

Legal Analysis of Female Circumcision in The Context of Legal Pluralism in Indonesia

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Abstract

This study aims to analyze legal regulations on female circumcision practices from the perspective of legal pluralism in Indonesia and examine the legal implications for women's health protection. The research method used is normative legal research with a qualitative approach, based on the analysis of legislation, legal literature, and expert opinions. The approaches used include a statutory approach, a conceptual approach, and a case approach to examine the relationship among state law, religious law, and customary law regarding the practice of female circumcision. The results of the study show that the Indonesian government, through Law No. 17 of 2023 concerning Health and Government Regulation No. 28 of 2024, has prohibited female circumcision as a form of protection of human rights and reproductive health in accordance with WHO recommendations. However, the practice of female circumcision is still found in society in symbolic and traditional forms, which are considered part of the values of purity and moral obligations. Differences in perception between state law, religious law, and customary law pose challenges in policy implementation. Clarity on the legal boundaries between permissible and prohibited forms of circumcision is necessary to ensure the protection of women and children without causing social resistance in the community.

Keywords

Female Circumcision; Legal Pluralism; Health Protection

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1. INTRODUCTION

The practice of female circumcision or circumcision in Indonesia has become part of the tradition in various communities that have certain cultural and religious backgrounds. Female circumcision, also known as female genital mutilation (FGM), is a complex and controversial phenomenon because it involves an overlap between Islamic law, state law, and medical perspectives (Lavenia & Widiastuti, 2025). Some communities maintain this practice as part of traditional values and religious teachings, so it is considered a symbol of women's purity and identity. Although not as much as male circumcision, the practice of female circumcision continues to exist and is shaped by cultural and religious understandings that are not always based on scientific or medical studies. (Marcoes et al., 2019)



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Differences of opinion between religious leaders, indigenous peoples, and medical professionals arise from the diversity of meanings and consequences of this practice. Some people view female circumcision as a moral obligation and part of religious teachings that must be carried out. At the same time, several medical personnel and human rights activists are concerned about the physical and psychological health impacts that can result from the practice (Januardi, 2022). Several studies have revealed the negative risks of female circumcision, thus causing a contest between the preservation of tradition and the protection of women's rights. This discourse not only takes place at the local level but also attracts national and global attention because it relates to bodily autonomy and human rights.

The legal pluralism that applies in Indonesia shows the complexity of handling female circumcision because national, customary, and religious laws go hand in hand and influence each other's mindset (Pratiwi & Widodo, 2016). The disagreement between these legal systems means the practice is considered legal and acceptable in one region, but can also be considered lawless or even morally prohibited in others (Hermanto, 2017). These legal inconsistencies create ambiguities in the implementation of policies and the protection of women's rights. This shows that the issue of female circumcision is more than just a medical or legal issue, but a battle of positive cultural, religious, and legal values that are interlinked.

National regulations on female circumcision continue to change, especially since the Ministry of Health issued Minister of Health Regulation Number 1636/MENKES/PER/XII/2010, which regulates medical procedures for female circumcision, despite strong criticism from health and women's rights circles because it has the potential to endanger health (Hikmalisa & Iballa, 2022). The government took decisive steps through Government Regulation Number 28 of 2024, Article 102, letter a, which explicitly abolishes the practice as part of efforts to protect children's reproductive health. However, symbolic practices that do not cause injury are still practiced in various regions as part of cultural rituals or religious obligations, posing challenges in legal clarity. An approach that distinguishes between physically risky practices and symbolic practices needs to be put forward so that policies can respect customary and religious rights while protecting women.

Previous studies at the global level consistently position female circumcision or female genital mutilation as a multidimensional issue involving health risks, cultural legitimacy, and human rights debates. International health institutions report that the practice has no medical benefit and is associated with immediate as well as long-term physical and psychological complications, including infection, reproductive disorders, and trauma that may persist into adulthood (World Health Organization, 2022; Reisel & Creighton, 2015). Statistical analyses from global child protection agencies further indicate that the persistence of the practice is strongly influenced by social norms, intergenerational transmission of beliefs, and community pressure rather than religious obligation alone (UNICEF, 2021).

Anthropological and sociological perspectives explain that female circumcision survives because it is embedded in symbolic meanings of purity, honor, and social acceptance, making legal prohibition alone insufficient without cultural transformation. (Gruenbaum, 2001; Boyle, 2002; Mackie, 1996)

In the field of public health and policy, systematic and comparative studies highlight the growing international consensus toward elimination, alongside debates over medicalization and harm-reduction approaches. Some scholars note that medical personnel's involvement in performing symbolic or minor procedures is often framed as a strategy to reduce harm, yet this approach risks legitimizing the practice's continuation in clinical settings (Johansen, 2013; Berg & Underland, 2014). Global development institutions, therefore, emphasize integrated interventions combining legal reform, education, and gender empowerment to accelerate abandonment of harmful traditional practices (UNFPA, 2020); (United Nations General Assembly, 2012). From a human rights standpoint, interpretative guidance under CEDAW and the Convention on the Rights of the Child classifies female genital cutting as a violation of bodily integrity, equality, and child protection, thereby obligating states to adopt preventive legal and social measures. (CEDAW Committee, 1990; Committee on the Rights of the Child, 2003)

Within the Indonesian and broader Southeast Asian context, contemporary scholarship demonstrates that the persistence of female circumcision is closely related to legal pluralism, where religious interpretation, customary norms, and state regulation interact dynamically. Empirical socio-legal research shows that communities often justify the practice through localized understandings of Islamic teaching and cultural identity, even when national health regulations discourage or prohibit it (Rahman, 2019; Nugroho, 2022). Legal analyses further reveal tensions between protective health legislation and the accommodation of symbolic rituals considered non-injurious, producing regulatory ambiguity and uneven enforcement across regions (Putri, 2020; Widodo, 2024). Medical and reproductive health studies in Indonesia also confirm continuing concerns regarding safety, informed consent, and the ethical responsibility of health workers when confronted with culturally driven requests for the procedure. (Sari, 2021)

Recent interdisciplinary discussions increasingly frame the issue within a comprehensive human rights and gender justice paradigm. Islamic legal scholarship demonstrates diverse interpretations, with some perspectives emphasizing precaution, non-harm, and contextual ijtihad that may support abandonment of harmful practices (Hassan, 2023). At the same time, human rights analyses stress that sustainable elimination requires not only prohibition but also transformation of social norms, women's empowerment, and community-based dialogue to reconcile religious identity with universal rights protections (Karim, 2024). These evolving debates indicate that female circumcision should no longer

be viewed solely as a cultural or theological matter but as a complex governance challenge situated at the intersection of law, health, religion, and gender equality.

The purpose of this research focus on the analysis of the position of female circumcision in legal pluralism in Indonesia and to formulate policy recommendations that are balanced between respect for tradition and protection of the rights of women and children. The study identified different types of circumcision practices, such as symbolic no-wounds and invasive procedures. It evaluated the legal responsibilities of health workers and unprofessional actors to the risk of post-operative complications. Field data from symbolic practices in some regions, including the use of turmeric cutting and no-frills actions by health workers, are important evaluation material for legislation to ensure that the legislative arrangements do not create legal loopholes and social resistance. This investigation aims to provide a clear and fair legal framework and strengthen the protection of the rights of women and children under national law.

2. METHOD

This type of research is normative legal research that examines applicable legal provisions and relevant legal principles to formulate solutions to specific legal problems. Marzuki's opinion explains that normative legal research systematically analyzes legal rules and identifies the norms that govern a problem, thereby providing a basis for solving it. (M. Marzuki, 2017; P. M. Marzuki, 2019)

The approach used in this study is qualitative, emphasizing an in-depth understanding of legal phenomena through the analysis of legal concepts, social norms, and the interpretation of applicable rules, without using quantitative data. The qualitative approach provides space to understand the meaning of the legal text and to attend to the reality of legal pluralism in society. In addition, this qualitative approach is combined with a statute approach, a conceptual approach, and a case approach to produce a comprehensive analysis. (Sugiyono, 2021)(Sugiyono, 2014)(Sugiyono, 2014)

The legal materials used include primary and secondary sources. Primary legal materials include relevant laws and regulations, such as Government Regulation Number 28 of 2024 concerning Implementation and Law Number 17 of 2023 concerning Health, which serve as the main references for research on the practice of female circumcision in the context of national law. Meanwhile, secondary legal materials consist of supporting literature in the form of books, scientific journals, and the results of previous research that discuss women's circumcision practices from various perspectives, such as law, religion, and culture, which help enrich the analysis of primary legal materials.

The legal material analysis technique used in the study is a descriptive-qualitative, normative approach, namely systematically analyzing primary and secondary legal materials to understand and interpret the applicable legal norms governing the practice of female circumcision. The analysis is

conducted by examining the content of relevant laws and regulations, along with associated scientific literature and other supporting documents, to produce logical, critical, and in-depth legal arguments.

3. FINDINGS AND DISCUSSION

3.1 Legal Regulation of Female Circumcision in Indonesia within Legal Pluralism

Table 1. Mapping of Legal Norms Related to Female Circumcision in Indonesia

Legal Source	Main Provision	Legal Orientation
1945 Constitution of the Republic of Indonesia	Guarantees the right to health, child protection, and freedom from discrimination	Human rights protection
Law No. 17 of 2023 on Health	Requires medical actions to be safe, ethical, and scientifically justified	Health protection
Government Regulation No. 28 of 2024	Eliminates the practice of cutting/injuring the female genitalia in children	Prohibition of FGM
MUI Fatwa 2008	Classifies female circumcision as <i>makrumah</i> if safe and non-harmful	Religious recommendation

Source: Processed from (Affandi, 2019); (F. Rahmawati & Maknun, 2019)(E. S. Rahmawati & Maknun, 2019); (Government of Indonesia, 2023); *Government Regulation No. 28/2024*.

3.2 Legal Implications for the Continuity of the Practice

Table 2. Legal and Social Implications of Female Circumcision Regulation

Aspect	Empirical Finding
State legal policy	Formal prohibition and elimination strategy
Women's rights protection	Recognition of FGM as harmful and discriminatory
Medical professionalism	Obligation to refuse non-indicated procedures
Regulatory governance	Absence of detailed technical guidelines
Social change	Gradual shift in cultural perception

Source: Processed (Sulistyawati & Hakim, 2022); (Istiqomah et al., 2024); (Latifah, 2024); (Sulahyuningsih, Kurniawan, et al., 2021); (Gunara et al., 2024).

3.3. Constitutional Norms

This study adopts the term female genital cutting (FGC) as the primary analytical designation to encompass practices variably described as female circumcision or female genital mutilation in legal, medical, and socio-cultural discourse. Within Indonesia's constitutional framework, the protection of health, bodily integrity, and children's rights constitutes a fundamental normative commitment. Article

28H paragraph (1) and Article 28B paragraph (2) of the 1945 Constitution guarantee the right to health and protection of children from violence and discrimination, forming a constitutional basis for preventing harmful bodily practices. These guarantees are consistent with Indonesia's international obligations under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC), which require state parties to eliminate harmful traditional practices affecting women and children. (United Nations, 1979, 1989)

Despite this strong constitutional orientation, empirical realities indicate that constitutional protection does not automatically translate into effective social compliance. The persistence of FGC in certain communities demonstrates a gap between normative guarantees and lived legal experience. This creates ambiguity because a practice may be constitutionally incompatible with bodily integrity and child protection yet remain socially tolerated through cultural or familial authority. Such ambiguity results in uneven protection of children, particularly where enforcement mechanisms are weak. A hypothetical scenario in which an infant girl undergoes symbolic cutting outside the formal health system illustrates how constitutional rights may be circumvented without clear accountability, confirming socio-legal findings on inconsistent rights protection in Indonesia. (Gunara et al., 2024)

3.4. Health Law Norms

Law Number 17 of 2023 on Health and Government Regulation Number 28 of 2024 signify a decisive shift toward eliminating FGC through medical safety standards, professional ethics, and child protection. These regulations reposition FGC from a culturally mediated ritual into a matter of patient safety and public health governance, since medical intervention must be based on scientific benefit and the principle of non-maleficence (Sulistyawati & Hakim, 2022). Because FGC lacks a therapeutic indication and may cause physical or psychological harm, its legitimacy within formal health services becomes untenable, aligning with global medical positions rejecting harmful genital cutting. (World Health Organization, 2020)

However, prohibition alone does not resolve implementation challenges. Ambiguity emerges where normative bans are not accompanied by technical guidance, supervision, or culturally responsive education. This legal gap may shift FGC into informal sectors beyond medical oversight, increasing health risks and complicating enforcement (Sulahyuningsih et al., 2021). In practice, health workers may face social pressure from families requesting symbolic procedures, creating tension between professional duty and community expectations. Such dilemmas support ethical analyses that emphasize medical personnel's obligation to refuse non-therapeutic procedures despite social pressure. (Latifah, 2024)

3.5. Religious Norms

Religious interpretation forms a crucial normative layer within Indonesia's plural legal order. The 2008 fatwa of the Indonesian Ulema Council classifies FGC as makrumah, meaning recommended but non-obligatory, provided it does not cause harm (Rahmawati & Maknun, 2019). This position reflects an ethical orientation toward harm prevention rather than unconditional endorsement. At the same time, the conditional formulation introduces interpretive flexibility regarding what constitutes non-harmful practice, allowing continuation of FGC under localized interpretations of safety.

The interaction between religious permissibility and state prohibition, therefore, reflects not pure theological conflict but differing risk standards and normative priorities. Religious discourse may emphasize symbolic or identity-based meaning, whereas health law prioritizes measurable medical safety and rights-based protection. Without institutional dialogue among religious scholars, medical professionals, and policymakers, communities tend to follow the norm perceived as socially legitimate, reinforcing the persistence of FGC within plural normative authority structures. (Gunara et al., 2024)

3.6. Customary Perspectives

In several Indonesian regions, FGC is embedded in customary rites of passage, purity symbolism, or communal identity, demonstrating the continuing authority of living law in plural societies. Such cultural legitimacy complicates legal reform because prohibition may be perceived as a cultural intrusion rather than a protective intervention. However, international human rights law—particularly CEDAW and CRC—requires states to transform traditions harmful to women and children. (United Nations, 1979)

When coercive prohibition occurs without cultural dialogue or education, communities may conceal the practice, reducing regulatory visibility and potentially increasing harm. This paradox illustrates that legal effectiveness depends on social acceptance, not merely normative validity. Empirical socio-legal studies similarly show that cultural resistance can undermine formal legal reform if not accompanied by participatory transformation strategies. (Gunara et al., 2024)

3.7. Legal Pluralism Analysis

FGC in Indonesia exists at the intersection of constitutional rights, health regulation, religious interpretation, customary authority, and international human rights obligations, forming a complex structure of legal pluralism. Each normative system advances a different rationale: constitutional law emphasizes fundamental rights, health law prioritizes safety and professional ethics, religion provides conditional legitimacy, custom sustains identity, and international law imposes protective duties. Their coexistence produces normative ambiguity, enabling FGC to persist despite formal prohibition. (Sulahyuningsih, Kurniawan, et al., 2021)(Sulahyuningsih, Daro, et al., 2021)

At the same time, pluralism reveals a pathway toward transformation through gradual norm harmonization. Indonesia's obligations under CEDAW and CRC require alignment between domestic practice and international standards on non-discrimination and child protection. However, effective realization depends on integrating these principles into religious reasoning, medical governance, and cultural understanding. The challenge of FGC, therefore, illustrates a broader reality in plural societies: legal reform succeeds not through singular authority but through negotiated convergence that preserves social legitimacy while advancing human dignity. (Sulistyawati & Hakim, 2022)

4. CONCLUSION

The legal regulation in Indonesia of the practice of female circumcision shows that there is a tension between state law, religious law, and customary law. Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024 affirms the prohibition of the practice in order to protect the health of women and children, in line with the WHO's view that female circumcision is dangerous. However, within the framework of legal pluralism, some people still maintain this practice on religious grounds, thereby creating a misalignment between regulations and social practices. This condition requires clarity and firmness of legal boundaries so that the implementation of women's health protection and rights remains in line with cultural values without giving rise to excessive social resistance.

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