

# Legal Reconstruction Regulation of Abortion Crime Based on Gender Justice Against Victims of Sexual Violence

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## Abstract

The condition of victims of sexual violence has rights that are regulated in law, but its implementation actually has a new impact, namely the criminalization of safe abortions. This has the impact and side effects of carrying out abortions in secret, secretly and causing losses for victims of sexual violence, and in the end, if their actions are discovered, they will become suspects. This research is a normative juridical research using statutory approach (*statute approach*), conceptual approach (*conceptual approach*), and comparative approach (*comparative approach*). The results of this study indicate that 1) the urgency of regulating gender-equity-based abortion crimes against victims of sexual violence due to the limited legality of abortion in Indonesia has led to the rise of *abortion provocatus criminalis* or the practice of illegal abortions by women who experience unwanted pregnancies (KTD); 2) Legal Reconstruction of Abortion Crime Based on Gender Equity Against Victims of Sexual Violence is aimed at providing legal certainty for women in taking choice as a result of rape, extending the limitation on the maximum gestational age requirement for abortion, from a maximum of 6 weeks to 24 weeks, as recommended by WHO and also provide legal protection for doctors and members of the abortion feasibility team who perform abortions based on medical emergency indications and pregnancies resulting from rape. In addition, it also provides legal protection for doctors and members of the abortion feasibility team who perform abortions based on medical emergency indications and pregnancies resulting from rape.

**Keywords:** Legal, Reconstruction, Crime, Abortion, Sexual violence, Gender justice

## 1. Introduction

Abortion is defined as the intentional act of terminating a pregnancy before the fetus can live outside the womb (before 20 weeks of pregnancy or the fetus's weight is less than 500 grams) without clear medical indications. Definitely abortion is the cessation (death) and discharge of a pregnancy before 20 weeks (counting from the last day) or a fetus weighing less than 500 grams, length less than 25 cm (Lenvo et al., 2007). Abortion or abortion is a serious problem. Abortion is often performed for unwanted pregnancies that are not safe (Anshor et al., 2002).

The United Nations Population Fund (UNFPA) revealed that as many as 60 percent of unplanned pregnancies by mothers lead to the decision to have an abortion. These unwanted conditions force women to make choices that endanger their lives by having abortions. Where 45 percent of all abortions that occur are

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carried out by mothers in an unsafe manner. These unsafe abortions result in increasing maternal mortality both in Indonesia and globally to the point where millions of women are hospitalized each year (Shanti, 2022).

Abortion is a controversial issue, not only from a health point of view, but also from a legal and religious point of view. From a health point of view, abortion is the termination of a pregnancy (due to certain consequences) before the fruit of the pregnancy is able to live outside the womb. Abortion is divided into two, namely spontaneous abortion and artificial abortion. Abortion is usually carried out for medical indications related to a threat to life safety or the presence of serious health problems in the mother, for example, severe pulmonary tuberculosis, asthma, diabetes mellitus, kidney failure, hypertension, chronic liver disease (National Network of Reproductive Health-Clinical Training, 1999).

In Indonesia's positive law, namely the Criminal Code, it is explicitly stated in Articles 346 to 348 that the act of aborting or terminating a womb (hereinafter referred to as abortion) is a crime. This is also emphasized in Article 75 paragraph (1) of Law Number 36 of 2009 concerning Health (hereinafter referred to as the Health Law) which states that everyone is prohibited from having an abortion. This prohibition also illustrates that essentially every creation of God has the right to live and survive. Likewise for the fetus that has not been born into the world. Even though he has not been born as a person in human form, the state still guarantees his existence to be born in the world. Referring also to Article 53 paragraph (1) of Law Number 39 of 1999 concerning Human Rights (hereinafter referred to as the Human Rights Law), it is expressly stated that every child from birth has the right to live, maintain life, and improve their standard of living.

According to Law no. 36 of 2009 concerning Health, abortion is basically prohibited, except in an emergency as an effort to save the life of a pregnant woman and/or her fetus, certain medical measures can be taken. This medical action can be carried out with due observance of the following: (a) based on indications of medical emergencies detected at an early age in pregnancy, whether those that threaten the life of the mother and/or fetus, suffer from severe genetic diseases and/or congenital defects, or those that are not can be repaired making it difficult for the baby to live outside the womb; or (b) pregnancy as a result of rape which can cause psychological trauma to the rape victim.

The justification for carrying out an abortion must of course be followed by other conditions, especially in terms of its implementation, both those regulated in the Health Law and other regulations. One of them is stated in Article 75 paragraph (3) of the Health Law, and Articles 34 to Article 39 PP 61/2014 concerning Reproductive Health. Victims of rape can have an abortion by proving that the pregnancy was the result of a crime of rape. This was done with the help of expert testimony regarding the causal relationship between the act of rape and the victim's pregnancy. Furthermore, it is regulated in Articles 35 to 39, which are related to the administration of abortion. This is important because the act of abortion is a dangerous act so that it requires a safe, quality and responsible implementation.

Even though Law No. 36 of 2009 on Health and PP 61/2014 on Reproductive Health have provided a basis for criminalization exceptions for victims of sexual violence and indications of a medical emergency related to access to legal abortion, obstacles such as regulations that are not implemented, lack of capacity building training and knowledge dissemination for Health workers present a recurring situation where health workers feel entitled to refuse to provide safe abortion health services, even for individuals who still meet the requirements in the existing regulatory framework.

Based on a study by the Women's Health Foundation (YKP), the criminalization of abortion has resulted in 108 criminal convictions in West, Central and East Indonesia from 2019 to 2021. Of the 31 existing sentences, it is women or adolescents who have abortions who are criminalized. In addition, 54 service providers and parties selling abortion-inducing drugs were also criminalized, as were 46 people who provided assistance, information and medicines. Of the 108 sentences, 51 were related to criminal sanctions in the Health Law, 36 were related to criminal sanctions based on the Child Protection Law, and 21 sentences strictly

referred to sanctions in the Criminal Code. In one of the documented cases, a rape victim was criminalized on the basis of Law Number 17 of 2016 concerning Child Protection (Women's Health Foundation, 2022).

Access to safe abortion for survivors of victims of sexual violence/ rape has been recognized in Indonesian legislation, but is still constrained in the field . Survivors are faced with a gestational age limit that is too short and limited to a gestational age of 6 weeks or 40 days in contexts where the availability of adequate information and support systems for all age groups and identities cannot be ensured. This is complicated by a lengthy bureaucratic process that causes delays in accessing the sexual and reproductive health that survivors need, as well as the social stigma associated with abortion or rape. which is expressed not only by the public in general, but also by health workers, law enforcement officials, and even by government officials .

The condition of victims of sexual violence has rights that are regulated in law, but its implementation actually has a new impact, namely the criminalization of safe abortions. This has the impact and side effects of carrying out abortions in secret, secretly and causing losses for victims of sexual violence, and in the end, if their actions are discovered, they will become suspects . This is like a cycle of ineffectiveness of law, where the law that is made ineffective will actually make the criminal act repeated many times. Therefore the author sees that, the law needs to be reconstructed as a regulation on the crime of abortion based on gender justice against victims of sexual violence .

## **2. Materials & Methods**

The research method used is normative juridical . In normative legal research, library materials are basic data that are classified as secondary data, namely data that is in a ready-made state, the form and content of which have been compiled by previous researchers and can be obtained without being bound by time and place (Soekanto Mamudji, 2001). The author conducted a review of legislation in carrying out criminal acts of asset confiscation in Indonesia by examining laws and regulations both through statutory approaches (*statute approach*), conceptual approach (*conceptual approach*), and comparative approach (*comparative approach*).

## **3. Discussion**

### **3.1 The Urgency of Regulating the Crime of Abortion Based on Gender Equity Against Victims of Sexual Violence**

Women have rights over their bodies and refuse to let their bodies be controlled by outsiders, which in a feminist perspective is a male patriarchal world (Fokky, 2014). Feminist legal theory rejects that women are seen as something homogeneous so that the approach or method in studying law with a perspective is to place women's experience as the main basis in considering various legal issues (Savitri, 2006).

According to Fokky (2014), in the context of *feminist jurisprudence* , women have the right to their bodies and refuse to have their bodies controlled by outsiders who, in a feminist perspective, are the male patriarchal world. Regarding the issue of abortion, this view gave birth to the *Pro-Choice* camp , which considers abortion as a reproductive right for women who experience unwanted pregnancies (KTD). This view assumes that women have control over their bodies to continue the pregnancy or not. This view emphasizes his concern for the future of children who are unwanted if they are still born because children often experience violence in the household (Lopex, 2012).

In the case of abortion, one can see that gender inequality is felt. According to Mansoer Fakhri, to understand how gender differences lead to gender injustice, one can see through the various manifestations of existing injustice. Injustice is manifested in various forms of injustice, marginalization or the process of economic impoverishment, subordination or the notion of being unimportant in political decisions, forming stereotypes or through negative labeling, *violence* , the workload is longer and more (*burden*) (Fakhri, 2012).

The problems faced by women related to gender inequality include the right to physical integrity; the right to choose a mate; the right to have sexual intercourse; the right to determine birth and the right to abortion services; and women's rights in government (parliamentary representatives) (Panjaitan and Purba, 2018). Rape victims can be said to be miserable because the things done by the perpetrators greatly affect the physical and psychological aspects of the victims, this is the suffering of women victims of rape. The social facts of a patriarchal society add to his misery so that the victim feels like he is in prison, silent, embarrassed to socialize. The cruelty of perpetrators and unjust actions in society that are experienced by victims in terms of gender morality standards are "the vulnerability of women victims of rape which can cause suffering to the victims themselves" (Elia, 2003).

Pregnancy as a result of rape is a violation of the reproductive rights of rape victims, therefore there is an exception for abortion for rape victims aimed at providing guarantees and legal protection of the reproductive rights of rape victims as a manifestation of human rights. In this way, arrangements that legalize abortion for rape victims must be interpreted to protect and save the lives and quality of life of women who actually also have no power to prevent the crime of rape which causes them to experience unwanted pregnancies. This means that there is an acknowledgment from the law that the special human right attached to women is the right to sexual reproduction, as stated in Article 45 of Law Number 39 of 1999 concerning Human Rights.

Government regulations have actually accommodated rape victims related to abortion, namely "Government Regulation Number 61 of 2014 concerning Reproductive Health (hereinafter referred to as PP on Reproductive Health)". In the PP on Reproductive Health, there are several requirements which it is very difficult for rape victims to fulfill. The difficulty lies in having to prove it with references from the police regarding the existence of a crime of rape and the limitation of the *gestational* age for the permissibility of an abortion/unlawful abortion for a rape victim, which is 40 (forty) days.

Regulations for carrying out abortions for rape victims are further regulated in Article 31 paragraph (2) of Government Regulation Number 61 of 2014 which states that "Abortion as a result of rape as referred to in paragraph (1) letter b can only be carried out if the gestational age is at most 40 ( forty) days from the first day of the last menstrual period. Furthermore, Article 34 paragraph (2) of the Government Regulation on Reproductive Health states that "Pregnancy as a result of rape as referred to in paragraph (1) is proven by: a. gestational age according to the incident of rape stated by a doctor's certificate; and b. information from investigators, psychologists, and/or other experts regarding the alleged rape".

Age for the permissibility of an abortion/illegal abortion for a rape victim is 40 (forty) days. In fact, it is the determination of the gestational age limit that causes a rape victim to not be able to have an abortion. Research shows that every woman has a menstrual/menstrual cycle that varies depending on age, health, hormones, and other factors. Women who have normal cycles have menstrual cycles of around 25-35 days and for teenage girls around 20-45 days. If the gestational age is calculated from HPHT and abortion is limited to a maximum of 40 (forty) days, then a woman who is a victim of rape with a normal cycle only has about 5-15 days to prove the incident of rape that she experienced (Hillard, 2008).

Women may not always experience normal menstrual cycles and the cycles may not be constant from month to month . Research shows that psychological trauma such as sexual violence can make a woman's menstrual cycle abnormal (Adjie, 2021). This is related to the physical trauma resulting from rape in the form of dysfunction in several organs as well as mental disorders that affect the rape victim's hormones. Because the menstrual cycle is not always normal, especially for rape victims, this affects the pregnancy so that it can be detected.

If the gestational age of the first day of the last menstrual period and illegal abortion/abortion are limited to a maximum of 40 (forty) days, then a rape victim with a normal cycle will only have about 5-15 (five

to fifteen) days to prove that she was raped (Savitri, 2006). Coupled with this erratic menstrual cycle, it states that the limit of pregnancy will affect biological conditions (Adjie, 2021).

On the other hand, there is the psychological problem of victims of sexual violence, where the victim of sexual violence is certainly traumatized by the rape incident, so she cannot think about what will happen in the future, whether she is really pregnant or not pregnant, whether in this case she will speak out and tell it to someone else, or rather he should be silent. Sable et al stated that the reasons for rape victims, both women and men, did not report the incidents they experienced were:

1. Fear that the perpetrator will retaliate
2. Financial dependence on the perpetrator/perpetrator does not allow the victim to seek help
3. Victims do not want family members or friends to be prosecuted
4. Victims are afraid of not being believed
5. Lack of resources to report such as financial problems, transportation, taking care of children, and so on
6. The victim feels ashamed and feels guilty
7. Victims consider it as a disgrace that is *confidential* or secret
8. Distrust of the police and the legal system (Marjorie et al., 2006).

When unwanted pregnancies occur, women experience psychological dynamics which is quite difficult for her to decide to continue or terminate the pregnancy. This makes women more vulnerable to coercion from partners (boyfriends or husbands), families, or the surrounding community to abort their pregnancies (Floranti, 2021). In facing an unwanted pregnancy, perpetrators choose abortion as the best solution based on various motives and integrated in the concept of motivation. Perpetrators of abortion crimes are driven by psychosocial motives, social status motives, economic motives, family motives, educational motives, contraceptive failure motives and rape motives to have an abortion in the face of an unwanted pregnancy. The limited legality of abortion in Indonesia has encouraged the rise of *abortion provocatus criminalis* or the practice of illegal abortions by women who experience unwanted pregnancies (KTD). From a feminist perspective, unwanted pregnancy is still one of the problems of women's reproduction and sexuality (Susiana, 2016). Oka Negara stated that unwanted pregnancy always creates deep conflict within the woman who experiences it, because she has to make a decision whether to continue or not to continue her pregnancy (Nagara, 2005).

Unsafe abortion is one of the causes of death for pregnant women in the world and it refers to abortion procedures performed outside hospitals, clinics or without qualified medical supervision. Women are more susceptible to dangerous infections or bleeding if they have an abortion in such places. Too many unsafe abortions are still happening, and too many women continue to suffer and die (WHO, 2017). Unsafe abortion occurs when a pregnancy is terminated either by a person who does not have the necessary skills/information or in an environment that does not meet minimal medical standards, or both. To prevent unwanted pregnancies and unsafe abortions, countries must make supportive policies and financial commitments to provide comprehensive sexuality education; various methods of contraception, including emergency contraception; accurate family planning counseling; and access to safe and legal abortion.

Abortion is a public health problem because it has an impact on maternal morbidity and mortality, but with this controversy, unsafe abortion has never been recorded as an official cause of maternal death, because it is shrouded in bleeding and infection, two categories of causes that cause more than half (55 %) maternal deaths (Gunawan, 2000). There are many reasons why a woman does not want her pregnancy, including rape, pregnancy that has come at an unexpected time, the fetus in the womb suffers from severe defects, pregnancies outside of marriage, family planning failures, and so on.

When a woman experiences an unwanted pregnancy (KTD), one way out is to try an abortion, either by herself or with the help of others. Many of them decide to end their pregnancies by seeking help that is not

safe and so they experience serious complications or death due to being handled by incompetent people or with equipment that does not meet standards (Sadik, 1998).

Illegal abortion then causes various "costly" consequences. This is not only related to the cost of an abortion, but also the "cost" in a broader sense that must be paid by the woman who has it: physical and psychological trauma. Not to mention the social costs, such as stigma and exclusion that women risk. Those who have unsafe abortions are also at great risk of facing the law.

Article 194 of the Health Law threatens a maximum of ten years in prison and a maximum fine of one billion rupiah for anyone who has an abortion without fulfilling the requirements. Article 194 of the Health Law stipulates that women who are victims of rape only have a choice, namely: a) to abort the fetus before the age of the fetus is 40 days (which cannot be fulfilled by a rape victim), b) to continue to bear a fetus resulting from the suffering caused by being raped, or c) to be imprisoned and pay a fine if female the rape victim was desperate to abort her womb. That way, according to Savitri (2006), women who are entangled in a double bind will always face a dilemma, they are forced to choose which one poses the least danger to them.

Rape victims who experience pregnancy are faced with choices that both make them suffer. If she wants an abortion, she must immediately report the rape she has experienced to law enforcement officials who are often incompetent and corner the victim in rape cases. He also had to endure his suffering and trauma when explaining the cases that happened to him to law enforcement officials. If she wants to conceive her pregnancy, she will be haunted by this traumatic incident for the rest of her life because she gave birth to a child from the perpetrator of the rape. However, if she is determined to have an abortion that exceeds the 40-day fetal age limit, then she will not receive safe abortion services which could threaten her life, and will also be subject to imprisonment and fines.

In the end, women who experience adverse events are faced with a tough consideration, namely between terminating the pregnancy (abortion) or continuing the pregnancy with the risks that come with each. The complexity of the problem of women who are victims of sexual violence who later experience unwanted pregnancy must be a legal consideration in the future. The behavior of unsafe abortions in women who experience unwanted pregnancy should be an encouragement for policy makers to evaluate abortion policies in Indonesia.

### ***3.2 Legal Reconstruction of Abortion Crime Based on Gender Equity Against Victims of Sexual Violence***

Gender is a human perspective or perception of women or men that is not based on natural biological sex differences. Gender in all aspects of human life creates differences between women and men, including the creation of a social position of women that is lower than that of men. For example, that women are known to be gentle, beautiful, emotional, or motherly. While men are considered strong, rational, manly, mighty. The characteristics of the nature itself are the properties that can be exchanged. This means that there are men who are emotional, gentle, motherly, while there are also women who are strong, rational and mighty (Soeroso, 2010).

Justice is a process to be fair to men and women. Gender is intended to overcome gender injustice that occurs which includes marginalization, subordination, stereotypes, violence, and workload. Each of these manifestations of gender inequality cannot be separated, interrelated and dialectically influential. The existence of gender studies basically aims to reduce and eliminate gender inequality. In other words, gender studies want to realize social justice, and social justice cannot be realized without gender justice in society.

Gender justice usually refers to the application of social justice in terms of giving equal opportunities to men and women. Justice here does not mean that men and women are the same in all respects, but what is meant is that the provision of an opportunity or access does not depend on gender differences. Gender justice

thus means that men and women have the opportunity to realize their rights and potential to contribute to political, economic, social and cultural development, and can equally enjoy the results of that development.

The issue of gender is not a new problem in social, legal, religious and other studies. However, the study of gender is still actual and interesting, bearing in mind that there are still many people, especially in Indonesia, who do not understand this issue and there are still many imbalances in the application of gender that give rise to gender inequality. The behavior of unsafe abortions in women who experience unwanted pregnancies is a legal issue for women. Therefore, it is necessary to reconstruct the law governing gender justice-based abortion crimes against victims of sexual violence.

The policy for the legal reconstruction of the regulation of abortion crimes based on gender justice for victims of sexual violence must be determined on the subjectivity of the woman herself. Women must be heard and involved in formulating laws, especially women who are affected, in this case rape victims. Only in this way can the law realize women's human rights as stated in Article 45 of the Human Rights Act that "Women's rights are human rights". This means that the arrangements that will be applied to women must prioritize women as subjects who fight for their rights, so that there are special things that cannot be equated with other legal subjects. The view that believes that women must be seen as something homogeneous, will only produce a legal order that is as neutral as patriarchal law (Donny, 2006).

The law hereby has generalized women who actually have multiple biological conditions related to the menstrual cycle and pregnancy. The law identifies women by setting limits on their biological condition without any prior research on this matter in formulating abortion policies for rape victims. "Feminist legal theory" believes that "neutrality and legal objectivity will only result in gender-biased laws". This requires an analysis of certain studies using the method of feminism, one of which is "*asking the women's question*", namely by using women's experience and combining it with law and politics" (Savitri, 2006). Thus, policies on abortion for women must regulate alternative arrangements that accommodate women's needs.

In Japan the Eugenics Protection Act as amended is the current law to regulate abortion which is legal in Japan. As a rule, abortion is available only for statutory reasons. Article 14 sets out five circumstances in which abortion is permissible:

- 1) the person or their partner suffers from psychosis, mental deficiency, psychopathy, hereditary bodily disease, or hereditary deformity;
- 2) blood relatives in the 4th degree of the person concerned or their partner has the above conditions;
- 3) the person concerned or their spouse suffers from leprosy;
- 4) the mother's health can be greatly affected by pregnancy or childbirth for physical or economic reasons; or
- 5) the person becomes pregnant as a result of rape (Hiromi, 1995).

In India the Medical Termination of Pregnancy Act 1971 (MTPA) became the basis for justifying some abortions. According to the MTPA, it is not a violation if the pregnancy has been terminated by medical personnel in accordance with the MTPA. According to Part 3 paragraph (2) of the MTPA, a pregnancy can be terminated by a registered medical practitioner if the gestational age is not more than 12 weeks and the medical practitioner is of the opinion, formed in good faith that:

- (i) continuation of the pregnancy would pose a risk to the life of the pregnant woman or serious injury to her physical or mental health; or
- (ii) there is a great risk that if the child is born, he or she will suffer such physical or mental abnormalities as to become seriously disabled.

If a pregnancy is suspected to be caused by rape, the suffering caused by the pregnancy should be considered as a serious injury to the mental health of the pregnant woman. In the event of a pregnancy resulting from the

failure of a device or method used by a married woman or her husband for the purpose of limiting the number of children, the suffering caused by the unwanted pregnancy may be considered as serious injury to the mental health of the pregnant woman (Ramalingam et al., 2018).

In Malaysia, although Article 312 of the Penal Code clearly prohibits abortion, the exceptions to Article 312 allow abortion in certain circumstances. The exception to Article 312 states: "This section does not cover a registered medical practitioner under the Medical Act 1971 [Act 50] who terminates a woman's pregnancy if the medical practitioner is of the opinion, formed in good faith, that the continuation of the pregnancy would involve a risk to life of the pregnant woman, or the injury to the mental or physical health of the pregnant woman, is greater than if the pregnancy were terminated." Under this exception, abortion is legal provided: The abortion is performed by a registered medical practitioner under the Medical Act 1971.

Based on comparisons in various countries, it can be seen that the concept of legal and safe abortion has been introduced internationally. Women are given the opportunity to make a decision whether to maintain their pregnancy or end it because of an unwanted pregnancy. Women can make the decision to end it, as long as it is done legally and safely through medical procedures.

The value of gender justice for victims of sexual violence must be based on women's human rights in making decisions because of sexual violence, in this case rape. Feminist legal thinkers see that in the context of *feminist jurisprudence*, women have rights over their bodies and refuse to have their bodies controlled by outsiders, which in a feminist perspective is the world of men's patriarchy (Fokky, 2014). Feminist legal theory rejects that women are seen as something homogeneous so that the approach or method in studying law with a perspective is to place women's experience as the main basis in considering various legal issues (Savitri, 2006). Women must be independent in controlling their decisions. Thus, victims of sexual violence should be based on women's human rights in making decisions because this is a human right, which includes serious considerations, namely between terminating the pregnancy (abortion) or continuing the pregnancy with the risks that accompany each due to rape.

The values of gender independence in women victims of sexual violence can then be derived from regulations governing abortion as a result of rape. The legal reconstruction of the regulation of abortion crimes based on gender justice against victims of sexual violence in Government Regulation Number 61 of 2014 concerning Reproductive Health can be applied as shown in Table 1:

**Table 1** Reconstruction Act

Initial Construction	Reconstruction
<p><b>Article 31</b></p> <p>(1) Abortion can only be done based on:</p> <ol style="list-style-type: none"> <li>a. medical emergency indications; or</li> <li>b. pregnancy due to rape.</li> </ol> <p>(2) Abortion as a result of rape as referred to in paragraph (1) letter b can only be carried out if the gestational age is at most 40 (forty) days from the first day of the last menstruation.</p>	<p><b>Article 31</b></p> <p>Abortion can only be done based on:</p> <ol style="list-style-type: none"> <li>a. medical emergency indications; or</li> <li>b. pregnancy due to rape.</li> </ol> <p>Eliminate restrictions on the criteria for women who are allowed to have an abortion. The hope is that abortion is no longer limited to women who have medical indications that endanger their safety or who experience pregnancy as a result of rape.</p>
<p><b>Article 34</b></p> <p>(1) Pregnancy as a result of rape as referred to in Article 31 paragraph (1) letter b is a pregnancy resulting from sexual intercourse without the consent of the woman in accordance with the provisions of laws and regulations.</p> <p>(2) Pregnancy as a result of rape as referred to in paragraph (1) is proven by:</p>	<p><b>Article 34</b> paragraph (2) Abolished</p> <p>There is no limit to the gestational age or at least extend the restrictions on the maximum gestational age requirements for abortion, from a maximum of 6 weeks to 24 weeks, as recommended by WHO</p>

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- a. gestational age according to the incident of rape, which is stated by a doctor's certificate; And
  - b. information from investigators, psychologists, and/or other experts regarding the alleged rape.
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**Article 36**

(1) Doctors who perform abortions based on indications of medical emergencies and pregnancies resulting from rape as referred to in Article 35 paragraph (2) letter a must receive training from an accredited training provider.

**Article 36**

(1) Doctor and members of the abortion feasibility team who perform abortions based on medical emergency indications and pregnancies resulting from rape as referred to in Article 35 paragraph (2) letter a must receive legal protection, training by an accredited training provider.

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Based on Article 31 paragraph (2) Government Regulation Number 61 of 2014 concerning Reproductive Health which states that abortion as a result of rape as referred to in paragraph (1) letter b can only be carried out if the gestational age is at most 40 (forty) days from first day of last menstruation. This must be abolished, which limits the criteria for women who are allowed to have an abortion. The hope is that abortion is no longer limited to women who have medical indications that endanger their safety or who experience pregnancy as a result of rape .

Rape victims who experience pregnancy are faced with choices that both make them suffer. If she wants an abortion, she must immediately report the rape she has experienced to law enforcement officials who are often incompetent and corner the victim in rape cases. He also had to endure his suffering and trauma when explaining the cases that happened to him to law enforcement officials. If she wants to conceive her pregnancy, she will be haunted by this traumatic incident for the rest of her life because she gave birth to a child from the perpetrator of the rape. However, if she is determined to have an abortion that exceeds the 40-day fetal age limit, then she will not receive safe abortion services which could threaten her life, and will also be subject to imprisonment and fines.

Harvard Health Publishing , the majority of abortions are performed in the first 12 weeks of gestation. In addition, women may do it from the first trimester and before 24 weeks of gestation based on the doctor's approval (HelloSehat, n.d). JM Seno Adjie stated that, abortion is an act of deliberately terminating a pregnancy before the fetus can live outside the womb (before 20 weeks of pregnancy or the fetal weight is still less than 500 grams) (Adjie, 2021). In 2018, the Irish parliament legalized termination of pregnancy before twelve weeks, as well as in cases where the mother's health is at stake. Previously, Ireland had one of the strictest abortion laws in Europe, codified in a 1983 constitutional amendment that effectively outlawed the practice (Women and Foreign Policy Program, 2023).

Setting is 40 (forty) days, calculated from the first day of the last menstruation, basically too narrow and fast, because it is only the development of the fetus at 5-6 weeks. This causes all actions that are not in accordance with the Article 31 process Government Regulation Number 61 of 2014 concerning Reproductive Health becomes criminal abortion. Thus, women's options in making choices because they are victims of sexual violence do not get the portion they should.

Criminal threats for rape victims who do not have an abortion according to the process of Government Regulation Number 61 of 2014 Concerning Reproductive Health in the end brings something sad, where victims who experience sexual violence experience pain as a result of the abortion, but they are also forced to undergo a legal process because not in accordance with the procedures regulated in Government Regulation Number 61 of 2014 concerning Reproductive Health. Therefore, justice must not only stop at the written rules, but take a more contextual substance, namely abortion must be carried out safely and legally.

Abortion by professionals in a place that meets the standards, the level of safety is 10 times greater than if continuing the pregnancy until delivery. However, the law in Indonesia is still not on the side of women by prohibiting this action from being carried out except to save the mother and baby. As a result, many professionals are not willing to provide this service; even if there is, it is often given at a very high cost because of the magnitude of the consequences that must be borne if the authorities find out. This clearly has a negative impact on many women in Indonesia who have no other choice, so they are forced to turn to unsafe labor which puts them at risk of illness and death (Susilo and Lestari, 2007).

If viewed from the Indonesian Medical Ethics, General obligations article 7 d of Law no. 29 of 2004 concerning Medical Practice reads that, "Every doctor must always remember the obligation to protect human life". This means that all the actions of a doctor towards a patient are aimed at maintaining health and happiness, by itself he must defend and maintain human life. This means that both from the point of view of religion, state law, and medical ethics, a doctor is not allowed to abort a womb (*Abortus Provocatus*). Abortion can only be justified as a treatment, if it is the only way to help the mother's soul from the danger of death or *abortion provokatus therapiuticus*.

The Code of Ethics itself contains a contract of moral obligations between doctors and their professional group. Although this obligation is not a legal obligation, but the moral obligation to protect every human life from the moment of conception, if it is violated, it will enter into a violation of legal obligations. This violation occurs when a doctor performs an abortion, which violates the code of ethics, especially ethical violations, which are not in accordance with the requirements specified in Article 75 paragraph (2) of the Health Law, then they can be punished as regulated in Article 194 of the 2009 Health Law.

Abortion may only be carried out based on the provisions of Article 75 paragraph (2), namely on the basis of medical emergency indications and pregnancy due to rape. The abortion can only be carried out by a doctor who has the authority and has a special certificate obtained from the training organized by the minister, if it is not in accordance with the provisions referred to in Article 75 paragraph (2) a person who deliberately commits an act of abortion not in accordance with the provisions referred to in Article 75 paragraph 2, which is subject to imprisonment for 10 years and a maximum fine of Rp. 1,000,000,000.00 (one billion) in accordance with Article 194 of the Health Law Number 36 of 2009. Abortion perpetrators who have qualifications as medical personnel (doctors and dentists) can also be subject to sanctions as stipulated in Law Number 29 of 2004 concerning Medical Practice, while for health workers other than doctors may be stipulated in Law Number 36 of 2014 concerning Health Personnel, or for other people involved, the provisions stipulated in the Criminal Code can be applied.

Based on this, it is not only women who are victims of the crime of rape that must be protected, Doctors and members of the abortion feasibility team who perform abortions based on medical emergency indications and pregnancies due to rape also need to be protected by law. This is because doctors and members of the abortion feasibility team who perform abortions based on medical emergency indications and pregnancies resulting from rape can become subjects of criminal acts of abortion, namely participating in or assisting in carrying out abortions. Therefore, the guarantee of legal certainty in the form of legal protection in the event of criminal prosecution becomes important to be regulated based on a statutory regulation.

#### 4. Conclusion

Based on the results of the research and discussion, the following conclusions are obtained:

1. The urgency of regulating abortion crimes based on gender justice against victims of sexual violence due to the limited legality of abortion in Indonesia has encouraged the rise of *abortion provocatus criminalis* or the practice of illegal abortions by women who experience unwanted pregnancies (KTD). Unsafe abortion is one of the causes of death for pregnant women in the world and it refers to

abortion procedures performed outside hospitals, clinics or without qualified medical supervision. Women are more susceptible to dangerous infections or bleeding that can result in death.

2. Legal Reconstruction of Gender Equity-Based Abortion Arrangements Against Victims of Sexual Violence is aimed at providing legal certainty for women in taking the choice due to the occurrence of rape, extending the limitation on the maximum gestational age requirement for an abortion, from a maximum of 6 weeks to 24 weeks, as recommended by WHO . In addition, it also provides legal protection for doctors and members of the abortion feasibility team who perform abortions based on medical emergency indications and pregnancies resulting from rape.

Based on the discussion, the author in this case provides the following suggestions:

1. Amend Government Regulation Number 61 of 2014 concerning Reproductive Health by extending the limitation on the maximum gestational age requirements for abortion, from a maximum of 6 weeks to 24 weeks, as recommended by WHO.
2. Emphasize in regulations that the position of women who experience unwanted pregnancy is the party that holds full authority over their decision to have an abortion. Thus, this change can provide protection to all women who experience unwanted pregnancy and guarantee the fulfillment of women's rights to their bodies and reproduction.
3. Encourage the Indonesian government to organize training for health workers and counselors, at least in the form of Value Clarification and an inter-professional collaboration approach, to ensure that there is a human rights perspective in fulfilling access to health according to the latest WHO guidelines.
4. Strengthening the understanding and sensitivity of law enforcement officials to stop all forms of criminalization against service providers and individuals who try to access safe abortion services as part of fulfilling sexual and reproductive health rights.
5. Involve civil society groups in efforts to prevent and provide information related to unplanned pregnancies, including monitoring and evaluating their implementation, as well as providing counseling support.

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