

Criminal Liability in Abortion Cases: Participation Doctrine under Indonesia's New Penal Code

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Abstract

This study aims to examine the construction of criminal liability for participants in abortion-related offenses and evaluate judicial reasoning in Decision Number 721/Pid.Sus/2019/PN Cikarang, and assess its compatibility with the paradigm shift introduced by Law Number 1 of 2023 concerning the Criminal Code. The research is motivated by the persistent doctrinal ambiguity in distinguishing co-perpetrators (medepleger) from accomplices (medeplichtige) in abortion cases, which creates uncertainty in attributing criminal responsibility and determining proportional sanctions. Employing a normative juridical method with statutory, doctrinal, and case approaches, this study analyzes relevant legal norms, judicial considerations, and the evolving framework of criminal liability under Indonesia's criminal law reform. The findings demonstrate that the defendant's liability was established through active participation in facilitating an unlawful abortion and was judicially classified as a co-perpetrator. However, the decision reveals a conceptual weakness in differentiating essential participation from auxiliary assistance, resulting in a predominantly formalistic application of participation doctrine. The study further finds that Law Number 1 of 2023 introduces a more contextual and differentiated model of criminal liability through clearer role attribution, proportional sentencing, and recognition of humanitarian considerations. The novelty of this research lies in integrating participation doctrine with the theory of functional perpetration and a comparative analysis of the old and new Criminal Codes to develop a more precise framework for assessing facilitators' criminal responsibility in abortion-related offenses. The study contributes to the refinement of Indonesian criminal law by advancing a proportional, contextual, and human rights-oriented approach to participation and sentencing.

Keywords: Abortion; Criminal Code Reform; Criminal Liability; Court Decisions

1. INTRODUCTION

Indonesia, as a state based on law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution, requires that all aspects of social life be governed by legal norms. This principle implies that any act violating the law must be subject to legal accountability through established mechanisms. In criminal law, such accountability extends not only to the principal offender but also to individuals who participate in the commission of a crime through the doctrine of *deelneming*.¹

Within this framework, abortion remains a complex legal and social issue. Normatively, Indonesian criminal law classifies abortion as a prohibited act due to its association with the protection of life. However, empirical realities indicate that abortion continues to occur, driven by factors such as unintended pregnancies, economic constraints, and psychological conditions.² Although Edwin M. Schur categorizes abortion as a *victimless crime*, this

¹ Willa Wahyuni, "Prinsip Negara Hukum Yang Diterapkan Di Indonesia," Hukum Online, 2022, <https://www.hukumonline.com/berita/a/prinsip-negara-hukum-yang-diterapkan-di-indonesia-lt63449d84e25e4/>.

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

perspective is increasingly contested, as the *state* maintains a legitimate interest in safeguarding life and ensuring public order.³

From a regulatory perspective, Indonesian law has undergone significant transformation. The old Criminal Code adopts a repressive approach by broadly criminalizing abortion without explicit exceptions. In contrast, Law Number 17 of 2023 concerning Health introduces conditional permissibility, particularly in cases of medical emergencies and pregnancies resulting from sexual violence. This development is further reinforced by Law Number 1 of 2023 on the Criminal Code, which reflects a paradigm shift toward a more contextual and proportional framework, including clearer regulation of participation and differentiation of roles among perpetrators.

Despite these normative advancements, practical challenges persist. In reality, abortion-related offenses are rarely committed by a single actor, but instead involve multiple parties with varying degrees of involvement. This creates significant complexity in determining the boundaries of criminal liability, particularly in distinguishing between co-perpetrators (*medepleger*) and accomplices (*medeplichtige*). The lack of clear doctrinal application in judicial practice risks generating inconsistency and legal uncertainty.

This issue becomes more urgent when viewed against broader empirical data. Globally, approximately 121 million pregnancies each year are unintended, with a significant proportion resulting in abortion, including unsafe procedures.⁴ In Indonesia, this phenomenon reflects a structural gap between legal norms, social realities, and the need for reproductive health protection.⁵

The urgency of this research is closely linked to the ongoing reform of national criminal law through the enactment of Law Number 1 of 2023 concerning the Criminal Code, which has been fully implemented since 2026. This reform introduces a more differentiated and contextual framework for regulating criminal acts, including abortion and participation. However, the persistence of unsafe abortion practices indicates that a predominantly repressive legal approach remains insufficient. This condition highlights the need for a more comprehensive analysis that not only examines normative provisions but also evaluates their capacity to ensure proportionality, legal protection, and substantive justice, particularly for women and other parties involved.

Existing scholarship demonstrates that abortion has been examined from multiple perspectives, including feminist legal critiques, medical liability, and *socio-legal* analysis. Studies by Jordan (2023) reveal normative biases in abortion regulation under the new

³ Shah Mohammad Omer Faruq Jubaer Et Al., “Victimless crime And Victimology Under Different National Legal System: A Global Approach,” *European Scholar Journal (Esj)* 2, No. 5 (2021): 6.

⁴ Deonisia Arlinta, “Sebanyak 121 Juta Kehamilan Tidak Diinginkan Terjadi Setiap Tahun Di Seluruh Dunia,” Kompas.Id, 2022, <https://www.kompas.id/artikel/global-sebanyak-121-juta-kehamilan-tidak-diinginkan-terjadi-setiap-tahun>.

⁵ Anna S. Wahongan And Nurhikmah Nachrawy, “Pertanggungjawaban Pidana Pelaku Aborsi Ilegal Di Indonesia Dalam Perspektif Hukum Pidana,” *Journal Unsrat* 1945, No. 2016 (2021).

Criminal Code, particularly its limited sensitivity to women's experiences.⁶ Research by Anton (2024) provides a systematic analysis of criminal liability within the medical context, emphasizing the elements of fault and causality.⁷ Meanwhile, Rahman (2024) highlights the influence of social and cultural factors in shaping abortion practices through a multidisciplinary lens.⁸

However, these studies have not specifically addressed the doctrinal construction of participation (*deelneming*) in abortion-related offenses, particularly in defining the boundaries between co-perpetrators, accomplices, and other forms of involvement under the new Criminal Code framework. This gap is significant because abortion in practice often involves multiple actors, creating complexity in the attribution of criminal liability. The absence of clear analytical parameters risks generating inconsistent judicial interpretations and undermining legal certainty.

Therefore, this study is important as it seeks to fill this gap by offering a systematic and integrative analysis of participation in abortion crimes, linking criminal law doctrine with developments in health law. By focusing on the construction of proportional criminal liability based on the role of each actor, this research aims to provide both doctrinal clarification and practical guidance for law enforcement, while also supporting the development of a more adaptive, just, and human rights-oriented criminal law system.

This research systematically examines three key interrelated legal issues within the framework of criminal liability for the crime of abortion. First, this research analyzes the form and scope of criminal liability of perpetrators involved in the crime of abortion as decided in Decision Number 721/Pid.Sus/2019/PN Cikarang, with an emphasis on the role of each perpetrator and the construction of the criminal act carried out in court. Second, this research examines the judge's legal considerations in qualifying the form of participation (*deelneming*), including how the judge assesses the causal relationship, intent, and contribution of each perpetrator's actions, as well as the argumentative basis for imposing criminal sanctions. Third, this research examines the relevance and effectiveness of the construction of criminal liability in the sentence by comparing it with the provisions of the old and new Criminal Codes, to assess whether there is a paradigm shift, an expansion of the meaning of liability, or even a normative inconsistency in the national criminal law regulations. Thus, these three issues are not only explained separately but also linked to gain a comprehensive understanding of the dynamics of criminal liability in the crime of abortion in Indonesia.

The purpose of this study is to legally analyze the concept of inclusion in the crime of abortion based on the provisions of applicable Indonesian criminal law, particularly from the

⁶ Rospita Adelina Siregar Raden Mas Airell Jordan Hidayat, "Aborsi Atas Kasus Pemerkosaan Anak Dalam Sudut Pandang Undang-Undang Nomor 17 Tahun 2023," *Honeste Vivere Journal* 36, No. 1 (2026): 24–32, <https://doi.org/10.55809/hv.v36i1.597>.

⁷ Abang Anton, Beny Satria, And Yasmirah Mandasari Saragih, "Criminal Liability Of Medical Personnel In Law Number 17 Of 2023 Concerning Health," *Ijlcj: International Journal Of Law, Crime And Justice* 1, No. 2 (2024): 36–50.

⁸ Maulidya Rezzinna And & Wawang S. Sukarya., "Legal Analysis Of Abortion In Cases Of Anencephaly: A Study Of Moral, Criminal Law, And Health Perspectives," *Intellectual Law Review (Ilre)* 2, No. 1 (2024): 23–31, <https://doi.org/10.59108/ilre.v2i1.59>.

perspective of the reform of the Criminal Code, and to examine how criminal liability can be applied appropriately and proportionally to the parties involved. Furthermore, this study also aims to contribute to the development of criminal law that is more responsive to the complexity of abortion practices, while supporting the creation of legal certainty and substantive justice in the Indonesian criminal justice system.

2. METHOD

The type of research used is normative juridical legal research, namely research that positions law as a norm or rule that applies in society. This research relies on written legal materials as the primary source, thus it is often referred to as library research. Within this framework, the analysis is conducted by examining laws and regulations, legal doctrine, and court decisions related to the issue under study, particularly regarding the crime of abortion and the concept of inclusion in criminal law.⁹

The approaches used in this research include a legislative approach and a case study approach. The legislative approach is conducted by examining various relevant legal provisions, such as the Criminal Code and Law Number 17 of 2023 concerning Health, to understand the normative construction related to prohibitions and exceptions to abortion. Meanwhile, the case study approach is conducted through an analysis of Decision Number 721/Pid.Sus/2019/PN Cikarang, which serves as the primary object for examining the application of law in judicial practice, particularly in determining the form of inclusion and criminal responsibility of perpetrators.

The legal sources in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include legally binding laws and court decisions, such as the Criminal Code, Law Number 17 of 2023 concerning Health, and the court decisions that are the subject of the study. Secondary legal materials consist of scientific literature such as books, legal journals, previous research results, and expert opinions relevant to the research topic. Tertiary legal materials are used as a supplement to provide additional understanding, such as legal dictionaries and encyclopedias.¹⁰

The legal material collection method is carried out through literature study by identifying, inventorying, and reviewing various relevant legal sources. Next, the legal material is analyzed using normative qualitative analysis methods, namely by interpreting and constructing legal norms contained in laws and court decisions.¹¹ This analysis is also carried out by linking the applicable legal norms with the legal facts in the decision, so that a comprehensive understanding can be obtained regarding the application of criminal responsibility to perpetrators who participate in the crime of abortion.

⁹ Aida Ardini Et Al., "Analisis Penerapan Hukum Pidana Terhadap Pelaku Pengeroyokan," *Unes Law Review* 7, No. 1 (2024): 546.

¹⁰ Ravid Aspin Lumbu Et Al., "Analisis Putusan No. 1977/K.Pid.Sus/2020 Tentang Tindak Pidana Pencucian Uang" 8, No. 1977 (2025): 97–109.

¹¹ Siti Shanda Et Al., "A Legal Analysis Of The Application Of Strict Liability And The Role Of Courts In Civil Litigation For Environmental Pollution," *Al-Adalah: Jurnal Hukum Dan Politik Islam* 11, No. 2 (2026): 261–80.

3. RESULTS AND DISCUSSION

3.1 Criminal Responsibility for Perpetrators Who Participate in the Crime of Abortion Based on Decision Number 721/Pid.Sus/2019/PN Cikarang

Criminal liability is the core of criminal law, determining whether a person can be punished for their actions. In the context of illegal abortion, criminal liability arises when an act of terminating a pregnancy is carried out without fulfilling the legally permitted requirements. Normatively, provisions regarding the prohibition of abortion are regulated in Articles 346 to 349 of the Criminal Code, which emphasize that any act of intentionally terminating a pregnancy, whether carried out alone or with the assistance of another party, is a punishable act.¹² These provisions reflect a classical paradigm of criminal law that prioritizes the protection of legal interests (*rechtsbelangen*), particularly the right to life, as a fundamental value safeguarded by the *state*. Within this framework, the fetus is positioned as a subject deserving legal protection, thereby justifying the strict prohibition of abortion. However, such a rigid approach has increasingly been questioned in contemporary legal discourse, especially when confronted with complex social realities that necessitate a more nuanced legal response.¹³

In criminal law doctrine, criminal responsibility requires the fulfillment of two main elements, namely an unlawful act (*actus reus*) and fault (*mens rea*).¹⁴ As Moeljatno stated, a person can only be held accountable if their actions were committed intentionally or negligently. Therefore, in the crime of illegal abortion, the focus is not only on the physical aspect of the act, but also on the perpetrator's awareness and will in carrying out the act.¹⁵ In practice, the crime of illegal abortion involves several categories of perpetrators: the woman who aborts her pregnancy, those who assist or facilitate it, and medical personnel who perform the act without a valid legal basis. These three categories have varying degrees of culpability, so the criminal liability imposed must be proportionate. This aligns with the concept of participation in Article 55 of the Criminal Code, which allows any party involved in a crime to be held accountable according to their role.¹⁶

However, this classification is still descriptive and does not fully address the crucial issue in practice, namely how to clearly distinguish between *medepleger* (participant) and *medepligtige* (assistant). In many decisions, including in the *case a quo*, judges tend to generalize the role of the perpetrator without thoroughly examining the intensity of each

¹² Padrisan Jamba And Irene Svinarky, "Pertanggungjawaban Pidana Dalam Penyebaran Data Pribadi: Tinjauan Hukum Pidana Saat Ini," *Prosiding Seminar Nasional Ilmu Sosial Dan Teknologi (Snistek)* 5, No. September (2023): 498–506, <https://doi.org/10.33884/psnistek.v5i.8125>.

¹³ Edward Omar Sharif Hiarij, "Kuhp Nasional Ubah Paradigma Hukum Pidana Fokus Ke Pemulihan Sosial," *Hukum Online*, 2025, <https://www.hukumonline.com/berita/a/kuhp-nasional-ubah-paradigma-hukum-pidana-fokus-ke-pemulihan-sosial-lt679b4b81c5fc8/>.

¹⁴ Ekky Aji Prasetyo, Et Al., "Pertanggungjawaban Pidana Dan Penerapan *Mens rea* Dalam Tindak Pidana Intersepsi Di Indonesia," *Hukum Responsif* 15, No. 2 (2024): 295–307.

¹⁵ Luhut, "Pertanggungjawaban Pidana Terhadap Anak Yang Melakukan Aborsi (Studi Kasus Pn Jakarta Timur Nomor 6/Pid.Sus-Anak/2024/Pn.Jkt.Tim)" Universitas Islam Sultan Agung, (2024).

¹⁶ Joko Hendro Lesmono And Fitriati, "Penerapan Unsur Tindak Pidana Aborsi Oleh Penyidik Berdasarkan Alat Bukti Yang Digunakan," *Unes Journal Of Swara Justisia* 8, No. 1 (2024): 187–94, <https://doi.org/10.31933/ujsj.v8i1.495>.

party's contribution to the commission of the crime. However, doctrinally, *medepleger* requires close cooperation (*nauwe en bewuste samenwerking*), while *medeplichtige* only provides secondary assistance. This lack of clarity has the potential to lead to over-criminalization, especially against parties who are actually only in a peripheral position in the criminal event.

Specifically for medical personnel, criminal liability presents its own complexities. On the one hand, the medical profession has the authority to perform medical procedures in the patient's best interest.¹⁷ However, on the other hand, this authority is limited by legal provisions and professional ethics. If an abortion is performed without meeting the requirements stipulated in Articles 75 and 76 of Law Number 36 of 2009 concerning Health, the act is still classified as a criminal offense.¹⁸ Furthermore, criminal liability cannot be separated from the principle of fault. As stated by Sudarto and Leden Marpaung, there is no crime without fault (*geen straf zonder schuld*). In this context, a person cannot be punished if their actions are committed under legally permissible circumstances, such as a medical emergency. However, in the case under review, no circumstances were found to eliminate the fault or unlawful nature of the defendant's actions.

However, this fault-based approach within the classical framework needs to be critiqued using a modern criminal responsibility perspective, particularly the theory of functional perpetration (*functionele dader*). In this theory, responsibility is not solely based on who physically commits the act, but also on who functionally controls the course of the crime.¹⁹ In the case of illegal abortion, those who systematically organize, direct, or provide facilities can be classified as primary perpetrators, even if they do not directly perform the medical procedure. This approach is important to avoid the simplification that medical personnel are always the primary perpetrators, while others with greater control are positioned as assistants.

On the other hand, developments in national criminal law indicate reforms through Law Number 1 of 2023 concerning the Criminal Code. While the new Criminal Code substantially maintains the prohibition on illegal abortion as a form of protection for life, there is a tendency toward more systematic and comprehensive regulations, including regarding the inclusion and criminal accountability. This reform leads to a clearer differentiation of the perpetrator's role and an emphasis on the principle of proportionality in sentencing. However, because the case in Decision Number 721/Pid.Sus/2019/PN Cikarang still uses the old Criminal Code regime, the analysis in this section remains focused on the provisions in effect at the time the case was decided, while the implications of the new Criminal Code will be further examined in the following section.

¹⁷ Muhammad Erland Sumardiyanto, "Pertanggungjawaban Tindak Pidana Malpraktek Oleh Tenaga Kesehatan Terhadap Pasien (Study Kajian Undang-Undang Nomor 17 Tahun 2023).," *Jurnal Pengabdian Masyarakat Dan Riset Pendidikan* 4, No. 4 (2026): 21622–27.

¹⁸ Nafisa Putri Rozaq And Budiarsih Budiarsih, "Analisis Hukum Praktik Aborsi Oleh Tenaga Medis.," *Journal Yustitabelen* 11, No. 1 (2025): 38–51, <https://journal.unita.ac.id/index.php/yustitia/article/view/1382>.

¹⁹ Adelli Ritza Minetha, Denny Guntara, And Muhamad Abas, "Juridical Analysis Of Criminal Sanctions Against Perpetrators Of Abortion Crimes Reviewed From The Criminal Code And Health Law (Study Of Decision Number 333/Pid.Sus/2021/Pn Bks).," *Journal Of Law, Politic And Humanities* 5, No. 4 (2025): 2809–16.

Conversely, the development of modern criminal law also demands that criminal accountability be viewed not only from a purely normative perspective, but also from social and humanitarian dimensions.²⁰ In many cases, illegal abortions occur not solely due to malicious intent, but rather due to social, economic, or psychological pressures. This creates a dilemma between legal certainty and substantive justice. Therefore, the application of criminal law must adhere to the principle of *ultimum remedium*, which makes criminal punishment a last resort. This approach is crucial to avoid excessive criminalization, particularly of women in vulnerable positions.²¹ From a human rights perspective, law enforcement against illegal abortion must also consider the rights to health, privacy, and bodily autonomy.

In this context, a judge's approach that places too much emphasis on formal legal certainty without delving into the perpetrator's social circumstances has the potential to neglect substantive justice. Criminal responsibility analysis should also consider whether the perpetrator was in a dominant position or a dependent relationship. Therefore, the distinction between *medepleger* and *medeplichtige* should be viewed not only in terms of physical contribution, but also in terms of power relations and control over the criminal event.²² This approach will result in more proportionate decisions and reflect the development of modern criminal law, which is no longer solely repressive but also responsive to social realities.

Case Facts of Decision No.721/Pid.Sus/2019/PN Cikarang

This case centers on the involvement of the defendant, Yuliana Febrianti, a health worker, in an illegal abortion performed jointly with other parties. The trial evidence indicates that the incident did not occur independently, but rather through a series of interconnected actions. In short, the victim first sought out someone who could assist with the abortion. The defendant then acted as a liaison by directing the victim to a specific health facility, arranging the administrative process, including payment, and accompanying the victim until the medical procedure was performed. This role demonstrates a real contribution that functionally supported the abortion.

The Public Prosecutor filed alternative charges, namely Article 194 in conjunction with Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, and Article 348 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. The panel of judges then found the defendant legally and convincingly guilty of participating in an unlawful abortion and sentenced him to one year and four months in prison and a fine of Rp 10,000,000.

²⁰ Herman Saputra M. Yusuf Dm, Boby Putra Ramadhan Sebayang, Zulkarnaini, Ridho Wira Turnip, "Perubahan Pidana Dari Kuhp Lama Ke Baru Salah Satu Adalah Reformasi Penegakan Hukum," *Collegium Studiosum Journal* 8, No. 2 (2025): 465–79.

²¹ Khairiah, "Tindak Pidana Aborsi Dalam Perspektif Hukum Pidana Indonesia: Antara Dan Pengecualian."

²² Rasji Dan Harry Harmono, "Problematika Pertimbangan Hukum Oleh Hakim Dalam Mewujudkan Keadilan Di Masyarakat," *Lex Generalis Jurnal Hukum* 5, No. 10 (2024): 1–19.

Based on the construction of criminal law, the defendant's criminal liability can be analyzed through the fulfillment of its essential elements. The element of an unlawful act (*actus reus*) is satisfied through the defendant's active role in facilitating the abortion procedure outside the provisions stipulated in Article 75, paragraph (2) of the Health Law. The act does not fall within any legally permitted exceptions and therefore retains its qualification as an unlawful act.²³

From the perspective of fault (*mens rea*), there is a strong indication of intent (*dolus*). The defendant not only understood the objective of her actions but also consciously directed and ensured the execution of the act. This is consistent with the *wilstheorie* (theory of will), which emphasizes that intent is reflected in the unity between will and conduct. The capacity to be held responsible is also not at issue, as the defendant was in a conscious state and capable of understanding the consequences of her actions. Furthermore, no justifying or excusing grounds, such as *overmacht*, were found. Thus, all elements of criminal responsibility are cumulatively fulfilled.

However, the more crucial issue lies in the classification of the defendant's role within the doctrine of participation. The panel of judges categorized the defendant as a *medepleger* (co-perpetrator) under Article 55 paragraph (1) point 1 of the Criminal Code. Doctrinally, this classification requires the existence of close cooperation (*nauwe en bewuste samenwerking*) and unity of intent in committing the criminal act.

Factually, while the defendant made a significant contribution, she did not perform the core act, namely the medical procedure itself. This opens a doctrinal debate as to whether her role would be more appropriately classified as *medeplichtige* (accomplice). In classical doctrine, an accomplice merely provides support, whereas a co-perpetrator exercises direct control over the execution of the offense.

From a more modern perspective, this analysis can be deepened through the theory of *functional perpetration* (*functionele dader*). This approach shifts the focus from the physical perpetrator to the party that holds functional control over the commission of the crime. Under this framework, the defendant's role in connecting, directing, and ensuring the process could be interpreted as that of a principal offender in a functional sense.

Nevertheless, the court's decision did not explicitly examine this aspect of functional control and instead relied predominantly on a classical normative construction. This reveals a weakness in the legal reasoning, as it fails to clearly distinguish between essential contributions (*essential contribution*) and those that are merely supportive (*auxiliary contribution*).

From a critical standpoint, the classification of the defendant as a *medepleger* without thorough argumentation risks blurring the boundary between principal offenders and accomplices. This has direct implications for the proportionality of sentencing. Although the

²³ Prasetyo Et Al., "Pertanggungjawaban Pidana Dan Penerapan *Mens rea* Dalam Tindak Pidana Intersepsi Di Indonesia."

penalty imposed was relatively lighter than the prosecutor's demand, the underlying reasoning does not fully reflect a conceptually grounded differentiation of roles.

Moreover, the court's reasoning does not adequately accommodate the social dimension of abortion-related offenses. In many instances, such acts are influenced by social, economic, or power-related pressures. The absence of this contextual analysis indicates that the approach remains predominantly formal-legal and has not yet fully responded to the developments of modern criminal law.

Therefore, although the decision normatively satisfies the elements of criminal liability, from an academic perspective, there remains room for critique, particularly regarding the accuracy of role classification within the doctrine of participation, the depth of analysis concerning the defendant's contribution, and the application of the principle of proportionality in a contextualized manner. Looking forward, with the enactment of Law Number 1 of 2023 concerning the new Criminal Code, a more systematic approach to differentiating the roles of offenders is expected, so that criminal liability is not merely formalistic but also reflects substantive justice.

3.2 The Judge's Considerations in Handing Down a Decision Against a Perpetrator Who Participated in an Abortion (Decision Number 721/Pid.Sus/2019/Pnckr)

In rendering a decision, judges are required to base their considerations on both juridical and non-juridical aspects as stipulated in Article 197 letters (d) and (f) of the Criminal Procedure Code (KUHP). These provisions mandate judges to elaborate on the facts, evidence, and legal grounds forming the basis of sentencing, including aggravating and mitigating circumstances. In addition, Law Number 48 of 2009 on Judicial Power emphasizes that judges must explore the values of justice living within society and consider the personal circumstances of the defendant in determining the severity of punishment.

In Decision Number 721/Pid.Sus/2019/PN Cikarang, the court's juridical reasoning began with an assessment of the alternative charges brought by the public prosecutor, namely Article 194 of Law Number 36 of 2009 on Health in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code, as well as Article 348 paragraph (1) of the Criminal Code in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code. Based on the facts established during the trial, supported by witness testimonies, expert opinions, the defendant's statement, as well as documentary evidence such as the *visum et repertum* and other exhibits, the judges were convinced that an unlawful abortion had occurred. Witness testimonies revealed a sequence of interconnected events, starting from the planning stage, the transportation of the victim, and the execution of the abortion procedure at an unauthorized healthcare facility. Expert testimony further confirmed the occurrence of a medical procedure involving the termination of pregnancy, as evidenced by tissue examination results. Meanwhile, the defendant's admission of her role as an intermediary and facilitator became a crucial factor in establishing both the element of intent and active participation in the offense.

Based on legally admissible evidence as regulated under Article 184 of KUHAP, and the fulfillment of at least two pieces of evidence supported by the judge's conviction as required under Article 183 of KUHAP, the panel concluded that all elements of the criminal offense had been satisfied. The element of "any person" was fulfilled as the defendant is a legally recognized subject. The element of "intentionally performing an abortion not in accordance with the law" was proven through the defendant's conscious involvement in facilitating the abortion without legal justification. Furthermore, the element of participation under Article 55 of the Criminal Code was also fulfilled, given the defendant's active role in enabling the commission of the crime.

In its considerations, the court also found no justifying or excusing grounds that could eliminate either the unlawfulness or the culpability of the defendant. Accordingly, the defendant was declared legally and convincingly guilty. In determining the sentence, the judges considered mitigating factors such as the defendant's cooperative attitude, confession, and remorse during the trial. Conversely, the aggravating factor was that the defendant's actions had caused public concern. Based on these considerations, the court imposed a sentence of one year and four months of imprisonment, along with a fine of IDR 10,000,000, with a subsidiary imprisonment of three months in the event of non-payment. This decision reflects the application of the principle of proportionality, whereby the punishment corresponds to the degree of fault and the defendant's role in the offense.

Furthermore, the court's reasoning remains largely within a formal-legal framework and does not fully integrate a structured sentencing rationale as commonly discussed in contemporary sentencing theory, such as the balance between culpability (*schuld*) and harm (*tat*), or the principle of individualized sentencing. The mitigating factors identified by the court, such as remorse and cooperation, are acknowledged, yet their impact on the final sentence is not transparently elaborated. This lack of analytical depth potentially weakens the persuasive force of the judgment.

From a broader evaluative standpoint, the decision also does not sufficiently explore whether alternative sanctions or non-custodial measures could have been considered, particularly given the defendant's non-primary role in the execution of the abortion. In modern sentencing frameworks, especially under the evolving paradigm reflected in Law Number 1 of 2023 on the new Criminal Code, there is an increasing emphasis on the use of imprisonment as a last resort (*ultimum remedium*). The absence of such consideration in the judgment indicates a limited engagement with progressive sentencing principles.

From a juridical standpoint, the court's decision can be considered appropriate, as it is grounded in valid evidence, the fulfillment of the elements of the offense, and a comprehensive assessment of both legal and factual aspects. The judges did not merely rely on normative provisions but also incorporated substantive justice by considering the defendant's circumstances. Moreover, the imposed punishment is not purely retributive but also embodies preventive and rehabilitative objectives. When briefly linked to the reform of criminal law under the new Criminal Code (Law Number 1 of 2023), the judicial reasoning

in this case aligns with the direction of national criminal law reform, particularly in emphasizing proportionality in sentencing and the differentiation of roles among participants in a criminal offense.

Despite this alignment, it must be noted that the judgment stops short of fully operationalizing these reform-oriented principles in its reasoning. The proportionality principle, although mentioned, is not supported by a rigorous analytical structure that clearly demonstrates how each factor—role differentiation, intent, and social context—translates into the final sentence. Consequently, while the decision formally satisfies the requirements of legal reasoning, substantively it still reflects a transitional stage between classical and modern approaches to sentencing.

Therefore, in response to the second research question, it can be concluded that the legal reasoning underlying Decision Number 721/Pid.Sus/2019/PN Cikarang has complied with the provisions of criminal procedural law and the principles of juridical consideration. The decision is based on a valid evidentiary assessment, analysis of the elements of the offense, and consideration of both aggravating and mitigating circumstances, thereby reflecting a judgment that ensures legal certainty while also fulfilling the values of justice and utility.

3.3 The Relevance and Implications of Criminal Liability in Decisions Analyzed Based on the Old and New Criminal Codes

The analysis of Decision Number 721/Pid.Sus/2019/PN Cikarang from a comparative perspective between the old Criminal Code (KUHP) and the new Criminal Code (Law Number 1 of 2023) reveals both continuity and a shift in paradigm in the construction of criminal liability, particularly concerning abortion offenses and the concept of participation (*deelneming*). This comparison is essential to assess the extent to which the decision remains relevant and to understand its implications within the framework of national criminal law reform.

Under the old Criminal Code, the regulation of abortion tended to be repressive and absolute in nature. The provisions in Articles 346 to 349 of the KUHP strictly criminalize any act of terminating a pregnancy without providing explicit room for exceptions. The primary focus of this regulation is the protection of fetal life as a legal interest that must be strictly safeguarded. In this context, criminal liability is based on the formal fulfillment of the elements of the offense, without deeply considering the social, psychological, or personal background of the perpetrator. In contrast, within the framework of national criminal law reform, the regulation of abortion in the new Criminal Code has been reformulated in a more structured manner, as reflected in Articles 463 and 464 of Law Number 1 of 2023. These provisions not only maintain the prohibition of abortion but also introduce clearer differentiation regarding the subjects involved, forms of conduct, and conditions for exceptions.

Article 463 of the new Criminal Code explicitly regulates criminal liability for women who undergo abortion, with a maximum penalty of four years' imprisonment. However, this provision introduces limited exceptions, namely when the woman is a victim of rape or other

forms of sexual violence resulting in pregnancy with a gestational age not exceeding fourteen weeks, or when there is a medical emergency. This formulation reflects a shift from a purely repressive approach toward one that is more oriented to victim protection and humanitarian considerations.²⁴

Furthermore, Article 464 of the new Criminal Code regulates criminal liability for other parties who perform abortion procedures on women. This provision clearly distinguishes between acts carried out with the woman's consent and those without consent. For acts conducted with consent, the perpetrator faces a maximum penalty of five years' imprisonment, whereas acts performed without consent carry a significantly heavier penalty of up to twelve years. Additionally, if the act results in the death of the woman, the penalties are increased to a maximum of eight years and fifteen years, respectively. In relation to Decision Number 721/Pid.Sus/2019/PN Cikarang, the criminal liability imposed on the defendant is fundamentally consistent with the framework of the old Criminal Code, particularly in terms of fulfilling the element of intent (*dolus*) and involvement through participation as regulated under Article 55 of the KUHP. The defendant was considered to have played an active role in facilitating the occurrence of the abortion, thereby qualifying as a participant in the commission of the criminal act.

From the standpoint of differentiating the roles of perpetrators, the new Criminal Code provides a more systematic classification of participation in criminal acts. In the context of this case, the defendant's role, who did not directly perform the medical procedure but acted as a facilitator and intermediary, may be more appropriately classified as an accomplice (*medeplichtige*). This classification carries implications for a more proportional sentencing, which tends to be lighter compared to that imposed on the principal offender. In relation to Article 464 paragraph (1) letter (a) of the new Criminal Code, the defendant's conduct may be categorized as abortion performed with the consent of the woman, with a maximum penalty of five years' imprisonment. This indicates that the sentence imposed in Decision Number 721/Pid.Sus/2019/PN Cikarang, namely one year and four months of imprisonment, remains within a proportional range and is even considerably lower than the maximum threshold under the new Criminal Code. Therefore, the decision retains its normative relevance within the reformed criminal law framework.

From the perspective of the principle of culpability and sentencing approach, the new Criminal Code emphasizes a more humane orientation by taking into account the subjective conditions of the offender. The defendant's position as a non-principal actor in the medical procedure may serve as a significant mitigating factor in sentencing. This approach aligns with the development of modern criminal law, which is no longer solely retributive but also oriented toward corrective, rehabilitative, and restorative objectives. Furthermore, the application of the *ultimum remedium* principle in the new Criminal Code implies that criminal

²⁴ Anang Riyan Ramadianto, "Aborsi Dalam Kuhp Nasional Antara Perlindungan Janin Dan Hak Perempuan Atas Tubuhnya," *Marinews*, 2025, <https://marinews.mahkamahagung.go.id/artikel/aborsi-dalam-kuhp-nasional-antara-perlindungan-janin-dan-hak-09z#:~:text=ketentuan mengenai aborsi dalam kuhp,pidana paling lama empat tahun.>

law should function as a last resort. In this case, the defendant's role as a *facilitator* opens the possibility for considering alternative sanctions that are more oriented toward guidance and rehabilitation rather than purely punitive measures, without neglecting the principle of legal certainty.²⁵

Additionally, the recognition of exceptions under Article 463 of the new Criminal Code reflects a more comprehensive legal protection for women. Unlike the old Criminal Code, which did not explicitly regulate exceptions, the new provisions acknowledge certain conditions that may eliminate criminal liability, thereby preventing excessive criminalization. Moreover, the new Criminal Code requires harmonization with other legislative frameworks, particularly the Health Law. This underscores that the assessment of the legality of abortion should not be based solely on criminal law norms but must also consider applicable medical and procedural standards. Accordingly, the analysis of criminal liability in abortion cases must be conducted comprehensively and systematically.²⁶

Based on the foregoing, it can be concluded that Decision Number 721/Pid.Sus/2019/PN Cikarang remains relevant within the framework of the old Criminal Code and is still aligned with the normative structure of the new Criminal Code. Nevertheless, the reform of the Criminal Code brings significant implications, particularly the need to adjust law enforcement approaches in terms of differentiating the roles of perpetrators, ensuring proportional sentencing, and incorporating humanitarian considerations. Thus, the enactment of Law Number 1 of 2023 not only reflects normative changes but also signifies a paradigm shift in Indonesia's criminal justice system, requiring a balance between legal certainty, substantive justice, and social utility.

Table 1. Comparative Analysis Between the Old Criminal Code and the New Criminal Code (Law Number 1 of 2023) in Regulating Abortion-Related Criminal Liability

Aspect	Old Criminal Code (KUHP)	New Criminal Code (Law No. 1 of 2023)	Legal Implication
Regulatory Approach	Repressive and absolute	Structured with exceptions	Shift toward conditional criminalization
Protection Focus	Fetal life (<i>state-centered</i>)	Balance between fetal life and women's rights	Emergence of <i>rights-based</i> approach

²⁵ Joko Sriwidodo, *Perkembangan Sistem Peradilan Pidana Di Indonesia*, 1st Ed. (Yogyakarta: Kepel Press, 2020), https://jdih.banyuwangikab.go.id/dokumen/ebook/perkembangan_sistem_peradilan_pidana_di_indonesia.pdf.

²⁶ Mohamad Deden Mutakin, "Moralitas Humanis Dalam Hukum Pidana Indonesia: Analisis Pasal 463 Kuhp Baru Tentang Aborsi Korban Perkosaan Berbasis Formula Radbruch," *Journal Of Global Legal Review* 3, No. 2 (2025): 53–68.

Exceptions	Not explicitly regulated	Explicitly regulated (rape, medical emergency)	Reduction of over-criminalization
Participation (<i>Deelneming</i>)	General and less differentiated	More systematic role differentiation	Greater clarity in liability attribution
Sentencing Orientation	Retributive dominant	Mixed (retributive, preventive, rehabilitative)	Movement toward proportional justice

Source: Data analysis results

Based on Table 1, it can be observed that the reform introduced by the New Criminal Code is not merely textual but reflects a broader shift in legal policy within Indonesian criminal law. The transition from a rigid prohibition model toward a more conditional and differentiated framework demonstrates a movement from a *state-centered* orientation to an approach that is more individual-oriented and responsive to contextual circumstances.

From a practical perspective, this shift carries significant implications for criminal law enforcement. Judges and other law enforcement authorities are required to adopt a more nuanced approach in determining the roles of participants in criminal conduct. In cases comparable to Decision Number 721/Pid.Sus/2019/PN Cikarang, the distinction between *medepleger* and *medeplichtige* extends beyond doctrinal classification and directly affects sentencing outcomes. Under the newer framework, a *facilitating* actor such as the defendant may more consistently be assessed as an accomplice, resulting in sanctions that are proportionate to the actual degree of contribution.

Table 1 also indicates that the introduction of explicit legal exceptions requires a broader evidentiary assessment. Judicial analysis is no longer limited to proving the occurrence of the prohibited act but must also consider surrounding circumstances, including whether the pregnancy resulted from sexual violence or constituted a medical emergency. This development expands judicial reasoning from a purely formal and legalistic approach toward a model that is more sensitive to factual and contextual dimensions.

Furthermore, the comparison presented in Table 1 reflects the increasing influence of a human *rights-based* approach within criminal law policy. Recognition of women’s rights to health, bodily autonomy, and protection from victimization illustrates an effort to align criminal law with broader human rights principles. Criminal liability is therefore understood not only as an instrument of punishment but also as a mechanism for balancing competing legal interests and rights.

Nevertheless, this transformation also generates challenges. The wider discretion afforded to judges in interpreting *statutory* exceptions and applying proportionality principles may lead to inconsistent decisions if not accompanied by clearer *interpretative* standards. In

addition, integrating human rights considerations requires judges to possess not only doctrinal competence but also sensitivity toward social and psychological contexts that differ across cases.

When connected to the analyzed decision, although the ruling remains normatively valid, its reasoning still reflects limitations associated with the previous legal paradigm. The absence of contextual and *rights-based* analysis suggests that under the New Criminal Code, a similar case would likely require a more comprehensive examination of both the defendant's role and the circumstances surrounding the victim. Accordingly, the implications of the reform extend beyond reinterpretation of legal norms and point toward the necessity of transforming judicial reasoning from a formalistic application of rules into a more contextual, proportional, and human rights-oriented model of adjudication.

4. CONCLUSION

This study concludes that criminal liability in abortion-related offenses under Decision Number 721/Pid.Sus/2019/PN Cikarang was formally established through the fulfillment of the elements of *actus reus*, *mens rea*, and participation (*deelneming*), thereby justifying the imposition of criminal sanctions on the defendant. Nevertheless, the findings reveal that the court's reasoning remained predominantly rooted in the classical framework of the old Criminal Code, particularly in classifying the defendant as a co-perpetrator (*medepleger*) without a sufficiently rigorous assessment of the qualitative degree of participation and functional control over the offense. The novelty of this research lies in its integration of participation doctrine with a comparative analysis of criminal liability under the old and new Criminal Codes, demonstrating that Law Number 1 of 2023 introduces a more contextual, proportional, and differentiated approach to offender attribution. The study further highlights that the distinction between co-perpetrators and accomplices is not merely doctrinal but has significant implications for sentencing proportionality, legal certainty, and substantive justice. Accordingly, the transition to the new Criminal Code signifies a paradigm shift from a predominantly formalistic and retributive model toward a human rights-oriented framework that emphasizes role differentiation, proportional punishment, and contextual judicial assessment. This research contributes to the refinement of the participation doctrine in Indonesian criminal law by proposing a more analytical and functional approach to determining criminal liability in abortion cases, thereby supporting the development of a criminal justice system that balances legal certainty, justice, and social utility.

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