



Restorative Legal Challenges of Abortion for Rape Victims in Indonesia

Renih Setiawan¹✉, Syarif Saddam Rivanie ²

¹Hasanuddin University, Indonesia

²Hasanuddin University, Indonesia

✉Corresponding email: renihsetiawan@gmail.com

Abstract

Indonesia has provided leniency and exceptions to abortion for rape victims. The legalization of abortion is the fulfillment of the rights of rape victims to obtain abortion services as soon as possible by the requirements stipulated in the health law. In reality, the fulfillment of this right cannot be fully implemented. A challenge lies in the weak enforcement of the law. Indonesia has not firmly supported this rule. Victims have difficulty accessing abortion services. No regulation on emergency services regulates clearly and in a structured manner within the scope of the police or the scope of health organizations and victim protection organizations. In addition, the strengthening of the mentality of law enforcers and stakeholders has not been fully achieved. This study aims to explore the implications and factors that hinder access to abortion services for rape victims. The results of the study show that the factors that hinder access to abortion are due to weak law enforcement, weaknesses in the substance of the law, the complexity of laws and regulations, and the feeble mentality of the parties involved, so that slow handling results in the inability to implement abortion services for rape victims. To achieve the implementation of this abortion regulation, a national policy is



Copyrights © Author(s). This work is licensed under a Creative Commons Attribution-ShareAlike 4.0 International License. (CC BY-SA 4.0). All writings published in this journal are personal views of the author and do not represent the views of this journal and the author's affiliated institutions.

needed within the scope of the police, policies in health organizations, and one-stop integrated service procedures. The urgency of this policy, apart from contributing to policy reform, is also important to make it easier for victims to get services without having to drain their energy, time, and costs. Based on this, Indonesia needs to take a more pragmatic, rational, integrated, and comprehensive approach through widespread socialization to the community, police, and other stakeholders.

KEYWORDS *Abortion Law, Legal Challenges, Rape Victims*

I. Introduction

Criminal efforts focused on children, parents, and communities, social Abortion exceptions for rape victims represent the fulfillment of human rights.¹ Women have the right to decide not to continue their pregnancy due to rape and have the right to choose what freedom to do with their bodies, this is known as the right of self-determination. Enforcing regulations that legalize abortion is a constitutional mandate by the state's goal of ensuring physical and spiritual well-being. Everyone also has the right to obtain health services and the state is obliged to provide them as regulated in Article 28H Paragraph (1) of the Constitution of the Republic of Indonesia. Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024 concerning

¹ Mariana Prandini Assis and Joanna N. Erdman, "Abortion Rights beyond the Medico-Legal Paradigm," *Global Public Health* 17, no. 10 (October 3, 2022): 2235-50, <https://doi.org/10.1080/17441692.2021.1971278>.

Implementing Regulations of Law Number 17 of 2023 concerning Health regulate that rape victims have the right to obtain abortion services by the terms and conditions that must be met.

The legalization of abortion since Law Number 36 of 2009 concerning Health until the current enactment of the new health law, no pregnant victims have received these services. Although there is no accurate data on how many pregnant victims of rape have applied for abortion in Indonesia, some data can be used as a reference, namely data from the Ministry of Social Affairs, hereinafter abbreviated as namely as of January 6, 2022, the number of children who were pregnant due to sexual violence handled by the Ministry of Social Affairs was 780 children with details, 568 people had given birth and 212 had not given birth. The actions taken by the government are only in the form of prevention programs including care, prevention campaigns. Handling is carried out through reporting, comprehensive assessment and handling, and stakeholder involvement.² This shows that the government does not provide assistance to have abortions as the right of rape victims to prevent pregnancy. Only security and assistance have been carried out so far. This is by data from the National Commission on Violence Against Women in Indonesia, namely from 2018 to 2023 there is 103 pregnant victims of rape reported their cases and filed for abortion. All reported victims did

² Yopi Makdori, "Laporan Kemensos Sebut 780 Anak Hamil Akibat Kekerasan Seksual" Retrieved from <Https://Www.Liputan6.Com/News/Read/4904618/Laporan-Kemensos-Sebut-780-Anak-Hamil-Akibat-Kekerasan-Seksual?Page=3>," Liputan6, March 7, 2022.

not receive permission to have an abortion.³ The failure to implement the abortion law as it should be is the philosophical basis for the need to establish internal regulations to provide protection and fulfillment of victims' rights. In addition to Indonesia, the United States also based on research results from July 1, 2022 to January 1, 2024, there were around 519,981 cases of rape resulting in 64,565 pregnancies. Nine of the 14 states prohibit total abortion resulting in pregnant rape victims showing high statistics.⁴ This high number shows the need for acceleration to provide illegal abortion opportunities for rape victims around the world.

Enforcement of abortion regulations currently faces many obstacles. Weak law enforcement is still a major factor. Various things hinder access to abortion for rape victims. There is no clear and structured internal policy. The absence of an internal policy has resulted in the police's professionalism being less than optimal. Often there is police involvement in prohibiting rape victims from continuing with abortions, even though if referring to Article 118 of Government Regulation Number 28 of 2024 concerning the Implementing Regulations of the Health Law, the police's authority is only to issue a certificate of alleged rape and does not have the authority to prohibit victims from having abortions. This also has

³ Komnas Perempuan, "Pernyataan Sikap Komnas Perempuan Terhadap Ketentuan Aborsi Bagi Korban Tindak Pidana Kekerasan Seksual Dalam PP No. 28 Tahun 2024 Tentang Kesehatan," Komisi Nasional Perlindungan Anti Kekerasan Terhadap Perempuan, August 2024.

⁴ Ahmad, "Studi: 64.000 Kehamilan Di Amerika Serikat Akibat Kasus Perkosaan" Retrieved from <Https://Hidayatullah.Com/Berita/2024/02/07/267464/Studi-64-000-Kehamilan-Di-Amerika-Serikat-Akibat-Kasus-Perkosaan.Html>, Hidayatullah.com, February 7, 2024.

an impact on the courage of health workers and medical personnel to perform abortions because of the prohibition.

Prohibitions by the police have occurred several times. One example is a case in Jambi in 2021, a 12-year-old child became pregnant as a result of rape by a 55-year-old, then filed for an abortion but because of the baseless prohibition by the police and the long process, the gestational age had passed the age limit for abortion services.⁵ This proves that understanding, strengthening mentality, and further regulations within the police need to be improved. In addition, the mentality of the community, medical personnel, and health workers who are still not completely against this rule. The humanitarian perspective often makes it shaky coupled with abortion which is considered contrary to religious and social views. Often the debate centers on two positions. The first position argues that abortion is a reproductive health right that must be fulfilled for victims. The second position defends abortion as a violation of religious and social values.⁶

Obstacles faced in accessing abortion services include the complexity of regulations. Several rules prohibit abortion such as human rights, religious teachings, and the Criminal Code. Abortion regulations are also considered to be contrary to the Hippocratic oath of doctors, resulting in a dilemma for medical personnel. A

⁵ Fadiyah Alaidrus, "Ia Diperkosa Lalu Hamil. Disarankan Aborsi, Tapi Polisi Melarangnya Korban Trauma Berat" Retrieved from <Https://Projectmultatuli.Org/Ia-Diperkosa-Lalu-Hamil-Disarankan-Aborsi-Tapi-Polisi-Melarangnya-Korban-Trauma-Berat/>, Project Multatuli, November 25, 2021.

⁶ Lora Adair, Nicole Lozano, and Nelli Ferenczi, "Abortion Attitudes Across Cultural Contexts," *International Perspectives in Psychology* 13, no. 3 (July 2024): 138-52, <https://doi.org/10.1027/2157-3891/a000101>.

choice between implementing laws and regulations or violating the principles of the code of ethics. In addition, the complexity of the rules also occurs in the regulation of the gestational age limit to be able to obtain services, raising the question of which rules regulate the gestational age limit to use.

Another obstacle that makes access to abortion even more difficult is victims who are in areas outside urban areas, namely the difficulty of accessing abortion services because only advanced facilities in urban areas can provide abortion services. Government regulations on implementing regulations for the new health law no longer involve health centers in providing abortion services. Facilities and infrastructure that are less supportive in remote areas are often faced with accepting difficult realities.

The problem faced by rape victims at the stage of examination of alleged rape no longer involves a psychologist which will cause the potential for victims who will not dare to report their pregnancy condition to obtain abortion services because the examination will not necessarily be in the victim's perspective. In addition, the requirement to prove the existence of a criminal act of rape for pregnant victims to obtain the right to access abortion also often faces problems. Pregnant victims will lose the opportunity for abortion because they need proof of rape first which of course will take a long time while the victim has to compete with her gestational age. The importance of the seriousness of all parties, namely the police, health organizations, stakeholders, and the community to support this service. The need for internal policies

within the police to build professionalism and improve mentality in providing emergency services for rape victims to immediately cooperate and integrate with other organizations. Although Indonesia legalizes abortion, in reality, there are only illegal abortions that endanger lives and health. According to research conducted by Brian Willis, Kathryn Church, and et.al, in 8 countries including Indonesia in 2019, it was stated that there were 1,320 maternal deaths reported, and 750 (56.8%) were caused by unsafe abortions.⁷

Law functions as the protection of human interests.⁸ Abortion regulations are a manifestation of the demands of the development of society regarding the regulation of abortion law in Indonesia. This is the reality of the development of national law and the development of international law. The legality of abortion in Indonesia is known as positive law which is part of the development of knowledge about the reality that occurs in Indonesia that is currently in effect. According to Logemann, positive law itself is a legal reality that has been known.⁹ Abortion in positive law in Indonesia is a form of protection for rape victims and is a result of increasing progress in legislative products.

The health law makes allowances for abortion as part of the right to receive health services and recovery as a result of criminal

⁷ Brian Willis et al., "The Preventable Burden of Mortality from Unsafe Abortion among Female Sex Workers: A Community Knowledge Approach Survey among Peer Networks in Eight Countries," *Sexual and Reproductive Health Matters* 31, no. 1 (December 31, 2023), <https://doi.org/10.1080/26410397.2023.2250618>.

⁸ Sudikno Mertokusumo, *Mengenal Hukum: Suatu Pengantar* (Yogyakarta: CV. Maha Karya Pustaka, 2019).

⁹ Dirdjosisworo Soedjono, *Pengantar Ilmu Hukum* (Jakarta: PT. RajaGrafindo, 2014).

acts of sexual violence.¹⁰ Seriousness in enforcing abortion law will avoid various problems such as the safety of victims of illegal abortion. In addition, to avoid the potential status of rape victims becoming perpetrators of criminal acts of abortion.¹¹ This potential can occur if legal abortion cannot be achieved. Therefore, it is important to evaluate abortion regulatory practices and provide solutions to existing obstacles.

This study uses an empirical legal research type, namely a method that functions to see how the law works in society, namely by examining how the health law that has allowed abortion for rape victims applies. Seeing the implications and obstacles to the implementation of abortion law. The legalization of abortion raises social symptoms, such as the emergence of debates between one law and another, debates between law and morals, debates between victim rights and human rights, stigmatization of victims, and services that must be supportive. The implications will later need to be analyzed as part of the obstacles to the implementation of this regulation, which is expected to fulfill the rights of victims, to prevent unwanted pregnancies, as an effort to prevent illegal abortions that endanger safety.

This study uses several approaches, namely the structural approach, which is an approach to how the law works in society,

¹⁰ Damian Clarke and Hanna Mühlrad, "Abortion Laws and Women's Health," *Journal of Health Economics* 76 (March 2021): 102413, <https://doi.org/10.1016/j.jhealeco.2020.102413>.

¹¹ Muhammad Fiqri Asyrof et al., "A Review of Feminist Legal Theory on Abortion Regulations for Rape Victims in Indonesia," *Jurnal Legisci* 2, no. 1 (August 6, 2024): 27-38, <https://doi.org/10.62885/legisci.v2i1.394>.

analyzing how the impact of abortion legalization in society causes a dilemma in its implementation. Seeing law enforcement officers, stakeholders, and the community using or not using the rules on the permissibility of abortion. In addition, this approach is used to analyze the extent to which the rights of rape victims can be fulfilled. Interdisciplinary approach, which is an approach to solving a problem by using studies from various relevant scientific perspectives. Analyzing the problem of implementing abortion law using studies from the health law, criminal law, human rights, medical, social, religious, normative, and ethical aspects. Pluralism approach, law consists of the basics of ethical values, social norms, and rules made by the state which in reality give rise to many cultural variations. This approach not only analyzes the Law on abortion but also analyzes the influence of rules in religion, norms, ethics, and customs or culture of society in Indonesia.

Obtaining data through primary data and secondary data. Primary data is obtained from interviews and observations. Data was obtained from several agencies, namely the Makassar City Police, the Makassar Legal Aid Foundation (YLBHI), the Makassar branch of the Indonesian Doctors Association (IDI), and interviews with one of the obstetricians, the selection of the location and research because of the relevance to the research topic, the availability of the required data, and the ease of access for researchers. In addition, using secondary data, namely literature studies from documents, in the form of various laws and regulations such as the Health Law, the Criminal Code, the Human

Rights Law, and other relevant regulations. In addition, obtaining data from scientific journals that discuss the problems of abortion, sexual violence, and human rights, and relevant and reliable internet sources. All data obtained were then analyzed descriptively and qualitatively. Providing explanations and arguments for the qualitative data obtained, both from observations, interviews, and other documents used to build conclusions on the problem of implementing abortion law.

II. Pros and Cons of Abortion from Human Rights Perspective

To start The human rights perspective on the practice of abortion is divided into two perspectives, namely the human rights perspective on the right to health for a mother or woman, and the right to life for a child or fetus, the following is an explanation;

Women's Rights

Women are protected from acts of violence, discomfort, exploitation, and discrimination in all fields through laws with a human rights perspective in an effort to prevent, protect, enforce, and overcome injustice against women.¹² Human rights are fundamental human rights or basic human rights and obligations

¹² Erwindya Julia Anggraeni, "Tinjauan Hak Asasi Manusia Terhadap Kekerasan Perempuan Dalam Peraturan Perundang-Undangan," *WICARANA* 2, no. 1 (March 28, 2023): 27-38, <https://doi.org/10.57123/wicarana.v2i1.28>.

that are constitutionally and formally juridical.¹³ This protection is expected so that women can enjoy the highest standard of physical and mental health that can be achieved.

Women have the right to themselves and their bodies. This right is part of women's reproductive rights. One of the reproductive problems faced by women is when sexual violence occurs which results in pregnancy. When pregnancy occurs, there is an option for women to have an abortion if they decide they do not want the fetus they are carrying, where every woman has the freedom to choose what to do with her body. This decision is included in the fulfillment of women's human rights. Human rights related to self-determination, including the right to life, are regulated universally. Can be seen in the United Nations Declaration of Human Rights, which can be interpreted as the Universal Declaration of Human Rights (UDHR).¹⁴ Although these rights concern some of the most personal aspects of a person, such as the right to give birth, they can still be held legally accountable if they are not by the law.

Protection of sexual and reproductive health is a guarantee of health. everyone has the right to receive health insurance and protection through the formulation of human rights. The right to health and achieve optimal health is one of the fundamental human rights (health is fundamental right) and the recognition of these

¹³ Muhammad Fadli Efendi, "Perbandingan Hukum Internasional Dan Nasional Tentang Hak Asasi Manusia," *Yurisprudens : Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 2 (June 22, 2022): 227, <https://doi.org/10.33474/yur.v5i2.9071>.

¹⁴ Slamet Sampurno Soewondo, Syarif Saddam Rivanie Parawansa, and Ulil Amri, "Konsep Euthanasia Di Berbagai Negara Dan Pembaruannya Di Indonesia," *Media Iuris* 6, no. 2 (June 20, 2023): 231–54, <https://doi.org/10.20473/mi.v6i2.43841>.

rights has been stated in various international and national regulations. Indonesia has recognized, is bound by, and has even implemented many human rights. Indonesia's commitment to human rights can be seen in the many components that have been signed. This recognition can be proven by the inclusion of articles related to human rights in the health sector starting from the 1945 Constitution to various other regulations.¹⁵

A country that recognizes and upholds Human Rights (HAM) and basic human freedoms as rights inherent in humans by nature, so that human rights must be protected, respected and upheld in improving human dignity. Regulations governing human rights are stated in the 1945 Constitution and Law Number 39 of 1999 concerning Human Rights. Several international agreements related to human rights have also been ratified, such as the International Convention of Civil and Political Rights (ICCPR) through Law Number 12 of 2005 and the International Convention of Economic, Social, and Cultural Rights (ICESCR) through Law No. 11 of 2005.¹⁶

Children's or Fetuses' Rights

Protection of children's rights has begun since they were still in the womb, as regulated in Law Number 39 of 1999 concerning Human Rights (HAM). The regulation regarding the right to life for fetuses is contained in Article 53 of the Human Rights Law which states

¹⁵ Indar, *Konsep Dan Perspektif Etika Dan Hukum Kesehatan Masyarakat* (Yogyakarta: Pustaka Belajar, 2015).

¹⁶ Dhea Januastasya Audina, "Kesetaraan Gender Dalam Perspektif Hak Asasi Manusia," *Nomos: Jurnal Penelitian Ilmu Hukum* 2, no. 4 (September 28, 2022): 148–54, <https://doi.org/10.56393/nomos.v1i6.602>.

that not only adults have the right to life, but also regulates the rights and guarantees of life for fetuses still in the womb.

The existence of a fetus signifies the initial step of the beginning of a human life so the right to life for the fetus must be respected. The form of protection of the rights inherent in the fetus is also regulated in Article 52 of the Human Rights Law which states that parents, families, communities, and the state must protect children including fetuses that are still in the womb. This is very necessary because basically, the fetus will experience a growth process to become a proper human being who will live in the world.¹⁷ Although women's autonomy is an essential right, considerations of human anatomy, politics, religion, and human rights interact in the controversy surrounding the fetal-maternal conflict that support women's responsibility towards their fetus during pregnancy.¹⁸

The pros and cons of human rights for women and fetuses that have been regulated in legislation continue to take place. This is the reason why Indonesia is still in the middle of agreeing to justify abortion. Pregnant victims due to rape are often faced with the fact that the child in the womb cannot be aborted because there are rights to the fetus or child that cannot be removed. This situation has given rise to strong reactions from child rights activists who do

¹⁷ Nurul Farhana, "Aborsi Dalam Perspektif Hak Asasi Manusia Dan Hukum Islam," *Journal Presumption of Law* 4, no. 2 (October 10, 2022): 178–93, <https://doi.org/10.31949/jpl.v4i2.3431>.

¹⁸ Anna Ludkiewicz, "The Fetal Maternal Conflict: One Body, Two Considerations," Academic Festival Sacred Heart University, 2023. Retrieved <https://digitalcommons.sacredheart.edu/acadfest/2023/all/17/> 2024

not support the removal of the life of a child conceived by a rape victim.

III. Contradictions Of The Diversity Of Religious Views

The The legalization of abortion is something that is very dilemmatic. Various views have emerged as reactions for and against abortion regulations. Basically, the unification of diverse understandings in society is inevitable.¹⁹ The tendency to reject the legalization of abortion as something that is indispensable in plural Indonesian society. Even though the majority of society welcomes this abortion regulation, the fact is that this regulation cannot be implemented and accepted by society as a whole. Rejection basically arises because it is based on a religion that respects every living person.²⁰ Some people state that the act of abortion is something that is contrary to religious values.

The pro-life movement holds the view that life is valuable, noble, and a gift from God. Human life begins from conception, the

¹⁹ Rabea Benhalim, "Agreeing to Disagree: Abortion Jurisprudence in Jewish and Islamic Law
," *SSRN Electronic Journal*, 2024, <https://doi.org/10.2139/ssrn.4959093>.

²⁰ Rizki Aji Rahmawan Abdullah, "Ethics and Legal Issues in the Abortion Case," *Semarang State University Undergraduate Law and Society Review* 1, no. 2 (July 31, 2021): 175–90, <https://doi.org/10.15294/lsr.v1i2.50547>.

meeting of the ovum and sperm in the womb. That's when there was life. The act of abortion of a fetus in the womb is tantamount to killing. Abortion also means going against God's power. This shows that the principle of religious communities is that they do not provide space and tolerate actions that are contrary to God's teachings.

Islamic law prohibits abortion. But the majority of academics who study Islamic law have different opinions on the issue of abortion. Various opinions, which were ultimately agreed upon by Islamic jurists, stated that it is haram to carry out an abortion when the spirit has been breathed into the fetus of a woman's womb, namely if the pregnancy is already four months old. If the gestational age exceeds, in Islamic law the act of abortion is categorized as a crime of murder which is prohibited. But there is also a proposition which says that it is haram to have an abortion if the age of the womb has reached 40 days or 40 nights or more.²¹ Before that age in Islam it is considered makruh. This means that even though religion basically prohibits it, according to the views of some ulama, abortion can be carried out with conditions that must be met, namely that the gestational age does not exceed the gestational age before the exhalation of the soul or does not exceed the predetermined gestational age.

In 2005, the Indonesian Ulema Council or Majelis Ulama Indonesia (MUI) issued a fatwa regarding abortion law. Fatwa of

²¹ Muhammad Raffi and Eka Juarsa, "Tindak Pidana Aborsi Ditinjau Dari Perspektif HAM Dan Hukum Positif Indonesia," *Jurnal Riset Ilmu Hukum*, July 19, 2023, 43-48, <https://doi.org/10.29313/jrih.v3i1.2130>.

MUI number 4 of 2005 concerning abortion stipulates that abortion is haram from the moment the blastocyst implants in the mother's uterine wall (nidation), abortion is permitted because of age, such as a pregnant woman suffering from serious physical pain that threatens the pregnant woman's life, and abortion is permitted for rape victims which can be carried out before the pregnancy is 40 days old.²²

Community factors and the mentality of law enforcement are what result in weak law enforcement in Indonesia.²³ Respect for every human being by religious Indonesian society is one of the things that hinders the enforcement of abortion regulations. Law enforcers who are not mentally prepared to be involved in abortion activities as well as the community environment, as well as a societal culture that considers abortion to be a sinful act contribute to the weak enforcement of abortion regulations in Indonesia.

IV. Controversy Over Gestational Age For Abortion Services

²² Muhammad Maulana Hamzah, "Peran Dan Pengaruh Fatwa MUI Dalam Arus Transformasi Sosial Budaya Di Indonesia," *Millah: Journal of Religious Studies*, 2017, 127–54.

²³ Abortion is a problematic issue. Abortion aims to fulfill justice for rape victims, but many parties oppose it. Enforcement theory becomes important to use to analyze the problem of abortion. the importance of seeing the problem of weak enforcement from various sides. From the side of law enforcement, rules or content of law, society, and culture that exists in Indonesia. See Soerjono Soekanto, "Faktor-Faktor Yang Mempengaruhi Penegakan Hukum," 2011.

Problems with the Gestational Age Limit (GLs) for rape victims often occur. This limitation is one of the factors that hinders access to abortion services.²⁴ There are several views regarding the GLs at which abortion services can be provided. A controversy that has its own justification. International human rights law does not expressly address the issue of GLs. GLs impact most on people who are least able to access abortion because of later detection of pregnancy, lack of access to abortion provision.²⁵ This difference in views is still one of the factors that hinders the provision of rights for rape victims.

Later gestational ages are associated with less support for abortion.²⁶ The problem faced by rape victims in Indonesia is that the gestational age has passed the predetermined gestational age limit. In the case of rape victims, they only accept that they cannot be provided with abortion services. The reason is that the victim feels embarrassed to reveal the contents.²⁷ The procedure also takes too long for applying for permission. A situation that must be facilitated and a solution found.

²⁴ S De Zordo et al., "Gestational Age Limits for Abortion and Cross-border Reproductive Care in Europe: A Mixed-methods Study," *BJOG: An International Journal of Obstetrics & Gynaecology* 128, no. 5 (April 23, 2021): 838–45, <https://doi.org/10.1111/1471-0528.16534>.

²⁵ Fiona de Londras et al., "The Impact of Gestational Age Limits on Abortion-Related Outcomes: A Synthesis of Legal and Health Evidence," *BMC Global and Public Health* 3, no. 1 (February 3, 2025): 7, <https://doi.org/10.1186/s44263-025-00124-2>.

²⁶ Brandon L. Crawford, Kathryn J. LaRoche, and Kristen N. Jozkowski, "Examining Abortion Attitudes in the Context of Gestational Age," *Social Science Quarterly* 103, no. 4 (July 16, 2022): 855–67, <https://doi.org/10.1111/ssqu.13157>.

²⁷ Gita Anita, Deddy Mulyana, and Nindi Aristi, "'Embarrassing and Disgraceful': Technology-Facilitated Sexual Violence and Victim's Healing Process," *Jurnal Kajian Komunikasi* 10, no. 2 (December 29, 2022): 228, <https://doi.org/10.24198/jkk.v10i2.42265>.

Implementing abortion services requires the role of police investigators and doctors in providing services. In Indonesia a doctor's opinion is required to make a decision to legally terminate a pregnancy, the ethical burden on healthcare providers remains quite serious.²⁸ Doctors must determine what the most ideal gestational age is and which has the least potential to disrupt the health and life of pregnant women.

The gestational age limits in various perspectives that are recommended for abortion are in the table.

Tabel 1.
GLs perspective differences according to comparison of rules

Regulations	Gestational Age Limits (GLs)	Regulations	Gestational Age Limits (GLs)
Article 463 paragraph (2) Law Number 1 of 2023 regarding the Criminal Code	14 Weeks	Law Number 1 of 1946 regarding Criminal Law Regulations	prohibition of abortion

²⁸ Yulia S. Razmetaeva and Olga O. Sydorenko, "Abortion, Human Rights And Medical Advances In Digital Age," *Wiadomości Lekarskie* 74, no. 1 (January 2021): 132-36, <https://doi.org/10.36740/WLek202101126>.

(New Criminal Code)			
Law Number 17 of 2023 regarding Health	Not regulated in statutory regulations	Law Number 36 of 2009 regarding Health	6 Weeks
Article 1154 PP No. 28 of 2024 regarding Implementing Regulations of Law number 17 of 2023 concerning Health	40 Days refers to Law Goverment Number 61 of 2014 until Law Number 1 of 2023 comes into effect in 2026, namely 14 weeks	Article 31 Paragraph (2) Government Regulation Number 61 of 2014 regarding Reproductive Health	40 Days
World Health Organization (WHO)	28 Weeks	Fatwa MUI	40 Days

Source: Authors, 2025 (processed from various laws and regulations

Based on the table, there are differences in the gestational age limit for abortion services. This raises the question of which rule will be applied. There are several rules that regulate the same thing.

Clashes of norms are often a factor that causes confusion for law enforcement officers and other law enforcers in enforcing a rule.

The positive legal system is often faced with the problem of norm conflict, namely, there are two or more positive legal norms that conflict with each other for the same regulatory object.²⁹ In this situation, complying with one norm results in a violation of the other norm so to implement one norm, derogation or elimination of the validity of the other norm is required. In this case, in addition to the conflict of norms that allow and prohibit abortion as contained in the old Criminal Code which prohibits it, the latest Health Law and the latest Criminal Code provide leniency for abortion. In addition, there is a conflict of norms that regulate the gestational age for abortion services. There are various rules on gestational age, ranging from Laws, government regulations, Minister of Health regulations, MUI fatwas, and WHO have their own rules on gestational age limits. All of them have justifications and reasons for limiting the gestational age for abortion. These differences indicate the existence of a conflict of norms that occurs. To overcome the norm conflict, the principle of *lex posterior derogat legi priori*, namely the new law (norm/legal rule) eliminates the validity of the old law (norm/legal rule). This principle can only be applied in conditions where the new legal norm has an equal standing. In this case, Law No. 36 of 2009 concerning Health which regulates a maximum of 6 weeks is set

²⁹ Nurfaqih Irfani, "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," n.d.

aside by Law No. 17 of 2023 in Article 1154 of Government Regulations No. 28 of 2024 concerning the Implementing Regulations of Law No. 17 of 2023 concerning Health which regulates the gestational age for abortion, namely 40 days. The gestational age at which abortion is permitted is currently 40 days and in 2026 it will be 14 weeks according to the latest Criminal Code.

Based on an interview with dr. Fatimah Yunikartika, Sp. OG. The ideal gestational age for abortion is in the first trimester.³⁰ So the gestational age for abortion in the new Criminal Code, which is 14 weeks, is appropriate if applied. The Ministry of Health considers that the extension of the pregnancy period is to the recommendations of the World Health Organization or WHO. WHO authorizes abortions to be carried out in primary medical service facilities and accompanied by expert health workers because of considerations of maternal mortality rates, if more than 14 weeks are dangerous for the safety of the mother.³¹ According to WHO, the removal of a fetus or embryo from a 'mother who is pregnant with a fetus or embryo weighing less than 500 grams. Meanwhile, according to FIGO (International Federation of Gynecology and Obstetrics), abortion is the process of giving birth to the results of conception before the fetus is viable or able to live outside the

³⁰ Results of Interviews with dr. Annisa as Obstetricians in Makassar City in 2025.

³¹ Epaper Media Indonesia, "Batas Aborsi Usia Kehamilan 14 Minggu Sesuai WHO", Retrieved from <Https://Epaper.Mediaindonesia.Com/Detail/a-5211>, "Epaper Media Indonesia, 2023.

womb, which is defined as a pregnancy of 20 weeks or a fetus weighing less than 500 grams.³²

V. Abortion Is Considered Contrary To Doctors' Hippocratic Oath

Indonesia's The Hippocratic Oath has been likened to a medical code of ethics. This oath is the basis of medical ethics or ethical behavior of doctors. Contains principles of academic loyalty and integrity, patient safety, not harming others, confidentiality, fair care, teamwork, and the importance of maintaining ethical standards in medical practice. This oath is a solemn promise to uphold the integrity and ethics of the medical profession.³³

In Indonesia, abortion is considered to be contrary to the Hippocratic oath. Indonesian Doctors Association (IDI) voiced its opinion to prohibit all its members from being involved in abortion services. Hippocratic oath it was stated that the medical profession respects every human being. This is one of the reasons why many doctors oppose and disapprove of carrying out abortions, especially for rape victims, without indications of a medical

³² Putra, Eduardus Raditya Kusuma. 2024. "Aborsi Tanpa Indikasi Medis Dalam Sudut Pandang UU No 17 Tahun 2023 Tentang Kesehatan, Kitab Undang-Undang Hukum Pidana Dan UU No 1 Tahun 2023". *Jurnal Cahaya Mandalika ISSN 2721-4796 (online)* 3 (3). Indonesia, 1129-43. <https://ojs.cahayamandalika.com/index.php/jcm/article/view/2640>

³³ Anthony M. Vintzileos and Ioannis H. Mylonas, "Revisiting the Evolution of the Hippocratic Oath in Obstetrics and Gynecology," *American Journal of Obstetrics and Gynecology* 230, no. 5 (May 2024): 469.e1-469.e5, <https://doi.org/10.1016/j.ajog.2024.01.027>.

emergency.³⁴ Based on the results of interviews with doctors as part of the Makassar branch of the IDI, it was stated that the IDI respects every human being and life that exists and that as long as the activity does not violate human rights, the IDI will fully support everything that has been determined by the government because it has gone through stages and mature considerations before being stated in laws and regulations.³⁵

The legal system has a consistent or steady nature and does not want or allow conflict within it.³⁶ In society, there are many conflicts of interest and it is not impossible for there to be a conflict between laws and customs. This dilemmatic situation is a burden that must be borne by medical personnel, especially doctors who are directly involved in carrying out abortions. A situation that is faced with a choice between carrying out statutory regulations or violating the Hippocratic oath as a professional code of ethics for doctors.

In terms of providing abortion services, there is no compulsion on medical personnel and health workers to carry out abortions. If the doctor feels that his conscience does not justify carrying out an abortion, then he may resign and hand over the implementation of

³⁴ Permata Adinda, "Kebijakan Aborsi Berbalut Stigma: Ketika Layanan Kesehatan Tidak Berpihak Pada Hak Korban Kekerasan Seksual" Retrieved from <Https://Projectmultatuli.Org/Kebijakan-Aborsi-Berbalut-Stigma-Ketika-Layanan-Kesehatan-Tidak-Berpihak-Pada-Hak-Korban-Kekerasan-Seksual/>," PROJECT MULTATULI X Konde, Koran Tempo, Yayasan IPAS Indonesia, September 27, 2023.

³⁵ The results of interviews conducted at the Ikatan Dokter Indonesia in Makassar City in February 2025.

³⁶ Lita Tyesta Addy Listya Wardhani, Muhammad Dzikirullah H Noho, and Aga Natalis, "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), <https://doi.org/10.1080/23311886.2022.2104710>.

the medical procedure to a competent colleague.³⁷ Medical personnel or in this case doctors feel that the act of abortion is something that is contrary to the wishes and conscience of the doctor. They can voice their opinion not to be involved in the act of abortion.³⁸

VI. Restrictions on the authority to provide abortion services for rape victims

Restrictions on the authority of service providing facilities are limited. Article 119 of PP Number 28 of 2024 concerning Implementing Regulations of Law Number 17 of 2023 concerning Health limits only advanced-level facilities that can provide abortion services. Previously, Article 13 of Minister of Health Regulation Number 3 of 2016 concerning Training and Implementation of Abortion Services for Indications of Medical Emergency and Pregnancy Due to Rape could be carried out in health facilities at community health centers, primary clinics, main clinics or equivalent hospitals. It is easier to access, especially in remote areas.

³⁷ Alexandra Indriyanti Dewi, *Etika Dan Hukum Kesehatan* (Yogyakarta: Pustaka Book Publisher, 2008).

³⁸ Alberto Giubilini et al., "Conscientious Commitment, Professional Obligations and Abortion Provision after the Reversal of *Roe v Wade*," *Journal of Medical Ethics* 50, no. 5 (May 2024): 351–58, <https://doi.org/10.1136/jme-2022-108731>.

The regulations implementing the latest health law allow this only for advanced facilities, namely government hospitals and police hospitals. But then the Ministry of Health opened up the opportunity for private health facilities to be able to carry out abortions as a follow-up to Government Regulation Number 28 of 2024 concerning Health which regulates abortion, but still encouraged government hospitals and police hospitals to be allowed to provide abortion services.³⁹

Restrictions on facility authority are considered due to risk factors. Some health risks due to abortion include blood loss, infection, cervical tear, uterine perforation, and infertility, and the worst situation is death in pregnant women. One of the main causes of maternal death worldwide is unsafe abortion. About 7 million people each year are hospitalized due to complications resulting from unsafe abortions. Nearly 40,000 women die every year from it. As many as 97 percent of unsafe abortions occur in developing countries.⁴⁰

In the regulations implementing the latest health law regarding abortion services, it is necessary to ensure the availability of reproductive health service facilities that meet standards, are safe, of high quality, are affordable and inclusive. In its implementation, the government ensures the availability of facilities and the

³⁹ CNN Indonesia, "Kemenkes Buka Peluang Faskes Swasta Layani Aborsi Retrieved from Chttps://Www.Cnnindonesia.Com/Nasional/20240806143800-20-1129846/Kemenkes-Buka-Peluang-Faskes-Swasta-Layani-Aborsi. Download Apps CNN Indonesia Sekarang Hhttps://App.Cnnindonesia.Com/," CNN Indonesia, August 6, 2024.

⁴⁰ Elena Sosa Lerín, "Five Things to Know about Safe and Unsafe Abortion Retrieved from Hhttps://Www.Oxfam.ca/Story/Five-Things-to-Know-about-Safe-and-Unsafe-Abortion/," OXFAM Canada, February 15, 2024.

availability of adequate medicines and health equipment which are really needed. Apart from that, providing and increasing the capacity of medical personnel and reproductive health personnel in service facilities is very necessary.⁴¹ Services carried out by doctors as medical personnel and health workers must comply with professional standards, service standards and standard operational procedures. Monitoring and assessing the quality of reproductive health services is also very necessary to protect and prevent women from abortions that are unsafe, low quality, irresponsible, and contrary to statutory provisions.

The success of health service efforts depends on the availability of health resources in the form of personnel, facilities and infrastructure in adequate quantity and quality.⁴² Service availability and facility readiness are important indicators in measuring service quality. The availability of the main components in health facilities is a manifestation of supporting health facilities in carrying out abortion procedures. The availability of service facilities that are easy to reach is very necessary. It is hoped that facilities that meet operational standards for abortion can be accessed to fulfill rights and can be reached to minimize losses experienced by pregnant victims due to sexual violence.

⁴¹ Nibedita S. Ray-Bennett, et al., "Sexual and Reproductive Service Interventions for Menstrual Regulation, Safe Abortion, and Post-Abortion Care and Their Effectiveness During Disaster Response: A Global Systematic Review," *International Journal of Disaster Risk Science* 15, no. 3 (June 12, 2024): 359–73, <https://doi.org/10.1007/s13753-024-00565-7>.

⁴² Amir Ilyas, *Pertanggungjawaban Pidana Dokter Dalam Malpraktik Medik Di Rumah Sakit* (Yogyakarta: Rangkang Education, 2014).

VII. Narrowing of The Authority of the Party Conducting the Investigation Into Allegations of Rape

There is a narrowing of the content in Article 118 Government Regulations Number 28 of 2024 regarding Implementing Regulations of Law Number 17 of 2023 concerning Health. This is different from Article 34 Paragraph (2) Government Regulations Number 61 of 2014 regarding Reproductive Health, which previously involved information from investigators, psychologists and/or other experts.

Latest regulations only involve doctors and investigators. Doctors have the authority to provide certificates of gestational age according to incidents of criminal acts of rape and only investigators can provide information regarding suspected criminal acts of rape, so that psychologists and/or other experts are no longer involved. Even though the role of psychologists is very much needed in the investigation process or the process during the examination.⁴³ The role of the psychologist at the beginning of the examination is very important. Involving a psychologist and/or other experts can help in the mental examination of the rape victim. Psychology's contribution to law is very important in confirming

⁴³ Deni Setiyawan and Noor Rahmad, "Crime of Sexual Violence Against Children (Study at Kebumen Police Station)," *Journal of Law Justice (JLJ)* 2, no. 2 (June 10, 2024): 122-32, <https://doi.org/10.33506/jlj.v2i2.3311>.

the situation of legal subjects. The victim's memory is very vulnerable, because there are many factors that cause information to become less accurate, including traumatic factors.

Burgess/Holmstrom divides post-rape syndrome into 2 (two) phases. The acute phase is where the victim openly shows his disturbed emotions and the phase hides his suffering quietly.⁴⁴ Rape victims' reactions also require a different approach. The different approaches taken to carry out examinations require special experts. Psychologists are the ones who know best how to deal with this situation. The role of investigators and psychologists and/or other experts is really needed to collaborate and be integrated together to find the truth.

In cases of sexual violence that causes trauma, the victim needs to be accompanied so that they are able to cope or control themselves over the events experienced. To reduce things that affect memory vulnerability, techniques are needed so that memory can be displayed optimally. Two investigative interview techniques that are often discussed are Hypnosis and cognitive interviewing.⁴⁵ Overall, this technique requires a relaxed state from the victim, provides various opportunities to relate the incident and does not use demanding or pressing questions. Witnesses' memories are very fragile, because many factors cause information

⁴⁴ Ainul Luthfia Al Firda, "Novel Hilda: Image of Women Sexual Victim Violence (Gender and Feminist Study)," *Jurnal Ilmiah Mahasiswa Raushan Fikr* 11, no. 2 (August 22, 2022): 254-70, <https://doi.org/10.24090/jimrf.v11i2.6084>.

⁴⁵ Ahmad et al., "Legal Protection of Child Victims of Sexual Crimes from a Legal and Psychosocial Perspective," *Journal of Lifestyle and SDGs Review* 5, no. 1 (December 20, 2024): e02719, <https://doi.org/10.47172/2965-730X.SDGsReview.v5.n01.pe02719>.

to be less accurate. The involvement of a psychologist in the examination of the victim will make the examination clearer and be able to help investigators decipher the chronology of events in sequence and be more focused using psychological techniques.

Rape victims will experience emotional instability. Especially if the victim is still a child. After experiencing an event that disrupts their motor and sensory abilities, children tend to become quiet and gloomy individuals, and will close themselves off from their surrounding environment.⁴⁶ At times like that, children will only choose who they want to communicate with. Therefore, it is not easy for investigators to conduct questions and answers about children who have experienced legal incidents. Thus, special methods and approaches are needed that are appropriate to the child's condition, especially his psychological condition. In this situation, initial treatment is needed that has a perspective of support and a personal approach and does not directly search for and explore the chronology of the incident as is the main aim of the investigator. Because basically, post-incident victims only need a sense of security and the desire to build their self-confidence again from the guilt of blaming themselves for the incident. A personal approach at the beginning to avoid victims will become closed individuals and not want to speak up about the incident for the next step.

⁴⁶ Jenna R. Parsons et al., "Neurocognitive Profiles Associated with Remote History of Sexual Trauma," *Psychological Injury and Law* 17, no. 4 (December 27, 2024): 344-70, <https://doi.org/10.1007/s12207-024-09522-7>.

The role of a forensic psychologist in assisting child victims of sexual violence is to carry out Crisis Intervention, namely providing psychological First Aids (PFA) in the initial phase, which will very likely increase the victim's stability.⁴⁷ Carrying out an assessment or assessments aimed at finding out the extent of psychological injury or trauma experienced by the child or victim. So that on the basis of this assessment, next steps or intervention steps can be formulated with the aim of alleviating suffering and facilitating compliance with the victim's needs.

The act of abortion should be carried out by medical personnel and health workers, and its implementation should be carried out in accordance with the provisions of the laws and regulations. The act of abortion of a pregnancy due to indications of a medical emergency and victims of the crime of rape must pay attention to the terms and criteria in its implementation.

Medical personnel and health workers are the parties with the most authority in providing abortion services. Competency and appropriateness of procedures are the main concerns. Abortion services are provided by a team of considerations and doctors who have competence and authority.⁴⁸ The consideration team is tasked with providing considerations and decisions in providing abortion services. After the deliberation team is formed and a decision has

⁴⁷ Naila Zulfa Rosyida, Jayanti Dian Eka Sari, and Mohammad Zainal Fatah, "Psychological First Aid To Reduce Trauma And Depression In The Victims Of Sexual Abuse: Literature Review," *Journal of Community Mental Health and Public Policy* 6, no. 2 (April 5, 2024): 86–94, <https://doi.org/10.51602/cmhp.v6i2.120>.

⁴⁸ Anitra D. Beasley et al., "New Gaps and Urgent Needs in Graduate Medical Education and Training in Abortion," *Academic Medicine* 98, no. 4 (April 16, 2023): 436–39, <https://doi.org/10.1097/ACM.00000000000005154>.

been made, the doctor as medical personnel and assisted by health personnel provides abortion services. A consideration team is formed by the leadership of advanced health care facilities to provide abortion services. The consideration team is chaired by the Hospital medical committee with at least 1 member of the medical staff who has competence and authority.

After providing abortion services, the victim must be given assistance and counseling after the abortion. The implementation of reproductive health efforts must be recorded and reported through a Health Information System that is integrated with the National Health Information System or SIKN. It is hoped that information will become more organized and evaluations can be carried out for the development of knowledge both in terms of the development of health sciences and in future improvements in law.

The existence of this abortion regulation has given rise to a new polemic. The potential for abuse of authority by individual medical personnel and health workers is a new threat. Carrying out abortions that are carried out due to the failure of contraceptives to function and pregnancies due to promiscuity, or even couples who are not ready for the presence of a child can possibly be a factor that arises in the potential for abuse. This is basically not in accordance with the doctor's code of ethics and oath, but this can be happened.

Abortion is still a debate today. Abortion does not only involve midwives but is even more sophisticated, namely involving the medical profession, which is specifically a profession that

renounces the Hippocratic oath. This is where the structured and scientific debate began, including involving other sciences outside of medicine, namely law.⁴⁹ The medical profession is a group of experts whose job is to provide health services to patients. Doctors have guidelines in the form of the Indonesian Medical Code of Ethics. In carrying out their duties, every doctor is required to understand and practice the contents of that so that they aim to optimize their role in providing the best health services for the community. The doctor's code of ethics is expected to provide quality, safe and ethical health services. One example of a violation of values for doctors is illegal abortion. The Indonesian Child Protection Commission or KPAI reported that the number of illegal abortions in Indonesia carried out by doctors, nurses and other medical personnel in 2020 reached 2 million cases, with 30 percent of those pregnant being teenagers. An unnamed clinic in Jakarta is suspected of having been providing illegal abortion procedures for almost 2 years.⁵⁰

Abortions are often carried out in the practices of doctors, pharmacists and midwives. Rarely do abortions surface as a case that can be resolved in court. An abortion that is intentionally carried out by a woman is generally declared guilty of a criminal offense as regulated and threatened in Article 346 of the Criminal Code and sentenced to a maximum prison sentence of four years.

⁴⁹ Andi Muhammad Sofyan and Aris Munandar, *Aspek Hukum Pelayanan Kesehatan, Eutanasia, Dan Aborsi* (Jakarta: Kencana, 2021).

⁵⁰ Chantika Zahra Adisaputra et al., "Survei Tingkat Pengetahuan Dokter Tentang Kode Etik Kedokteran Indonesia (KODEKI) Dan Sikap Terhadap Upaya Pencegahan Tindakan Aborsi Ilegal," *Jurnal Etika Kedokteran Indonesia* 8, no. 1 (2024): 23-26.

Many cases do not appear on the surface because many parties involved try to cover up the cases in the interests of maintaining the image of the profession and the image of the place where illegal abortion cases occur.

The doctor's actions which have legal implications as the perpetrator of an abortion, in addition to a heavier sentence, the doctor, midwife or pharmacist who assists in this crime can be sentenced to additional punishment of revocation of the right to carry out their work as a doctor, midwife or pharmacist.⁵¹ Even though criminal law recognizes the abolition of criminal offenses in health services, namely justifying reasons and forgiving reasons as found in jurisprudence, these justifying and forgiving reasons do not necessarily eliminate a criminal offense for the medical profession. Apart from violating the code of ethics, this is not in accordance with morals in society.

Every religion and belief a certain moral basis to justify its teachings to regulate human life. Morals are discourses, sermons, standards, a collection of rules and regulations, both oral and written, about how humans live and act in order to become good humans. Morality is a set of rules and principles that govern the way we interact with each other and has special power and authority.⁵² Morals function to provide guidance on human actions

⁵¹ Leti Ratna Kusumawati, Boy Nurdin, and Faisal Santiago, "Regulation on Abortion Without a Medical Diagnosis in the Law of Crimes Performed By Medical Personnel," *Edunity Kajian Ilmu Sosial Dan Pendidikan* 2, no. 1 (January 15, 2023): 172–79, <https://doi.org/10.57096/edunity.v1i05.49>.

⁵² J Driver, "'Moral Theory' Retrieved from [Https://Plato.Stanford.Edu/Entries/Moral-Theory/](https://Plato.Stanford.Edu/Entries/Moral-Theory/)," Stanford Encyclopedia Of Philosophy : plato.stanford.edu, July 27, 2022.

at the conceptual level. It is important to prioritize morals in every action so that every human action can run according to its corridors. Firm principles of morals will lead to actions that are beneficial to other human beings.

Based on the implications of abortion regulation, shows a polemic in law enforcement related to abortion. The implications have an impact on the non-implementation of regulations caused by various factors. Legal factors, regulations that still conflict with other regulations, namely the Criminal Code, religious norms, principles and customs, and the doctor's oath. In addition, law enforcer factors, based on research that has been conducted at the Polrestabes Makassar City by conducting interviews with Ms. Rahmatia as an investigator in the UPTD PPA of the Makassar City.⁵³ It was found that commitment, and recognition of the permissibility of abortion for rape victim are not yet complete, the police who have not made internal regulations, and national policies within the police environment. Addition to hesitant nature of medical personnel and health workers. This shows the mentality of law enforcement that is not yet fully supportive. Another factors such as differences in religious views and the difficulty of accessing abortion facilities which are not available in hard-to-reach areas.

Interviews conducted at YLBHI Makassar with Ambara Dewita, S.H.,M.H as as Head of the Women, Children and Disabilities Division of YLBHI, that most rape victims just accept the situation

⁵³ Interview conducted in Makassar City at Makassar City Police Headquarters with one of the investigators. Conducted on December 4, 2024.

and continue the pregnancy.⁵⁴ This condition shows that the rights that should be given are just a hope. The enforcement of abortion regulations has not been implemented according to the policies that should be given. Rape victims seem to be forced to accept reality even though in substance in the regulation the right to abortion services has been given to rape victims or other victims of sexual violence.⁵⁵



Source: Annual Notes (CATAHU) YLBHI Makassar, 2022.

Based on the data, it shows that there are 7 unwanted pregnancies (KTD). The pregnant victims are the result of rape and sexual exploitation. The unwanted pregnant victims are not given the rights that should be provided in the form of abortion services.

⁵⁴ Interview with Ambara Dewita, S.H.,M.H as as Head of the Women, Children and Disabilities Division of YLBHI conducted in Makassar city at a legal aid institution on November 15, 2024.

⁵⁵ Researchers conducted interviews with one of the legal institutions, namely Yayasan Lembaga Bantuan Hukum Indonesia (YLBHI) in November 2024.

VIII. Conclusion

Based on the analysis, the government needs to evaluate the implications of abortion regulations. Building public trust by ensuring the implementation of abortion regulations properly through commitments from the police and medical and health personnel to the implementation of abortion regulations supported by adequate and easily accessible facilities and infrastructure. The government also needs to intensify socialization to the public about abortion regulations so that the stigmatization of victims can be minimized. This is to ensure and support victims to get services as soon as possible immediately. Also, there is a need for legal norms that provide clear and structured regulations within the police and health organizations to ensure support for positive law enforcement that is implementable.

The police must demonstrate their commitment to fully support this abortion legalization regulation. The police are expected to ensure the provision of emergency contraception referrals and safe abortions for victims of sexual violence, by creating a national policy within the police. Providing emergency services immediately after rape is important to prevent pregnancy and to avoid unclear enforcement of abortion service provisions. In addition, other law enforcers need to guarantee the right to reproductive health through the Integrated Service Center service. This service can be placed in a hospital so that patients or victims can simultaneously access assistance from the Women's Empowerment and Child Protection Service or DPPPA. Reports of examination results from the hospital can also be submitted directly to the police. This is important to realize one-stop service, responsive, and victim-oriented services. The existence of a one-stop service can maximize time, costs, and energy. The government also needs to ensure the availability of medical personnel or health workers with good competence, such as forensic obgyns who can understand legal cases in each organization in the region.

References

Abdullah, Rizki Aji Rahmawan. "Ethics and Legal Issues in the Abortion Case." *Semarang State University Undergraduate Law and Society Review* 1, no. 2 (July 31, 2021): 175–90. <https://doi.org/10.15294/lsr.v1i2.50547>.

Adair, Lora, Nicole Lozano, and Nelli Ferenczi. "Abortion Attitudes Across Cultural Contexts." *International Perspectives in Psychology* 13, no. 3 (July 2024): 138–52. <https://doi.org/10.1027/2157-3891/a000101>.

Adisaputra, Chantika Zahra, Abdul Kolib, Nunuk Nugrohowati, and Ulul Albab. "Survei Tingkat Pengetahuan Dokter Tentang Kode Etik Kedokteran Indonesia (KODEKI) Dan Sikap Terhadap Upaya Pencegahan Tindakan Aborsi Ilegal." *Jurnal Etika Kedokteran Indonesia* 8, no. 1 (2024): 23–26.

Ahmad. "Studi: 64.000 Kehamilan Di Amerika Serikat Akibat Kasus Perkosaan" Retrieved from <Https://Hidayatullah.Com/Berita/2024/02/07/267464/Studi-64-000-Kehamilan-Di-Amerika-Serikat-Akibat-Kasus-Perkosaan.Html>, Hidayatullah.com, February 7, 2024.

Ahmad, Sigid Suseno, Mien Rukmini, and Aulia Iskandarsyah. "Legal Protection of Child Victims of Sexual Crimes from a Legal and Psychosocial Perspective." *Journal of Lifestyle and SDGs Review* 5, no. 1 (December 20, 2024): e02719. <https://doi.org/10.47172/2965-730X.SDGsReview.v5.n01.pe02719>.

Alexandra Indriyanti Dewi. *Etika Dan Hukum Kesehatan*. Yogyakarta: Pustaka Book Publisher, 2008.

Amir Ilyas. *Pertanggungjawaban Pidana Dokter Dalam Malpraktik Medik Di Rumah Sakit*. Yogyakarta: Rangkang Education, 2014.

Andi Muhammad Sofyan, and Aris Munandar. *Aspek Hukum Pelayanan Kesehatan, Eutanasia, Dan Aborsi*. Jakarta: Kencana, 2021.

Anggraeni, Erwindya Julia. "Tinjauan Hak Asasi Manusia Terhadap Kekerasan Perempuan Dalam Peraturan Perundang-Undangan." *WICARANA* 2, no. 1 (March 28, 2023): 27–38. <https://doi.org/10.57123/wicarana.v2i1.28>.

Anita, Gita, Deddy Mulyana, and Nindi Aristi. "'Embarrassing and Disgraceful': Technology-Facilitated Sexual Violence and Victim's Healing Process." *Jurnal Kajian Komunikasi* 10, no. 2 (December 29, 2022): 228. <https://doi.org/10.24198/jkk.v10i2.42265>.

Anna Ludkiewicz. "The Fetal Maternal Conflict: One Body, Two Considerations." Academic Festival Sacred Heart University, 2023.

Assis, Mariana Prandini, and Joanna N. Erdman. "Abortion Rights beyond the Medico-Legal Paradigm." *Global Public Health* 17, no. 10 (October 3, 2022): 2235–50. <https://doi.org/10.1080/17441692.2021.1971278>.

Asyrof, Muhammad Fiqri, Fikri Rizki Lukmanula, Mohammad Arya, Teddy Asmara, and Muhammad Noupel. "A Review of Feminist Legal Theory on Abortion Regulations for Rape Victims in Indonesia." *Jurnal Legisci* 2, no. 1 (August 6, 2024): 27–38. <https://doi.org/10.62885/legisci.v2i1.394>.

Audina, Dhea Januastasya. "Kesetaraan Gender Dalam Perspektif Hak Asasi Manusia." *Nomos : Jurnal Penelitian Ilmu Hukum* 2, no. 4 (September 28, 2022): 148–54. <https://doi.org/10.56393/nomos.v1i6.602>.

Beasley, Anitra D., Aishat Olatunde, Erica P. Cahill, and Kate A. Shaw. "New Gaps and Urgent Needs in Graduate Medical Education and Training in Abortion." *Academic Medicine* 98, no. 4 (April 16, 2023): 436–39. <https://doi.org/10.1097/ACM.0000000000005154>.

Benhalim, Rabea. "Agreeing to Disagree: Abortion Jurisprudence in Jewish and Islamic Law
" *SSRN Electronic Journal*, 2024. <https://doi.org/10.2139/ssrn.4959093>.

Clarke, Damian, and Hanna Mühlrad. "Abortion Laws and Women's Health." *Journal of Health Economics* 76 (March 2021): 102413. <https://doi.org/10.1016/j.jhealeco.2020.102413>.

CNN Indonesia. "Kemenkes Buka Peluang Faskes Swasta Layani Aborsi" Retrieved from <https://www.cnnindonesia.com/nasional/20240806143800-20-1129846/kemenkes-buka-peluang-faskes-swasta-layani-aborsi>. Download Apps CNN Indonesia Sekarang [Https://App.Cnnindonesia.Com/](https://app.cnnindonesia.com/)." CNN Indonesia, August 6, 2024.

Crawford, Brandon L., Kathryn J. LaRoche, and Kristen N. Jozkowski. "Examining Abortion Attitudes in the Context of Gestational Age." *Social Science Quarterly* 103, no. 4 (July 16, 2022): 855–67. <https://doi.org/10.1111/ssqu.13157>.

Dirdjosisworo Soedjono. *Pengantar Ilmu Hukum*. Jakarta: PT. RajaGrafindo, 2014.

Efendi, Muhammad Fadli. "Perbandingan Hukum Internasional Dan Nasional Tentang Hak Asasi Manusia." *Yurispruden : Jurnal Fakultas Hukum Universitas Islam Malang* 5, no. 2 (June 22, 2022): 227. <https://doi.org/10.33474/yur.v5i2.9071>.

Elena Sosa Lerín. "Five Things to Know about Safe and Unsafe Abortion" Retrieved from [Https://Www.Oxfam.ca/Story/Five-Things-to-Know-about-Safe-and-Unsafe-Abortion/](https://www.oxfam.ca/Story/Five-Things-to-Know-about-Safe-and-Unsafe-Abortion/)." OXFAM Canada, February 15, 2024.

Epaper Media Indonesia. "Batas Aborsi Usia Kehamilan 14 Minggu Sesuai WHO", Retrieved from [Https://Epaper.Mediaindonesia.Com/Detail/a-5211](https://epaper.mediaindonesia.com/detail/a-5211)." *Epaper Media Indonesia*, 2023.

Fadiyah Alaidrus. "Ia Diperkosa Lalu Hamil. Disarankan Aborsi, Tapi Polisi Melarangnya Korban Trauma Berat" Retrieved from [Https://Projectmultatuli.Org/Ia-Diperkosa-Lalu-Hamil-Disarankan-Aborsi-Tapi-Polisi-Melarangnya-Korban-Trauma-Berat/](https://projectmultatuli.org/ia-diperkosa-lalu-hamil-disarankan-aborsi-tapi-polisi-melarangnya-korban-trauma-berat/)." Project Multatuli, November 25, 2021.

Firda, Ainul Luthfia Al. "Novel Hilda: Image of Women Sexual Victim Violence (Gender and Feminist Study)." *Jurnal Ilmiah Mahasiswa Raushan Fikr* 11, no. 2 (August 22, 2022): 254–70. <https://doi.org/10.24090/jimrf.v11i2.6084>.

Giubilini, Alberto, Udo Schuklenk, Francesca Minerva, and Julian Savulescu. "Conscientious Commitment, Professional Obligations and Abortion Provision after the Reversal of *Roe v Wade*." *Journal of Medical Ethics* 50, no. 5 (May 2024): 351–58. <https://doi.org/10.1136/jme-2022-108731>.

Hamzah, Muhammad Maulana. "Peran Dan Pengaruh Fatwa MUI Dalam Arus Transformasi Sosial Budaya Di Indonesia." *Millah: Journal of Religious Studies*, 2017, 127–54.

Indar. *Konsep Dan Perspektif Etika Dan Hukum Kesehatan Masyarakat*. Yogyakarta: Pustaka Belajar, 2015.

Irfani, Nurfaqih. "Asas Lex Superior, Lex Specialis, Dan Lex Posterior: Pemaknaan, Problematika, Dan Penggunaannya Dalam Penalaran Dan Argumentasi Hukum," n.d.

Driver. "Moral Theory" Retrieved from <Https://Plato.Stanford.Edu/Entries/Moral-Theory/>." Stanford Encyclopedia Of Philosophy : plato.stanford.edu, July 27, 2022.

Komnas Perempuan. "Pernyataan Sikap Komnas Perempuan Terhadap Ketentuan Aborsi Bagi Korban Tindak Pidana Kekerasan Seksual Dalam PP No. 28 Tahun 2024 Tentang Kesehatan." *Komisi Nasional Perlindungan Anti Kekerasan Terhadap Perempuan*, August 2024.

Londras, Fiona de, Amanda Cleeve, Maria I. Rodriguez, Alana Farrell, Magdalena Furgalska, and Antonella F. Lavelanet. "The Impact of Gestational Age Limits on Abortion-Related Outcomes: A Synthesis of Legal and Health Evidence." *BMC Global and Public Health* 3, no. 1 (February 3, 2025): 7. <https://doi.org/10.1186/s44263-025-00124-2>.

Mertokusumo, Sudikno . *Mengenal Hukum: Suatu Pengantar*. Yogyakarta: CV. Maha Karya Pustaka, 2019.

Muhammad Raffi, and Eka Juarsa. "Tindak Pidana Aborsi Ditinjau Dari Perspektif HAM Dan Hukum Positif Indonesia." *Jurnal Riset Ilmu Hukum*, July 19, 2023, 43–48. <https://doi.org/10.29313/jrih.v3i1.2130>.

Nurul Farhana. "ABORSI DALAM PERSPEKTIF HAK ASASI MANUSIA DAN HUKUM ISLAM." *Journal Presumption of Law* 4, no. 2 (October 10, 2022): 178–93. <https://doi.org/10.31949/jpl.v4i2.3431>.

Parsons, Jenna R., Nelson B. Rodrigues, Christina D. Sirianni, Robert M. Roth, Patti A. Timmons Fritz, and Laszlo A. Erdodi. "Neurocognitive Profiles Associated with Remote History of Sexual Trauma." *Psychological Injury and Law* 17, no. 4 (December 27, 2024): 344–70. <https://doi.org/10.1007/s12207-024-09522-7>.

Permata Adinda. "Kebijakan Aborsi Berbalut Stigma: Ketika Layanan Kesehatan Tidak Berpihak Pada Hak Korban Kekerasan Seksual Retrieved from <Https://Projectmultatuli.Org/Kebijakan-Aborsi-Berbalut-Stigma-Ketika-Layanan-Kesehatan-Tidak-Berpihak-Pada-Hak-Korban-Kekerasan-Seksual/>." PROJECT MULTATULI X Konde, Koran Tempo, Yayasan IPAS Indonesia, September 27, 2023.

Ratna Kusumawati, Leti, Boy Nurdin, and Faisal Santiago. "Regulation on Abortion Without a Medical Diagnosis in the Law of Crimes Performed By Medical Personnel." *Edunity Kajian Ilmu Sosial Dan Pendidikan* 2, no. 1 (January 15, 2023): 172–79. <https://doi.org/10.57096/edunity.v1i05.49>.

Ray-Bennett, Nibedita S., Winifred Ekezie, Isha Biswas, Nimra Iqbal Choudhary, David Cowie, Lasith Dissanayake, Lauren Macleod, Azukaeogo Nnaji, and Madhulika Sahoo. "Sexual and Reproductive Service Interventions for Menstrual Regulation, Safe Abortion, and Post-Abortion Care and Their Effectiveness During Disaster Response: A Global Systematic Review." *International Journal of Disaster Risk Science* 15, no. 3 (June 12, 2024): 359–73. <https://doi.org/10.1007/s13753-024-00565-7>.

Razmetaeva, Yulia S., and Olga O. Sydorenko. "ABORTION, HUMAN RIGHTS AND MEDICAL ADVANCES IN DIGITAL AGE." *Wiadomości Lekarskie* 74, no. 1 (January 2021): 132–36. <https://doi.org/10.36740/WLek202101126>.

Rosyida, Naila Zulfa, Jayanti Dian Eka Sari, and Mohammad Zainal Fatah. "PSYCHOLOGICAL FIRST AID TO REDUCE TRAUMA AND DEPRESSION IN THE VICTIMS OF SEXUAL ABUSE: LITERATURE REVIEW." *Journal of Community Mental Health and Public Policy* 6, no. 2 (April 5, 2024): 86–94. <https://doi.org/10.51602/cmhp.v6i2.120>.

Setiyawan, Deni, and Noor Rahmad. "Crime of Sexual Violence Against Children (Study at Kebumen Police Station)." *Journal of Law Justice (JLJ)* 2, no. 2 (June 10, 2024): 122–32. <https://doi.org/10.33506/jlj.v2i2.3311>.

Soekanto, Soerjono. "Faktor-Faktor Yang Mempengaruhi Penegakan Hukum," 2011.

Soewondo, Slamet Sampurno, Syarif Saddam Rivanie Parawansa, and Ulil Amri. "Konsep Euthanasia Di Berbagai Negara Dan Pembaruannya Di Indonesia." *Media Iuris* 6, no. 2 (June 20, 2023): 231–54. <https://doi.org/10.20473/mi.v6i2.43841>.

Vintzileos, Anthony M., and Ioannis H. Mylonas. "Revisiting the Evolution of the Hippocratic Oath in Obstetrics and Gynecology." *American Journal of Obstetrics and Gynecology* 230, no. 5 (May 2024): 469.e1-469.e5. <https://doi.org/10.1016/j.ajog.2024.01.027>.

Wardhani, Lita Tyesta Addy Listya, Muhammad Dzikirullah H Noho, and Aga Natalis. "The Adoption of Various Legal Systems in Indonesia: An Effort to Initiate the Prismatic Mixed Legal Systems." *Cogent Social Sciences* 8, no. 1 (December 31, 2022). <https://doi.org/10.1080/23311886.2022.2104710>.

Willis, Brian, Kathryn Church, Emily Perttu, Heather Thompson, Swarna Weerasinghe, and Wendy Macias-Konstantopoulos. "The Preventable Burden of Mortality from Unsafe Abortion among

Female Sex Workers: A Community Knowledge Approach Survey among Peer Networks in Eight Countries." *Sexual and Reproductive Health Matters* 31, no. 1 (December 31, 2023). <https://doi.org/10.1080/26410397.2023.2250618>.

Yopi Makdori. "Laporan Kemensos Sebut 780 Anak Hamil Akibat Kekerasan Sekual" Retrieved from <Https://Www.Liputan6.Com/News/Read/4904618/Laporan-Kemensos-Sebut-780-Anak-Hamil-Akibat-Kekerasan-Sekual?Page=3>." Liputan6, March 7, 2022.

Zordo, S De, G Zanini, J Mishtal, C Garnsey, A-K Ziegler, and C Gerdts. "Gestational Age Limits for Abortion and Cross-border Reproductive Care in Europe: A Mixed-methods Study." *BJOG: An International Journal of Obstetrics & Gynaecology* 128, no. 5 (April 23, 2021): 838-45. <https://doi.org/10.1111/1471-0528.16534>.

DECLARATION OF CONFLICTING INTERESTS

The authors state that there is no conflict of interest in the publication of this article.

FUNDING INFORMATION

None

ACKNOWLEDGMENT

Gratitude is expressed to practitioners who were willing to provide information on the current justice system such as Mahkamah Agung Republik Indonesia, Universitas Padjadjaran, Pengadilan Negeri Bale Bandung, and Pengadilan Negeri Padang Panjang for supporting the implementation of this research.

HISTORY OF ARTICLE

Submitted : December 12, 2024

Revised : September 29, 2025

Accepted : November 4, 2025

Published : December 15, 2025