formulated as a normative contribution bridging health law unification and legal pluralism in Indonesia.

3. RESULTS AND DISCUSSION

3.1 Legal Implications of the FGM Prohibition Under Article 102(a) of Government Regulation No. 28 of 2024

The enactment of Article 102 (a) of Government Regulation No. 28 of 2024 marks a decisive shift in Indonesia's regulatory posture toward female circumcision, moving from the conditional harm-reduction framework established under Ministry of Health Regulation No. 1636/2010 to a categorical and imperative prohibition. This shift, however, generates a structural conflict of norms that cannot be resolved through simple hierarchical deference. Applying the principle of *lex superior derogat legi inferiori*, the national health regulation formally supersedes customary and local normative orders that have long accommodated

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female circumcision as a rite of passage.[25] Yet this hierarchical resolution is constitutionally incomplete, because Article 18B (2) of the 1945 Constitution independently guarantees state recognition of customary law communities and their traditional rights—a provision of equal constitutional standing that the regulation does not engage. The result is not a clean normative hierarchy but a genuine constitutional tension: the state simultaneously commands the elimination of a practice and constitutionally undertakes to respect the communities that define that practice as integral to their identity. Government Regulation No. 28 of 2024, as a subordinate regulation, cannot unilaterally resolve this constitutional-level conflict; it can only suppress its surface manifestation while leaving the underlying normative contradiction unaddressed.[26]

The juridical vulnerability of customary law communities under the current framework is correspondingly acute. Customary communities in Sumbawa, Java, and Madura have long incorporated female circumcision into social structures that govern a woman's transition to adulthood, religious legitimacy, and communal membership. The total prohibition renders these practices not merely discouraged but legally actionable, exposing community members and traditional practitioners to potential criminal liability under Law No. 17 of 2023 on Health.[27] This outcome is juridically significant because it effectively criminalizes the exercise of a right that the constitution nominally protects. The state's reliance on the *lex superior* principle to override customary norms is legally defensible only insofar as the relevant customary practice constitutes a direct conflict with a binding national norm—but this threshold is precisely what the regulation fails to define. By prohibiting all forms of female circumcision without differentiating between invasive procedures and non-invasive symbolic acts, Article 102 (a) applies uniform legal consequences to practices of fundamentally different medical and legal character, producing a legal overgeneralization that is analytically untenable and constitutionally vulnerable.[28]

The Islamic legal dimension compounds this normative conflict. MUI Fatwa No. 9A of 2008 classifies female circumcision as a *makrumah* (act of virtue), explicitly conditioning its permissibility on the absence of excessive harm or organ damage.[29] This jurisprudential standard is not categorically incompatible with a health-protective regulatory framework; on the contrary, the fatwa's harm-limitation criterion provides a point of normative convergence that Article 102 (a) fails to exploit.[30] By enacting a total prohibition that makes no exception for symbolic or non-invasive practices within the scope of Islamic jurisprudential

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[25] Feni Sulistyawati and Abdul Hakim, "Sunat Perempuan Di Indonesia: Potret Terhadap Praktik Female Genital Mutilation (FGM)," *Jurnal Hawa: Studi Pengarus Utamaan Gender Dan Anak* 4, no. 1 (2022): 95–108, https://doi.org/10.29300/hawapsga.v4i1.4736.

[26] Ida Rosyidah and Joharotul Jamilah, "Habitus and Cultural Reproduction of Female Circumcision in Muslim Community of Sumenep," *Society* 10, no. 1 (2022): 240–54, https://doi.org/10.33019/society.v10i1.130.

[27] Sulahyuningsih, Daro, and Safitri, "Analisis Praktik Tradisional Berbahaya: Sunat Perempuan Sebagai Indikator Kesetaraan Gender Dalam Perspektif Agama, Transkultural, Dan Kesehatan Reproduksi Di Kabupaten Sumbawa."

[28] Dea Latifah, "Perlindungan Hukum Terhadap Korban Dan Tanggung Jawab Hukum Dokter Atas Kelalaiannya Dalam Melakukan Khitan Yang Merugikan Pasien Ditinjau Dari Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan," *Bandung Conference Series: Law Studies* 4, no. 2 (2024): 1125–29, https://doi.org/10.29313/bcsls.v4i2.15721.

[29] Sulistyawati and Hakim, "Sunat Perempuan Di Indonesia: Potret Terhadap Praktik Female Genital Mutilation (FGM)."

[30] Affandi, "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara."

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permissibility, the regulation creates a condition of dualistic compliance impossibility for observant Muslim communities: adherence to state law requires non-performance of what religious authority classifies as virtuous, while adherence to religious authority exposes practitioners to regulatory sanction.[31] This compliance dilemma is not merely a sociological observation; it constitutes a juridically significant failure of regulatory design, insofar as a norm that cannot be simultaneously obeyed across the relevant population is structurally unlikely to achieve its protective objectives.

The legal exposure of healthcare workers under Article 102 (a) represents a further concrete juridical consequence of the regulation's definitional inadequacy. The provision explicitly prohibits medical personnel from facilitating female circumcision, irrespective of the clinical character of the procedure, thereby conflating medically supervised harm-reduction interventions with dangerous traditional practices. Healthcare workers who perform purely symbolic acts—such as external cleansing without incision—at the request of families seeking to fulfill customary or religious obligations face potential sanctions including revocation of practice licenses and criminal liability under Law No. 17 of 2023, despite causing no demonstrable physical harm to the patient. This outcome inverts the foundational logic of health law, which is oriented toward the prevention of harm rather than the prohibition of harmless conduct. The regulation thus places healthcare professionals in a structurally untenable position: compliance with the letter of the prohibition may require them to abandon culturally sensitive practices that, in clinical terms, cause no injury, while non-compliance exposes them to professional and criminal consequences. This tension is not resolvable through professional discretion alone; it requires explicit legislative clarification.

From a critical legal standpoint, the central weakness of the blanket prohibition in Article 102 (a) lies not in its protective objective—which is legitimate and constitutionally grounded—but in its failure to calibrate legal consequences to the actual degree of harm produced by the regulated conduct.[32] Legal theory distinguishes between regulations that prohibit harmful conduct and regulations that prohibit conduct categorically associated with harm; the latter approach is justifiable only where the regulated category is sufficiently homogeneous that uniform prohibition is proportionate. Female circumcision in Indonesia does not constitute such a homogeneous category: the WHO's own typology recognizes four distinct types of FGM, ranging from symbolic nicking (Type IV) to infibulation (Type III), practices that differ fundamentally in their medical consequences. A regulation that applies identical legal sanctions to all four types—and implicitly to practices that may not meet any WHO threshold—cannot be characterized as a proportionate legal response.[33]

A further critical dimension concerns the likely behavioral consequences of the prohibition in the absence of accompanying social intervention. Comparative regulatory experience with prohibition-based approaches to deeply embedded cultural practices suggests that enforcement without social dialogue tends to displace rather than eliminate the prohibited conduct, driving

[31] Maknun, "Khitan Perempuan Dalam Fatwa MUI No. 9A Tahun 2008 Dan Permenkes No. 6 Tahun 2014 Perspektif Maqashid Al-Syari'ah."
[32] Gunara, Irsyad, and Zulaiha, "Khitan Perempuan Dalam Isyarat Ayat Ayat Al Qur'an."
[33] Hasmita, Ropii, and Putra, "Legal Analysis of Female Circumcision in The Context of Legal Pluralism in Indonesia."

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it into informal and unregulated spaces where the risk of harm is substantially elevated.[34] In the Indonesian context, communities that cannot access medically supervised symbolic practices are likely to resort to traditional practitioners operating outside any clinical or legal framework, thereby increasing—rather than reducing—the actual incidence of medically dangerous procedures. The regulation's protective objective is therefore self-undermining to the extent that it fails to distinguish between practices that can be safely redirected and practices that must be absolutely prohibited. An effective legal framework requires not only a prohibition but also a positive specification of permissible alternatives, accompanied by the institutional mechanisms—education, community engagement, and technical guidelines—necessary to make those alternatives accessible and socially legitimate.

Taken together, these juridical and critical dimensions reveal that Article 102 (a), as currently formulated, fails to achieve the coherent integration of health law, constitutional law, and legal pluralism that the complexity of the regulated subject matter demands. The norm conflict between national health regulation and the constitutional recognition of customary law communities remains unresolved; the compliance dilemma for religious communities remains unaddressed; the legal exposure of healthcare workers performing harmless symbolic acts remains unjustified; and the risk of driving dangerous clandestine practices remains unmitigated.[35] These deficiencies are not incidental to the regulation's design—they are structural consequences of the decision to enact a categorical prohibition in the absence of a principled legal classification framework. It is this classificatory deficit that the present study seeks to remedy through the proposed two-tier typology developed in the subsequent sections

3.2 Legal Classification of Acts Under Article 102(a): Distinguishing Invasive FGM from Symbolic Practices

The central analytical task of this sub-section is to supply the definitional precision that Article 102(a) of Government Regulation No. 28 of 2024 conspicuously lacks. As established in the preceding analysis, the regulation's blanket prohibition fails to distinguish between categories of practice that differ fundamentally in their medical character, social meaning, and legal implications.[36] A legally coherent regulatory framework requires an explicit classification model capable of differentiating, based on objective and judicially administrable criteria, those practices that warrant absolute prohibition from those that may be conditionally accommodated within a rights-protective framework.[41][51] Drawing upon the WHO's four-tier typology of female genital mutilation, the principle of proportionality in health law, and the doctrinal requirements of legal pluralism theory, this study proposes a three-category classification model structured around four core indicators: physical harm, medical risk, instrument use, and legal consequence.[37]

[34] Nurfajri Istiqomah, "Wujudkan Perlindungan Perempuan Dalam Tradisi Female Circumcision Di Wilayah Kabupaten Bogor, Jawa Barat," *Jurnal Pengabdian Kepada Masyarakat Nusantara* 5, no. 2 (2024): 2614–20, https://doi.org/10.55338/jpkmn.v5i2.3260.

[35] Taufan Januardi, "Sebuah Perspektif Nawal El Saadawi: Khitan Perempuan Antara Syariat Dan Adat," *Jurnal Iman Dan Spiritualitas* 2, no. 3 (2022): 361–72, https://doi.org/10.15575/jis.v2i3.18649.

[36] Sulistyawati and Hakim, "Sunat Perempuan Di Indonesia: Potret Terhadap Praktik Female Genital Mutilation (FGM)."

[37] Alifah, "Female Genital Mutilation (FGM) in Indonesia: Systematic Review."

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Category 1 encompasses invasive FGM practices that cause demonstrable physical harm through the use of sharp instruments and the incision, excision, or alteration of genital tissue.[38] These practices correspond to WHO Types I through III, including clitoridectomy, excision, and infibulation, and are unequivocally associated with serious medical risks including hemorrhage, infection, reproductive dysfunction, and long-term psychological trauma.[39] From a legal standpoint, Category 1 practices fall squarely within the prohibition established by Article 102 (a), and their performance by any person, whether a medical professional or a traditional practitioner, constitutes a violation of Law No. 17 of 2023 on Health, subjecting the perpetrator to both professional and criminal sanctions. The absolute prohibition of Category 1 practices is constitutionally grounded in the state's obligation to protect children's bodily integrity under Article 28B (2) of the 1945 Constitution, and is consistent with Indonesia's obligations under the Convention on the Rights of the Child and CEDAW.

Category 2 encompasses non-invasive symbolic rituals that involve no use of sharp instruments, no incision of genital tissue, and no demonstrable medical harm.[40] Field cases documented in the literature illustrate this category: the application of turmeric paste as a symbolic substitute for circumcision in Pangkalan Bun, and external cleansing of the genital area with cotton at a university hospital, are representative examples of practices that fulfill customary or religious expectations without producing any injury to the child.[41] Medically, such practices fall outside the WHO's definition of female genital mutilation, which requires that the procedure involve partial or total removal or injury to the female genital organs for non-medical reasons. Legally, the categorical application of Article 102 (a) to Category 2 practices constitutes a disproportionate regulatory response that fails the test of proportionality: the restriction imposed, namely criminal sanction or professional liability, is manifestly excessive relative to the harm prevented, namely none.[42] This study argues that Category 2 practices should be conditionally permissible under a revised regulatory framework, subject to implementing guidelines that specify the criteria of non-invasiveness, the absence of instrument use, and the absence of any physical alteration of genital tissue.[43]

Category 3 identifies a zone of supervisory ambiguity that the current regulatory framework has failed to address.[44] This category corresponds to WHO Type IV, which encompasses all other harmful procedures to the female genitalia for non-medical purposes, including pricking, piercing, incising, scraping, and cauterizing the genital area. Practices in this intermediate zone involve minimal instrument contact, may or may not produce discernible physical harm depending on technique and practitioner, and resist categorical classification as either absolute

[38] Norazam Khair Mohd Ithnin, Ishak Suliaman, and Abdul Halim Ibrahim, "Violence Against Women: Comparing Female Genital Mutilation and Female Circumcision in Malaysia," *JURIS (Jurnal Ilmiah Syariah)* 22, no. 2 (2023): 291–304, https://doi.org/10.31958/juris.v22i2.10426.

[39] Sulahyuningsih, Daro, and Safitri, "Analisis Praktik Tradisional Berbahaya: Sunat Perempuan Sebagai Indikator Kesetaraan Gender Dalam Perspektif Agama, Transkultural, Dan Kesehatan Reproduksi Di Kabupaten Sumbawa."

[40] Iballa, "Perspektif Kesetaraan Dan Keadilan Gender Husein Muhammad Dalam Silang Pendapat Khitan Perempuan."

[41] Azizah, "Status Hukum Khitan Perempuan (Perdebatan Pandangan Ulama Dan Permenkes RI No. 1636/MENKES/PER/XI/2010)."

[42] Mundzir, "Female Circumcision (Between Shariah Legal Evidence And Government Regulations)."

[43] Gunara, Irsyad, and Zulaiha, "Khitan Perempuan Dalam Isyarat Ayat Ayat Al Qur'an."

[44] Pasya, Aulia, and Indriyany, "Regulatory Ambiguity of Female Circumcision in Indonesia: A Biopolitical Analysis of the Role of the State."

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FGM or purely symbolic ritual. The legal exposure of healthcare workers who encounter these practices is particularly acute: performing such procedures exposes them to regulatory sanction under Article 102 (a), while refusing may generate social conflict with families asserting customary or religious entitlement.[47][55] Category 3 thus constitutes the most urgent regulatory gap in the current framework, requiring case-by-case medical assessment and explicit legislative clarification through technical implementing guidelines.[45]

Table 1. Two-Tier Legal Classification Model for Female Circumcision Practices Under Article 102(a) of Government Regulation No. 28 of 2024

Indicator	Category 1 Invasive FGM	Category 2 Symbolic Ritual	Category 3 Supervisory Ambiguity	Legal Consequence
Physical Harm	Definite organ damage or tissue injury	None; no bodily contact with sharp instrument	Possible minor contact; disputed clinical threshold	Absolute prohibition; criminal liability under Law No. 17/2023
Medical Risk	High: infection, bleeding, reproductive dysfunction, psychological trauma	Negligible; no documented reproductive impairment	Low to moderate; dependent on technique and practitioner	Requires case-by-case medical assessment
Instrument Use	Sharp instrument (blade, needle, or scissor) with incision	No instrument; or non-invasive substance (e.g. turmeric, cotton)	Minimal instrument contact without incision	Instrument type as primary legal differentiator
Regulatory Basis	WHO Type I–III FGM; Art. 102(a) PP 28/2024	Outside WHO FGM typology; cultural or religious ritual only	WHO Type IV (symbolic nicking); regulatory gap	Requires explicit classification in technical guidelines
Legal Consequence	Absolute prohibition; criminal and professional sanctions	Conditionally permissible; subject to implementing guidelines	Legal grey area; healthcare worker exposed without protection	Urgent legislative clarification required

Source: Authors' construction based on WHO FGM typology, Government Regulation No. 28 of 2024, and doctrinal analysis (2026).

The proposed classification model is further reinforced by the Islamic jurisprudential framework established by MUI Fatwa No. 9A of 2008. The fatwa classifies female circumcision as a *makrumah* (act of virtue) whose performance must not be excessive or result in damage to the organ. This jurisprudential standard maps directly onto the Category 2

[45] Hasmita, Ropii, and Putra, "Legal Analysis of Female Circumcision in The Context of Legal Pluralism in Indonesia."

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permissibility criterion: a symbolic ritual that causes no physical alteration satisfies both the fatwa's harm-limitation condition and the proposed regulatory requirement of non-invasiveness. The classification model therefore does not conflict with Islamic jurisprudential authority; on the contrary, it operationalizes the fatwa's own normative limit in legal regulatory form.[46] Scholars examining Quranic indicators and hadith-based arguments on female circumcision have further demonstrated that Islamic jurisprudence does not mandate an invasive procedure, thereby opening doctrinal space for religious communities to adopt symbolic alternatives without theological compromise.[47]

The constitutional foundation for the conditional permissibility of Category 2 practices is grounded in the intersection of three constitutional provisions.[48] Article 18B (2) guarantees state recognition of customary law communities and their traditional rights. Article 28I (3) protects cultural identity and the rights of traditional communities. Article 28H (1) guarantees every person the right to a good and healthy life. Read systemically, these provisions establish that the state's obligation to protect health does not license the total elimination of cultural practices that pose no demonstrable health risk.[49] A regulatory framework that prohibits Category 2 practices on the sole basis of their cultural or religious character, without reference to any medical harm criterion, cannot be reconciled with the constitutional guarantee of cultural identity. The proposed classification model operationalizes this constitutional balance: it maintains the absolute prohibition of Category 1 practices in discharge of the state's health protection obligation, while accommodating Category 2 practices in discharge of the state's cultural recognition obligation.

The practical implementation of the proposed classification model requires, as a matter of legislative necessity, the issuance of technical implementing guidelines (*petunjuk teknis*) by the Ministry of Health that translate the three-category framework into operationally specific criteria for healthcare workers and regulatory enforcement agencies. Such guidelines must specify, at minimum: the instruments whose use automatically triggers Category 1 classification; the non-invasive substances and acts that qualify for Category 2 treatment; the clinical assessment protocol applicable to Category 3 cases; and the procedural safeguards applicable to any permitted symbolic practice.[50] Without such guidelines, the classification model remains an analytical contribution without direct regulatory application, and the legal exposure of healthcare workers and customary practitioners will persist. The issuance of technical guidelines is therefore not a discretionary policy option but a constitutional and

[46] Ithnin, Suliaman, and Ibrahim, "Violence Against Women: Comparing Female Genital Mutilation and Female Circumcision in Malaysia."

[47] Latifah, "Perlindungan Hukum Terhadap Korban Dan Tanggung Jawab Hukum Dokter Atas Kelalaiannya Dalam Melakukan Khitan Yang Merugikan Pasien Ditinjau Dari Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan."

[48] Gunara, Irsyad, and Zulaiha, "Khitan Perempuan Dalam Isyarat Ayat Ayat Al Qur'an."

[49] Soheila Rabiepour and Zeynab Ahmadi, "The Effect of Female Circumcision on Maternal and Neonatal Outcomes After Childbirth: A Cohort Study," *BMC Pregnancy and Childbirth* 23, no. 1 (2023): 46, https://doi.org/10.1186/s12884-022-05316-4.

[50] Istiqomah, "Wujudkan Perlindungan Perempuan Dalam Tradisi Female Circumcision Di Wilayah Kabupaten Bogor, Jawa Barat."

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regulatory obligation flowing from the state's duties under both the national health framework and the constitutional recognition of customary community rights.[51]

3.3 Normative Reconstruction of Article 102 (a): Toward an Integrative Legal Framework

The current formulation of Article 102 (a) of Government Regulation No. 28 of 2024 reflects a legitimate protective objective but suffers from a structural normative deficiency: it enacts a categorical prohibition without providing the definitional thresholds necessary for consistent and proportionate enforcement.[52]In the Indonesian legal context, where state law, Islamic law, and customary law operate simultaneously and often in tension, a norm that does not engage with legal pluralism as a structural feature of the legal order is unlikely to achieve effective implementation. The regulation's silence on the distinction between invasive and non-invasive practices does not merely create interpretive ambiguity; it generates a condition of norm conflict between the health law framework and the constitutionally protected sphere of customary community rights under Article 18B (2) of the 1945 Constitution, a conflict that the regulation itself provides no mechanism to resolve.[53]

The normative reconstruction proposed in this study is guided by two coordinate principles that must be held in productive tension rather than hierarchical subordination. The first is the principle of health protection primacy: the state's obligation to safeguard children's reproductive health and bodily integrity is non-derogable and constitutionally grounded in Articles 28B (2) and 28H (1) of the 1945 Constitution. Any permissible regulatory accommodation of cultural or religious practice must operate within this protective floor and cannot be invoked to authorize practices that cause demonstrable physical harm.[54] The second is the principle of proportionate pluralism: the state's regulatory intervention must be calibrated to the degree of harm produced by the regulated conduct, and must not extend to practices whose cultural or religious significance is established and whose medical risk is absent. These two principles are not contradictory; they are coordinate obligations flowing from the same constitutional order, and a legally coherent regulatory framework must give operational effect to both simultaneously rather than resolving apparent tensions by suppressing one in favor of the other.[55]

From a comparative regulatory perspective, contemporary legal systems increasingly adopt a differentiated approach when addressing culturally embedded practices that intersect with public health concerns. Rather than relying on absolute prohibitions, jurisdictions influenced by proportionality-based constitutional review tend to distinguish between conduct that produces demonstrable physical harm and conduct whose significance is predominantly symbolic or cultural in nature. This distinction reflects the broader principle that legal

[51] Affandi, "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara."
[52] Lavenia, "Khitan Perempuan Dalam Perspektif Medis, Hukum Islam, Dan Hukum Negara Di Indonesia."
[53] Putra, *Pluralisme Hukum Di Indonesia*.
[54] Inayati, Widanti, and Lucyati, "Ketentuan Tentang Sunat Perempuan Dikaitkan Dengan Asas Gender Dan Nondiskriminatif."
[55] Putri, "Rekognisi Tradisi Khitan Perempuan Dalam Hukum Konstitusi (Harmonisasi Hukum Adat Dan Perlindungan Hak Asasi Manusia Di Indonesia)."

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intervention should be commensurate with the degree of risk posed by the regulated activity. Within Indonesia's plural legal order, such an approach is particularly relevant because the legitimacy of state regulation depends not only on its capacity to protect public health but also on its ability to accommodate constitutionally recognized cultural and religious diversity. Consequently, the reconstruction of Article 102 (a) should not be understood as a relaxation of health protection standards, but rather as an effort to enhance regulatory effectiveness through a more precise alignment between legal restrictions, empirical harm, and constitutional guarantees. By integrating proportionality, legal certainty, and legal pluralism into a single analytical framework, the proposed reconstruction provides a stronger normative basis for balancing competing constitutional interests while preserving the primary objective of safeguarding women's and children's health rights.

Translating these principles into normative form requires a legal formulation that is sufficiently precise to be judicially administrable, sufficiently flexible to accommodate the diversity of cultural and religious practice across Indonesia's regions, and sufficiently firm to maintain the absolute prohibition of physically harmful procedures.[56] Table 2 below presents the proposed reformulation of Article 102 (a) in a four-paragraph structure, accompanied by the doctrinal justification for each provision. The formulation is offered not as a definitive legislative text but as a doctrinal model demonstrating how the three-category classification developed in sub-section 3.2 can be operationalized in statutory language.[57]

Table 2. Proposed Normative Reconstruction of Article 102(a) of Government Regulation No. 28 of 2024

Ayat	Proposed Legal Formulation	Doctrinal Justification
(1)	The following practices are absolutely prohibited without exception: (a) any incision, excision, infibulation, or other physical alteration of the female external genitalia using a sharp or invasive instrument; (b) any procedure that causes bleeding, scarring, or functional impairment of the female reproductive organs.	Grounds the prohibition in objective, instrument-based and outcome-based criteria rather than cultural categorization, thereby avoiding constitutional challenge under Art. 28I(3) (cultural identity protection). Aligns with WHO FGM Types I–III.
(2)	Notwithstanding paragraph (1), a symbolic cultural or religious act shall not be subject to the prohibition if it satisfies all of the following conditions: (a) no sharp, cutting, or invasive instrument is used; (b) no physical alteration, incision, or injury to genital tissue occurs; (c) the act does not result in bleeding, infection, or any impairment of reproductive function; and (d) informed consent of the parent or guardian is documented and the act is performed under applicable hygiene standards.	Conjunctive four-condition test (all must be met simultaneously) prevents creative interpretation from extending the exception. Operationalizes Category 2 of the proposed classification model. Balances Art. 18B(2) customary rights recognition with health protection floor.

[56] Lingga and Najib, "The Female Genital Mutilation Regulations In Indonesia: The International Law, Human Rights, and Islamic Law Perspectives."
[57] Hasmita, Ropii, and Putra, "Legal Analysis of Female Circumcision in The Context of Legal Pluralism in Indonesia."

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(3)	The Minister of Health shall, within six (6) months of the enactment of this provision, issue technical implementing guidelines (*petunjuk teknis*) specifying: (a) instruments and acts that trigger paragraph (1); (b) substances and acts qualifying for paragraph (2) treatment; (c) the clinical assessment protocol for ambiguous (Category 3) cases; and (d) documentation and consent requirements for any act permitted under paragraph (2).	Converts administrative guideline issuance from a discretionary act into a legally enforceable obligation with a mandatory timeline. Addresses the regulatory vacuum that currently exposes healthcare workers to liability without clear guidance.
(4)	Any act performed under paragraph (2) that is subsequently found to have resulted in physical harm shall retroactively fall within the prohibition of paragraph (1) and shall be subject to the sanctions prescribed therein.	Eliminates the moral hazard of practitioners invoking the conditional permissibility exception for acts that subsequently cause injury. Ensures that the permissibility of Category 2 practices does not create a compliance loophole.

Source: *Authors' normative construction based on doctrinal analysis of Government Regulation No. 28 of 2024, the 1945 Constitution, and comparative legal pluralism principles (2026).*

Several features of the proposed formulation warrant further doctrinal elaboration. Paragraph (1) adopts an instrument-based and outcome-based prohibition standard, ensuring that the scope of the absolute ban is defined by objective physical criteria rather than by cultural or religious categorization. This avoids the constitutional difficulty of a norm that would, in effect, prohibit a cultural practice as such, which would be vulnerable to challenge under Article 28I (3)'s protection of cultural identity.[58] Paragraph (2) establishes conditional permissibility through a conjunctive four-condition test, all of which must be satisfied simultaneously. The conjunctive structure ensures that the exception cannot be extended by creative interpretation to cover practices that satisfy only some conditions. Paragraph (3) imposes a mandatory timeline on the Ministry of Health, converting what has hitherto been a discretionary administrative matter into a legally enforceable obligation. Paragraph (4) introduces a retroactive liability clause that eliminates the moral hazard of practitioners claiming conditional permissibility for acts that subsequently cause harm.[59]

The normative reconstruction, however, cannot succeed through legislative drafting alone. The empirical literature on legal pluralism in Indonesia consistently demonstrates that top-down norm-imposition without participatory social engagement generates resistance rather than compliance, particularly in communities where the regulated practice is embedded in religious

[58] Azizah, "Status Hukum Khitan Perempuan (Perdebatan Pandangan Ulama Dan Permenkes RI No. 1636/MENKES/PER/XI/2010)."
[59] Latifah, "Perlindungan Hukum Terhadap Korban Dan Tanggung Jawab Hukum Dokter Atas Kelalaiannya Dalam Melakukan Khitan Yang Merugikan Pasien Ditinjau Dari Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan."

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and customary authority structures.[60] A legally reconstructed Article 102 (a), however well-drafted, will remain formally valid but socially ineffective unless accompanied by a deliberate process of participatory norm socialization involving customary leaders (*tokoh adat*), religious scholars (*ulama*), and community health workers. This participatory dimension is not merely a policy recommendation; it is a constitutional requirement implicit in Article 18B (2)'s recognition of customary law communities as rights-bearing actors whose engagement in the regulatory process is a precondition for the democratic legitimacy of the norm.[61]

Taken together, the proposed reformulation and its accompanying implementation framework constitute a legal model that is simultaneously protective, proportionate, and pluralism-sensitive. It is protective because it maintains an absolute prohibition on all physically harmful procedures without exception. It is proportionate because it does not extend regulatory prohibition to practices whose cultural significance is established and whose medical risk is absent. It is pluralism-sensitive because it engages with the structural coexistence of state law, Islamic law, and customary law not as an obstacle to regulatory effectiveness but as a normative resource to be incorporated into the regulatory design.[62] The test of any legal reform in a pluralistic society is not whether it achieves formal legislative enactment, but whether it generates the conditions under which the norm can be genuinely internalized across the diverse legal communities it seeks to govern. The proposed framework is designed to meet that test by building legal certainty, constitutional coherence, and social legitimacy into the structure of the norm itself.[63]

3.4 Legal Protection and Liability of Healthcare Workers Under the FGM Prohibition

Legal protection for healthcare workers in the context of the FGM prohibition cannot be analyzed solely through the lens of regulatory compliance; it requires a doctrinal framework that distinguishes between the state's duty to protect healthcare workers from unjustified liability and the state's duty to hold them accountable when their conduct causes harm.[64] In Indonesian health law, legal protection for health professionals is grounded in the principle that professional conduct undertaken in good faith, within the scope of lawful clinical authority, and consistent with applicable standards of care is shielded from punitive consequence. Conversely, liability attaches when a health professional acts outside the scope of lawful authority, causes demonstrable harm, or fails to discharge the duty of care owed to the patient. The analytical task is to identify precisely where, under Article 102 (a) of Government Regulation No. 28 of 2024, the boundary between protected professional conduct and actionable liability falls, and to distinguish between the three doctrinal forms of liability that may arise: administrative, criminal, professional-ethical, and civil.[65]

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[60] Rosyidah and Jamilah, "Habitus and Cultural Reproduction of Female Circumcision in Muslim Community of Sumenep."

[61] Putra, *Pluralisme Hukum Di Indonesia*.

[62] Lingga and Najib, "The Female Genital Mutilation Regulations In Indonesia: The International Law, Human Rights, and Islamic Law Perspectives."

[63] Januardi, "Sebuah Perspektif Nawal El Saadawi: Khitan Perempuan Antara Syariat Dan Adat."

[64] Inayati, Widanti, and Lucyati, "Ketentuan Tentang Sunat Perempuan Dikaitkan Dengan Asas Gender Dan Nondiskriminatif."

[65] Sulistyawati and Hakim, "Sunat Perempuan Di Indonesia: Potret Terhadap Praktik Female Genital Mutilation (FGM)."

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Administrative liability constitutes the first and most immediately applicable form of legal consequence under the current regulatory framework. Article 188 of Law No. 17 of 2023 on Health empowers the competent authority to impose graduated administrative sanctions on health professionals who violate the provisions of the health regulatory framework, including written warnings, temporary suspension of practice licenses, and permanent revocation of registration. Under Article 102 (a), a healthcare worker who performs any circumcision procedure, whether invasive or non-invasive, without a clear clinical indication is formally exposed to administrative sanction. The doctrinal difficulty is that administrative liability under Law No. 17 of 2023 is triggered by the act of performing the procedure, irrespective of whether physical harm results. This outcome-independent liability standard is appropriate for Category 1 invasive FGM, where the act itself is inherently harmful, but becomes legally disproportionate when applied to Category 2 symbolic acts that cause no injury. A proportionate administrative liability framework would therefore require the same definitional differentiation proposed in sub-section 3.2: administrative sanction should attach to Category 1 and ambiguous Category 3 acts, while Category 2 acts performed in compliance with the proposed technical guidelines should be shielded from administrative consequence.[66]

Criminal liability arises under a more demanding doctrinal threshold and must be carefully distinguished from administrative liability in both its elements and its consequences. Under the Indonesian Criminal Code (KUHP), criminal liability for bodily harm requires proof of both the actus reus (the physical act causing injury) and the mens rea (intentional or negligent causation of harm). Articles 354 to 356 of the KUHP govern intentional severe bodily harm, while Article 359 covers death by negligence. In the context of FGM, criminal liability attaches where a practitioner, whether a licensed health professional or a traditional practitioner, performs an invasive procedure that causes physical injury, organ damage, or death. The aggravated child protection provisions of Law No. 35 of 2014 on Child Protection further elevate criminal exposure where the victim is a minor.[67] Critically, criminal liability under these provisions does not extend to symbolic acts that cause no physical harm: the absence of *actus reus* (injury) eliminates the foundational element of the offence. Healthcare workers who perform Category 2 symbolic acts therefore face no criminal exposure under the KUHP, provided no physical harm results. The regulatory ambiguity of Article 102 (a), however, creates uncertainty about whether administrative enforcement might be pursued even in the absence of criminal elements, a conflation of liability forms that a properly drafted regulatory framework must preclude.[68]

Professional-ethical liability constitutes a distinct doctrinal category that operates independently of both administrative and criminal liability and is governed by the internal disciplinary jurisdiction of the medical profession. The Indonesian Medical Code of Ethics (KODEKI), the professional oath (*Lafal Sumpah Dokter*), and the standards of the Indonesian

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[66] Latifah, "Perlindungan Hukum Terhadap Korban Dan Tanggung Jawab Hukum Dokter Atas Kelalaiannya Dalam Melakukan Khitan Yang Merugikan Pasien Ditinjau Dari Undang-Undang Nomor 17 Tahun 2023 Tentang Kesehatan."

[67] Brian D Earp, "Against Legalising Female 'Circumcision' of Minors: A Reply to 'The Prosecution of Dawoodi Bohra Women' by Richard Shweder," *Global Discourse* 12, no. 1 (2022): 47–76, https://doi.org/10.1332/204378921X16347905414226.

[68] Lingga and Najib, "The Female Genital Mutilation Regulations In Indonesia: The International Law, Human Rights, and Islamic Law Perspectives."

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Medical Association (IDI) and the Indonesian Midwives Association (IBI) collectively establish that health professionals owe their patients a non-delegable duty of care that is defined by the current state of medical knowledge and professional consensus. A health professional who performs FGM at the request of a patient's family, knowing that the procedure has no established clinical indication and carries documented medical risks, may be found to have violated this duty of care regardless of whether criminal or administrative proceedings are initiated. Conversely, a health professional who refuses to perform FGM and provides accurate, evidence-based health information to the requesting family acts in full compliance with professional-ethical obligations.[69] The Majelis Kehormatan Disiplin Kedokteran Indonesia (MKDKI) and the Majelis Kehormatan Etik Kedokteran (MKEK) are the institutional bodies empowered to adjudicate professional-ethical complaints and impose disciplinary sanctions, including suspension or revocation of professional membership, independently of any criminal or administrative proceedings.[70]

Table 3. Doctrinal Classification of Legal Liability for Healthcare Workers and Traditional Practitioners Under Article 102(a) of Government Regulation No. 28 of 2024

Type of Liability	Legal Basis	Triggering Conduct	Sanction	Applicable Subject
Administrative Liability	Art. 188 Law No. 17/2023; PP No. 28/2024 Art. 102(a)	Performing any circumcision procedure, including supervised symbolic acts, without clear clinical indication	Written warning; temporary suspension of practice license; permanent revocation of practice license	Licensed physicians, midwives, nurses, and other registered health professionals
Criminal Liability	Art. 440–443 Law No. 17/2023; Art. 354–356 Criminal Code (KUHP) on intentional bodily harm	Performance of invasive FGM causing physical injury, organ damage, or death, whether by medical or traditional practitioner	Imprisonment of up to 10 years and/or fine; aggravated penalty where victim is a child under Law No. 35/2014	Any person performing the act, including traditional practitioners (dukun beranak) and parents who commission the act
Professional / Ethical Liability	Indonesian Medical Code of Ethics (KODEKI); *Lafal Sumpah Dokter*; IDI and IBI professional	Facilitating FGM upon social or familial request without medical indication; failure to provide accurate health information	Disciplinary sanction by professional ethics board (MKDKI/MKEK); suspension or revocation of	All licensed health professionals subject to professional association jurisdiction

[69] Affandi, "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara."

[70] Della Octavia Indana, "Hukum Khitan Bagi Perempuan Menurut Fatwa Dar Al-Ifta Al-Misriyyah Dan Fatwa Majelis Ulama Indonesia," *Jurnal Madzhab* 1, no. 2 (2024): 73–84, https://doi.org/10.15575/madzhab.v1i2.1038.

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	standards	regarding FGM risks	professional membership	
Civil Liability	Art. 1365 Civil Code (BW); Art. 46 Law No. 36/2009 (prev. Health Law); Law No. 8/1999 on Consumer Protection	Medical negligence causing harm to patient (onrechtmatige daad); failure of duty of care owed to patient	Compensatory damages (material and immaterial); rehabilitation of patient rights	Healthcare workers; healthcare facilities (vicarious liability)

Source: *Authors' doctrinal construction based on Law No. 17 of 2023, PP No. 28 of 2024, the Indonesian Criminal Code, and professional medical ethics standards (2026).*

The doctrinal framework of legal protection for healthcare workers operates as the correlative of the liability framework: where liability attaches for harmful or unlawful conduct, protection attaches for lawful professional conduct undertaken in good faith.[71] Under Indonesian health law, a health professional who refuses to perform FGM on the grounds that it lacks clinical indication and poses medical risk is acting within the scope of lawful professional authority and is therefore protected from liability, whether administrative, criminal, or professional-ethical, arising from that refusal.[72] This protection, however, is currently undermined by the absence of explicit regulatory guidance on the boundary between prohibited conduct and permissible professional refusal. Healthcare workers in regions with strong cultural or religious expectations of female circumcision face social pressure that the law does not currently equip them to resist with clarity. The proposed technical implementing guidelines (*petunjuk teknis*) discussed in sub-section 3.3 are therefore an essential component of the legal protection framework: they translate the regulatory prohibition into operationally actionable guidance that enables healthcare workers to discharge their professional obligations with legal certainty and without exposure to unjustified liability.[73]

Beyond their role as clinical practitioners subject to regulatory compliance obligations, healthcare workers occupy a structurally significant role as agents of health education and norm socialization, a dimension that the current regulatory framework has insufficiently acknowledged.[74] The documented cases of symbolic circumcision practices in field settings demonstrate that community members seek healthcare worker involvement not primarily for clinical purposes but for the social legitimacy that medical participation confers on the ritual. This dynamic creates a professional opportunity: healthcare workers who engage with these requests not by performing the procedure but by providing evidence-based information about reproductive health, the medical risks of FGM, and the availability of non-harmful symbolic alternatives can simultaneously fulfill their professional-ethical duty of non-maleficence and

[71] Inayati, Widanti, and Lucyati, "Ketentuan Tentang Sunat Perempuan Dikaitkan Dengan Asas Gender Dan Nondiskriminatif."
[72] Putri, "Rekognisi Tradisi Khitan Perempuan Dalam Hukum Konstitusi (Harmonisasi Hukum Adat Dan Perlindungan Hak Asasi Manusia Di Indonesia)."
[73] Rosyidah and Jamilah, "Habitus and Cultural Reproduction of Female Circumcision in Muslim Community of Sumenep."
[74] Istiqomah, "Wujudkan Perlindungan Perempuan Dalam Tradisi Female Circumcision Di Wilayah Kabupaten Bogor, Jawa Barat."

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contribute to the gradual transformation of community norms. This educative role is legally grounded in Article 11 (d) of Law No. 17 of 2023, which places health promotion and preventive health action among the core professional obligations of health workers, and should be explicitly recognized in the proposed technical guidelines as a standard response protocol for healthcare workers who receive requests for female circumcision.[75]

The legal protection of communities that continue to uphold traditional practices must equally be framed in doctrinal rather than purely sociological terms. Communities whose members perform or commission non-invasive symbolic practices under the reasonable belief that such practices fall outside the scope of the prohibition in Article 102 (a) have a legitimate claim to protection from retroactive criminalization on the basis of a regulatory text whose scope was not authoritatively defined at the time of their conduct.[76] The principle of *nullum crimen sine lege certa*, which requires that criminal prohibitions be formulated with sufficient precision to enable citizens to foresee the legal consequences of their conduct, is directly implicated by the definitional ambiguity of Article 102(a).[77] A regulatory framework that exposes community members to criminal liability for conduct that a reasonable person could not have known to be prohibited is constitutionally deficient under Article 28D(1) of the 1945 Constitution, which guarantees equal protection before the law and legal certainty.[78] The issuance of technical implementing guidelines is therefore not merely a policy desideratum but a constitutional obligation flowing from the *lex certa* principle, which requires that the scope of criminal prohibition be knowable by those to whom it applies.[79]

Beyond resolving questions of individual liability, the proposed framework contributes to the broader development of responsive and pluralism-sensitive health governance in Indonesia. The analysis demonstrates that legal certainty for healthcare workers cannot be achieved solely through punitive regulation, but requires a coherent regulatory architecture that aligns constitutional rights, public health objectives, professional ethics, and community-based normative systems. In this respect, legal protection should be conceptualized not merely as immunity from sanctions, but as the provision of clear normative guidance that enables healthcare professionals to perform their duties within a predictable and constitutionally legitimate framework. The adoption of technical implementing guidelines, coupled with participatory engagement involving health authorities, religious institutions, and customary leaders, would reduce regulatory ambiguity while strengthening compliance and public trust. More broadly, the proposed model illustrates how legal pluralism can function not as a source of regulatory fragmentation, but as a normative resource for designing health regulations that are simultaneously effective, proportionate, and socially legitimate. Such an approach provides an important reference for future legislative reforms concerning culturally sensitive health

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[75] Affandi, "Implementasi Hak Atas Kesehatan Menurut Undang-Undang Dasar 1945: Antara Pengaturan Dan Realisasi Tanggung Jawab Negara."

[76] Atu Setiati, Aziz Muslim, and Farhana Sabri, "The Polemic of Female Circumcision in Garut West Java Indonesia: Clash of Culture and Regional Policy," *Fikri: Jurnal Kajian Agama, Sosial Dan Budaya* 8, no. 1 (2023): 69–81, https://doi.org/10.25217/jf.v8i1.2672.

[77] Lies Marcoes, Ahmad Suadey, and Hamzah Bashori, *Perempuan Dan Pluralisme* (Jakarta: LKIS, 2019).

[78] Putri, "Rekognisi Tradisi Khitan Perempuan Dalam Hukum Konstitusi (Harmonisasi Hukum Adat Dan Perlindungan Hak Asasi Manusia Di Indonesia)."

[79] Putra, *Pluralisme Hukum Di Indonesia*.

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practices in Indonesia and other plural legal systems confronting similar tensions between human rights protection, public health regulation, and cultural diversity.

4. CONCLUSION

This study concludes that the prohibition of female circumcision under Article 102(a) of Government Regulation No. 28 of 2024 has not yet achieved legal certainty because it fails to clearly distinguish between invasive forms of *female genital mutilation* (FGM) that cause physical harm and non-invasive symbolic practices that do not result in reproductive injury. This regulatory ambiguity creates normative tensions between the state's obligation to protect women’s and children’s health, the constitutional recognition of legal pluralism, and the protection of customary and religious rights. The findings demonstrate that a blanket prohibition may generate legal uncertainty for healthcare professionals, expose harmless symbolic practices to disproportionate sanctions, and potentially encourage the continuation of such practices in unregulated settings beyond state supervision. As its principal theoretical contribution, this study proposes a two-tier legal classification model that differentiates invasive FGM, which must remain absolutely prohibited, from non-invasive symbolic rituals that may be conditionally accommodated under strict regulatory safeguards and technical guidelines. The novelty of this research lies in the reconstruction of Article 102(a) through a legal pluralism framework that integrates health protection, proportionality, and constitutional recognition of cultural diversity. This reconstructed model offers a more coherent and balanced regulatory approach capable of strengthening legal certainty for healthcare workers, enhancing the protection of women’s and children’s rights, and fostering harmonization between state law, religious norms, and customary law within Indonesia’s plural legal system.

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