



“TEXTUAL ANALYSIS TOWARDS HEALTH MINISTER REGULATION NUMBER 2/2025 ABOUT REPRODUCTIVE HEALTH IN RELATION WITH SAFE ABORTION”

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Article	Abstract
<p>Keywords:</p> <p><i>Safe abortion;</i> <i>Rape victims;</i> <i>States responsibility;</i> <i>Permenkes 2/2025;</i> <i>Violence against women.</i></p> <p>History Received : Nov.12, 2025 Reviewed: Nov.27, 2025 Accepted : Dec.19, 2025 Published: Dec.,29,2025</p>	<p>In the beginning of 2025, Indonesia’s Minister of Health enacted a new ministerial regulation number 2/2025 (Permenkes 2/2025) about reproductive health. It is enacted as the implementational regulation for the Law 17/2023 about Health. However, these laws do not resonate with Anti Sexual Violence Law 12/2022 in protecting sexual assault victims. While sexual assault cases have been facing challenges in term of access to justice and victim’s safety, the Permenkes 2/2025 will make justice for rape victims harder to achieve. There are complex requirements for accessing safe abortion which creates some weaknesses for its implementation. Weaknesses of this regulation are (1) under-reported case to police due to existing stigma; (2) lack of considerations of victim’s psychological and physical conditions; (3) elimination of the right for women to decide for abortion independently; (4) limiting possibility for women in rural and remote areas. This article is a textual analysis towards the Permenkes 2/2025 and related laws. This article argued that legal protection for rape victims in accessing safe abortion is not prioritizing women’s right towards their reproductive health. The formulation of the laws is instead limiting the access for justice. Thus, ideal reparation for victims is potentially harder to achieve.</p>

1. INTRODUCTION

Abortion is the termination of a pregnancy after, accompanied by, resulting in, or closely followed by the death of the embryo or fetus.¹ Essentially, abortion is illegal in Indonesia, referring to Article 346 of the current Indonesian Penal Code (1946 version) which mentioned:

“A woman who intentionally aborts her pregnancy or orders someone else to do so is subjected to a maximum incarceration for 4 years.”

This notion is followed by Article 347 to 349 which provisioned varietal criminal elements of abortion and sanctions. Similar notions also constituted in the Indonesian Penal Code 2023 version that will begin to enter into force in January 2026. Article 463-465 of this law also constituted abortion as illegal. However, the 2023 Penal Code also constituted exceptions, conditions when abortion is allowed, which is not regulated in the currently-still-active 1946 Penal Code. Those conditions are:

- 1) Medical emergency;
- 2) Pregnancy as a result of rape or other sexual violence.

The same notions of abortion in the Penal Code 2023 are adopted by the Health Law 17/2023. Its Article 60(1) explicitly refers to the Penal Code 2023:

“Every person is prohibited from having an abortion, except with the permitted criteria in accordance with the provisions in the criminal code.”

Despite the Penal Codes, abortion has sparked endless debate: between pro-choice (viewing that women have authority over their bodies and therefore have the right to determine their reproductive preferences) and pro-life (opposing abortion on the grounds of the fetus' right to life).² The Human Rights Law of Indonesia justifies the debate of the legitimacy of abortion for both sides. Proponents of abortion argue that every woman has the right to her own body and the right to live a life with reproductive health according to her personal choices, as supported by Article 49 Par. (3) of The Human Rights Law 39/1999, meanwhile opponents of abortion contend that every human being has the right to life and to preserve their existence, as stipulated in Article 52 Par. (2) of the same law.³

¹ Merriam-Webster Dictionary, “Abortion,” accessed April 24, 2025, <https://www.merriam-webster.com/dictionary/abortion>.

² Aditya Widya Putri, “Aborsi Aman Itu Mungkin Asalkan Kita Menyudahi Alasan Moral,” [tirto.id](https://tirto.id/aborsi-aman-itu-mungkin-asalkan-kita-menyudahi-alasan-moral-dhMJ), February 27, 2019, <https://tirto.id/aborsi-aman-itu-mungkin-asalkan-kita-menyudahi-alasan-moral-dhMJ>.

³ William Wongkar and I Wayan Gede Artawan Ekaputra, “Abortion and Human Rights: An Analysis of Indonesian Legal Perspectives in Balancing the Right to Life of the Fetus and Women’s Reproductive Health,” *Journal of Law, Politic, and Humanities* 5, no. 4 (March 2025): 2421–28.

Looking closely at the phenomena, religious values are still closely attached in determining a person's sexual and reproductive health rights.⁴ According to a 2013 Pew Research Center survey, about 89 percent of Indonesians believe abortion is morally unacceptable.⁵ Indonesian law-makers then attempted to balance between human rights aspects, such as, an aspect of a fetus' rights to life as a part of humanitarian principles and women's right to reproductive health which includes access to abortion for pregnancy with medical indications or cases of rape.⁶

Taking into account the concern of human rights, International Covenant on Civil and Political Rights (ICCPR) which was ratified through Law 12/2005 about the Ratification of ICCPR, in the General Comment ICCPR No. 36 year 2018 art. 6 para. 8 about the right to life stated that:

“States parties must provide safe, legal and effective access to abortion where the life and health of the pregnant woman or girl is at risk, or where carrying a pregnancy to term would cause the pregnant woman or girl substantial pain or suffering, most notably where the pregnancy is the result of rape or incest or where the pregnancy is not viable” and,

“They should not take measures such as criminalizing pregnancy of unmarried women or applying criminal sanctions to women and girls who undergo abortion or to medical service providers who assist them in doing so, since taking such measures compels women and girls to resort to unsafe abortion.”

Consequently, for Indonesian context, after ratifying the ICCPR, the government must act in accordance to the abovementioned paragraphs. Therefore, the Indonesian government enacted several laws related to women's reproductive health, including The Health Law. Recently, Indonesia's Minister of Health Regulation (*Peraturan Menteri Kesehatan/Permenkes 2/2025*) about Reproductive Health was enacted to support The Health Law. Alongside Permenkes 2/2025, several implementational regulations that functioned to implement the technicalities for the Health Law are:

- 1) Government Regulation 28 of 2024 about Implementational Regulations of Law Number 17 of 2023 concerning Health (PP 28/2024)
- 2) Government Regulation 61 of 2014 about Reproductive Health (PP 61/2014)⁷

⁴ Maidina Rahmawati, Arinta Dea Dini Singgi, and Erasmus A T Napitupulu, “Penyelenggaraan Kebijakan Aborsi Aman, Bermutu, Dan Bertanggung Jawab Sesuai Dengan UU Kesehatan Di Indonesia” (Jakarta, November 2021), <https://icjr.or.id/wp-content/uploads/2022/01/ICJR-Penyelenggaraan-Kebijakan-Aborsi-Aman-Bermutu-dan-Bertanggung-Jawab-sesuai-dengan-UU-Kesehatan-di-Indonesia.pdf>.

⁵ Putri, “Aborsi Aman Itu Mungkin Asalkan Kita Menyudahi Alasan Moral.”

⁶ Wongkar and Ekaputra, “Abortion and Human Rights: An Analysis of Indonesian Legal Perspectives in Balancing the Right to Life of the Fetus and Women's Reproductive Health.”

⁷ Only enforceable if not contradictory with PP 28/2024

Therefore, regulations pertaining to abortion in Indonesia is as the following,

Health Law 17/2023	60(1)	Every person is prohibited from having an abortion, except with the permitted criteria in accordance with the provisions in the criminal code.
	60(2)	Abortion with permit can only be performed: <ul style="list-style-type: none"> a. by Medical Personnel and assisted by Health Personnel who have the competence and authority; b. at Health Service Facilities that meet the requirements set by the Minister; c. with the consent of the pregnant woman of her husband, except for rape victims.
	61	The Central Government, Regional Governments, and the community are responsible for protecting and preventing women from unsafe abortions that are contrary to the provisions of laws and regulations.
	427	Every woman undergone illegitimate abortion is punishable with maximum 4 years of incarceration.
	428	Every person performed illegitimate abortion for a woman is punishable with incarceration: <ul style="list-style-type: none"> a. 5 years if consent given from the woman, or; b. 12 years if consent was absent.
	429	If Art. 428 is performed by medical personnel, the sanction is increased for 1/3.
PP 28/2024	116	Every person is prohibited from performing an abortion, except for indications of a medical emergency or for victims of rape or other sexual violence that results in pregnancy in accordance with the provisions of the criminal code.
	119(1)	Abortion services that are permitted can only be carried out at advance health care facilities that meet the standards set by the Minister.
	119(2)	Abortion services can only be performed by Medical Personnel and assisted by Health Personnel in accordance with their competence and authority.
	120(1)	Abortion services are provided by an advisory board and authorized doctors.
	120(2)	The advisory board is tasked with providing considerations and decisions in carrying out abortion services due to pregnancies that indicate a medical emergency and/or pregnancies resulting from rape or other sexual violence.
	121(1)	The advisory board is formed by the head of the advance health care facility for abortion services.

	121(2)	The advisory board is chaired by the Hospital medical committee with at least 1 (one) member of Medical Personnel who has the competence and authority.
	121(4)	The doctor who performed abortion must not a member of the advisory board.
	121(5)	In the event that in a particular area the advisory board member is not sufficient, the performing doctor may become a member of the consideration team.
	122(1)	Abortion services can only be performed with the consent of the pregnant woman and with the consent of her husband, except for victims of rape.
	122(2)	The exception to the husband's consent as referred to in paragraph (1) also applies to victims of other acts of sexual violence that result in pregnancy.
	122(3)	In the case of abortion services being carried out on people who are considered incompetent in making decisions, consent can be obtained from other family members.
	123	Assistance and counselling must be provided before and after the abortion, which is carried out by medical personnel, health workers, and/or other personnel.
	124(1)	In case of a victim of rape and/or other sexual violence resulting in pregnancy decided to cancel abortion after receiving assistance and counselling, the victim will be provided with assistance by a counsellor during pregnancy, childbirth, and postpartum.
Permenkes 2/2025	58	Everyone is prohibited from abortion, except for indications of a medical emergency or for victims of rape or other acts of sexual violence that result in pregnancy, in accordance with the provisions of the criminal code.
	59	Indications of medical emergencies as referred to in Art. 58 include: <ul style="list-style-type: none"> a. pregnancy that threatens the life and health of the mother; and/or b. health conditions of the fetus with incurable birth defects, so that it is not possible to live outside the womb.
	60(1)	Pregnancy as a result from rape or other sexual violence is proven by: <ul style="list-style-type: none"> a. doctor's certificate of gestational age which aligned with the incident of rape or other sexual violence resulting in pregnancy; and b. a statement from the investigator regarding the alleged rape and/or other sexual violence resulting in pregnancy.

	60(2)	The doctor's certificate as referred to in paragraph (1)(a) is made by a doctor based on the results of supporting examinations.
	62(1)	Abortion services may only be carried out with the consent of the pregnant woman and with the consent of her husband, except for victims of rape.
	62(2)	The exception to the husband's consent as referred to in paragraph (1) also applies to victims of other sexual violence that result in pregnancy.
	62(3)	In the event that the husband's consent as referred to in paragraph (2) cannot be fulfilled, consent may be given by family members.
	62(4)	In the case of abortion services being carried out on a person who is deemed incompetent in making decisions, consent can be given by family member.
	62(5)	Persons who are considered incompetent as referred to in paragraph (4) consist of: <ul style="list-style-type: none"> a. A minor. b. Persons with mental disabilities or intellectual disabilities as determined by a doctor who has competence and authority in the field of psychiatry or a doctor who is providing medical services at that time.
	63(1)	Abortion services that are permitted can only be carried out at advance health care facilities that meet the standards set by the Minister.
	63(3)	Advance health care facilities that provide abortion services for victims of rape or other acts of sexual violence are determined by the Minister.
	63(4)	In determining advance health care facilities as referred to in paragraph (3), the Minister involves the provincial health service and the local district/city health service.
	64(1)	Abortion services are provided by an advisory board and authorized doctors.
	64(2)	The advisory board is tasked with providing considerations and decisions in carrying out abortion services due to pregnancies that indicate a medical emergency and/or pregnancies resulting from rape or other sexual violence.
The National Penal Code 1/2023 (enter into force in January 2026)	463(1)	Every woman undergone an abortion is punishable with incarceration for maximum 4 years
	463(2)	Exception for: <ul style="list-style-type: none"> a. pregnancy as a result of rape or other sexual harassment, if gestational age is not yet exceeding 14 weeks; b. pregnancy with medical emergency issues
	464(1)	Every person performed illegitimate abortion for a woman is punishable with incarceration:

		<ul style="list-style-type: none"> a. 5 years if consent given from the woman, or; (464(2) if it resulted in the death of the woman, 8 years of incarceration) b. 12 years if consent was absent. (464(3) if it resulted to the death of the woman, 15 years of incarceration)
	465(1)	If Art. 464 is performed by medical personnel, the sanction is increased by 1/3.
The 1946 National Penal Code (currently in force)	299(1)	Anyone who intentionally treats a woman or causes her to be treated, by informing her or raising the expectation that the treatment will result in her pregnancy being terminated, shall be punished by a maximum incarceration of 4 years or a maximum fine of IDR45000
	299(2)	If abortion is the subject's occupation or if the subject is medical personnel, the sanction is increased by 1/3.
	346	A woman who intentionally aborts her pregnancy or orders someone else to do so is subjected to a maximum incarceration for 4 years.
	347(1)	Anyone who intentionally aborts a woman's pregnancy without her consent is subjected to a maximum incarceration for 12 years.
	347(2)	If the woman dies, punishable with maximum 15 years of incarceration.
	348(1)	Anyone who intentionally aborts a woman's pregnancy with her consent is subjected to a maximum incarceration for 5 years 6 months
	348(2)	If the woman dies, punishable with maximum 7 years of incarceration.
	349	If crimes based on Art. 346, 347 and 348 are committed by medical personnel, maximum punishment is increased by 1/3

Indonesia conforms with the ICCPR by enacting several legal bases for abortion. Because, as a rule of law state, the initial element of prevention from human rights abuse is by enacting legal bases about it. However, referring to the aforementioned provisions, the many provisions about criminalizing abortion will prevent victim to access safe abortion due to fear. Taking into account victims' psychological factor and unawareness of legal matters, complicated pre-requisites to access safe abortion will cause victims to retreat from accessing it. Later in the next section of this article, it is discussed the case when Indonesia criminalized a victim for performing abortion, which evidently put Indonesia not in accordance to the ICCPR.

Permenkes 2/2025 immediately engaged critics, particularly related to how abortion is provisioned. The new Permenkes 2/2025 is convoluted, bureaucratic, and difficult that it

is potentially violating women's rights. The Institute for Criminal Justice Reform (ICJR) established a note on how dangerous the regulation can be towards rape victims which can be derived into at least four controversies, those are:

- 1) Non-participatory drafting process;
- 2) Elimination of bodily autonomy for women with disabilities;
- 3) Discrimination towards sexual orientations and gender identities;
- 4) Limitation for access to safe abortion services.⁸

Taking the four problems into account, Permenkes 2/2025 is perceived as violating the basic principle set forth by The Health Law 17/2023 which mandates the State to provide primary and secondary health services for vulnerable communities with inclusive, non-discriminatory principles.⁹ This group includes individuals who are socially marginalized, whether based on religion/belief, race or ethnicity, disability, sexual orientation and gender identity, as well as individuals living in disadvantaged, remote and border areas.¹⁰ Prerequisites as set forth in the Permenkes 2/2025 are expected to create more difficulties to achieve justice enforcement, prevalence to those individuals. Whereas, in sexual violence cases, victims and survivors have been facing significant challenges for access to justice. In its essence, the law sees women in a homogenous way. Whereas, Indonesian women, may seem homogenous, but they are very heterogeny and this is non-equivalent to the protection offered by the provisions in the laws. Without taking into account the intersectionality of Indonesian women, implementation of legal protection for victims will not achieve goals. Therefore, approach for abortion, both in legal and medical context must always include gender perspectives. To guide this analysis, this article utilized a due diligence framework that was introduced in 2016 which explained the accountability of a state in eliminating violence against women.¹¹

⁸ Institute for Criminal Justice Reform, "Ilusi Kebaruan Peraturan Menteri Kesehatan No.02 Tahun 2025: Regulasi Berbahaya Yang Memukul Mundur Pemenuhan Hak Kesehatan Seksual Dan Reproduksi," icjr.or.id, March 8, 2025, <https://icjr.or.id/ilusi-kebaruan-peraturan-menteri-kesehatan-no-02-tahun-2025-regulasi-berbahaya-yang-memukul-mundur-pemenuhan-hak-kesehatan-seksual-dan-reproduksi/>.

⁹ Ibid.

¹⁰ Ibid.

¹¹ Zarizana Abdul Aziz and Janine Moussa, "Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women" (Malaysia, November 2016), <https://www.peacewomen.org/sites/default/files/Due%20Diligence%20Framework%20Report%20final.pdf>.

The framework consists of 5 principles to measure state's compliance. The 5 principles are:

- 1) Prevention;
- 2) Protection;
- 3) Prosecution;
 - a) Punishment of perpetrators;
 - b) Provision of redress and reparation for victims/survivors.

If referring to the principle of prevention, protection and provision of redress and reparation for victims/survivors (the 1st, 2nd, and the 3rd principle), the Permenkes 2/2025 does not indicate Indonesia's accountability in handling women and girls victimized in sexual violence cases. This article aims to provide a textual analysis of Permenkes 2/2025 in relation to abortion service for rape and sexual abuse victims. By inserting gender perspectives into analysis towards the relevant legal texts, there can be understood the significant of the enactment of Permenkes 2/2025 towards rape victim.

2. RESEARCH METHODOLOGY

This article is a normative-juridical research that put legal documents as the basis of research. This article utilized textual analysis method towards legislation, in this context, Ministry of Health Regulation Number 2/2025 about Reproductive Health. Textual analysis is a methodology that involves understanding language, symbols, and/or pictures present in texts to gain information regarding how people make sense of and communicate life and life experiences (Hawkins 2017)¹². This legal text is analyzed with purpose to understand and to be able to criticize how the text is formulated, particularly its potential effect towards rape victims who seek for safe abortion.

To guide this analysis, this article utilized a due diligence framework that was introduced in 2016 which explained the accountability of a state in eliminating violence against women.¹³ The framework consists of 5 principles to measure state's compliance. The 5 principles are:

- 1) Prevention;
- 2) Protection;
- 3) Prosecution;

¹² Hawkins, Jennifer Morey. "Textual Analysis." In *The SAGE Encyclopedia of Communication Research Methods*, edited by , 1754-56. Thousand Oaks, CA: SAGE Publications, Inc, 2017. <https://doi.org/10.4135/9781483381411.n623>.

¹³ Zarizana Abdul Aziz and Janine Moussa, "Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women" (Malaysia, November 2016), <https://www.peacewomen.org/sites/default/files/Due%20Diligence%20Framework%20Report%20final.pdf>.

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3. DISCUSSION

Permenkes 2/2025 is a ministerial regulation that established in 2025 for the Health Law 17/2023. Not only supported by the Permenkes 2/2025, the Health Law is also elaborated further for implementational purposes through the Government Regulation 28/2024 (*Peraturan Pemerintah/PP 28/2024*). Therefore, analysing Permenkes 2/2025 is systematically with The Health Law and PP 28/2024.

This article utilized 3 principles from the due diligence framework of state accountability for eliminating violence against women.¹⁴ For analysis, three principles from this framework are relevant for the topic, those are principle of prevention, principle of protection, and principle of provision of redress and reparation for victims/survivors.

3.1 Prevention

The prevention principle addressed several key points, but one point relevant to this article is about 'Formulating Comprehensive Laws and Constitutional Guarantees'.¹⁵ Indonesia upholds a rule of law principle, henceforth, every aspect of governance and human life must be formulated through legal bases. That includes efforts to eliminate violence against women. Without written statutes, policies regarding any matters will not be executable. In the context of prevention from violence against women, for abortion issue, Indonesia has legalized several legal bases pertaining to abortion. The existence of those laws acts as a safeguard for women victimized in sexual violence which resulted to a pregnancy, so that they have access to terminate the unwanted pregnancy in a safe, legitimate way. The laws also applicable to pregnancy from any cause, but circumstantiated by emergency situations that endangered the safety of the mother.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

However, as aforementioned, the provisions lean towards harsh criminalization to those performing illegal abortion:

- 1) Permenkes 2/2025 Art. 58 says, “*Everyone is prohibited from abortion..*”
- 2) PP 28/2024 Art. 116 says, “*Every person is prohibited from performing an abortion..*”
- 3) The Health Law 17/2023 Art. 60(1) Says, “*Every person is prohibited from having an abortion..*”
- 4) The 2023 Penal Code Art. 463(1) says, “*Every woman undergone an abortion is punishable with incarceration for maximum 4 years.*”

These notions strongly affirmed that abortion is perceived as prohibited action, a crime, instead of a reproductive right as part of women’s rights. Although there are provisions that constituted criteria of a safe and legal abortion, these provisions are essentially some exceptions towards a prohibition. Henceforth, there will be a lingering fear of repercussion. Laws provided for ensuring a safe and legal abortion are potential to increase doubts from the women as well as medical personnels to actually agree to undergo it. Whereas, sexual violence victims are already reluctant to report their cases to the police, let alone to access legitimate abortion. This will potentially persuade victims to decide to keep an unwanted pregnancy, or, to decide for another ways for abortion that are actually unsafe and unlawful.

For example, a case in Jambi (2018) of WA, 15 years old, a victim of rape by her biological brother who was criminalized together with her mother for performing an abortion from a pregnancy resulting from the rape.¹⁶ She was pregnant as a result of rape conducted by her brother, she was then persuaded to terminate the pregnancy outside the supposed procedure. As a minor who became a rape victim, she did not aware aspects of legitimate and safe abortion, she was somewhat coerced for unsafe and illegal abortion, but she was still criminalized for that. This is the negative precedent of the implementation of abortion law.

Legitimate abortion procedure also requires pre-requisites that are daunting for victims. In a case where a sexual assault victim needs an abortion, she must comply to the pre-requisites before she can access safe abortion. The medical personnel also must comply. If one or few of the pre-requisites check lists are not met, the victim and the medical personnel are risked for criminalization with hard penalty. Whereas, access to justice for victimized

¹⁶ Eva Mazrieva, “Vonis Korban Perkosaan Yang Gugurkan Kandungan di Jambi, Dikritik Tajam,” VOA Indonesia, July 23, 2018, <https://www.voaindonesia.com/a/vonis-korban-perkosaan-yang-gugurkan-kandungan-di-jambi-dikritik-tajam/4493385.html>.

women must be set as accessible as possible, taking into account psychological state of victims as well as immediate safety measures for victims who are in immediate danger. Permenkes 2/2025 Art. 60(1) mentioned that:

“Pregnancy as a result from rape or other sexual violence is proven by:

- 1) doctor's certificate of gestational age which aligned with the incident of rape or other sexual violence resulting in pregnancy; and*
- 2) statement from the investigator regarding the alleged rape and/or other sexual violence resulting in pregnancy.”*

Documents pre-requisite will be limiting for victims because not every victim aware of her pregnancy in the beginning. Essentially, limiting abortion only for rape victims already discriminates reproductive rights for all women who experience unwanted pregnancy, regardless if the pregnancy is a result of a rape. The need to match gestational age with the date of rape is adding to the victim's trauma. Not every victim wants to report their assault case to the police for many reasons. There is a possibility when the best settlement is through non-litigation processes, and yet they may need abortion in the process. In this scenario, abortions cannot be undergone due to absence of police's statement, which is irrelevant because the goal is supposedly a reparation of victim that should be victim oriented.

The issue of consent is also arisen with the Permenkes 2/2025. Women should be able to decide for their body independently. Women should fully exercise the autonomy of their reproductive health. However, Art. 62(1)(2)(3)(4) mentioned the obligation of other person's consent towards victim's decision for abortion.

- 5) 62(1) says, “Abortion services may only be carried out with the consent of the pregnant woman and with the consent of her husband, except for victims of rape.”*
- 6) 62(2) says, “The exception to the husband's consent as referred to in paragraph (1) also applies to victims of other sexual violence that result in pregnancy.”*

These notions implies that married women can no longer be addressed as a free-willed individual but instead as a unity with her husband. Whereas, there shall be married couple with a non-supporting or even an abusive husband. In a scenario of marital rape that resulted in an unwanted pregnancy, Art. 62(1) will be limiting the victim's need for abortion. Although it is also stated an exception for rape and sexual violence victims, there is still consent needed from other family members.

“In the event that the husband's consent as referred to in paragraph (2) cannot be fulfilled, consent may be given by family members (Art. 62(3))”, this provision emphasize that consent for abortion should be given by a husband, in a case where the husband is absent, consent must be given by family members. This concludes that victim cannot decide

independently. Moreover, Art. 62(4) that says, “In the case of abortion services being carried out on a person who is deemed incompetent in making decisions, consent can be given by family members.” is perceived to discriminate victims with disabilities. This strengthens the ableism in Indonesia’s societal structures. Examples of incompetency if refers to Art 62(5) are:

- 7) A minor;
- 8) Persons with mental disabilities or intellectual disabilities as determined by a doctor who has competence and authority in the field of psychiatry or a doctor who is providing medical services at that time.

Permenkes 3/2016 which was established prior to Permenkes 2/2025 did not regulate about abortion consent for a person who is deemed incompetent in making decisions. Whereas Permenkes 2/2025 constituted that in the Art. 62(4). Thus, it is underlined that the development in the Permenkes 2/2025 increase the limitation for abortion.

There is a lingering question, if a minor or a mentally/intellectually disabled woman is pregnant as a result of a rape, then her families disagree for abortion, does she have to carry on with her pregnancy? Consequential answer will be yes, and this strongly conclude a non-victim-oriented law, which causes more harm to the victim instead of prioritizing her needs.

3.2 Protection

For the protection principle, there are several key points that should be taken into account:

- 1) Ensuring Availability of and Accessibility to Coordinated Support Services.
- 2) Upholding the Duties of First Responders
- 3) Fostering Positive Attitudes and Sensitization through Sustained Training
- 4) Implementing a Multi-sectoral Approach and Coordinating Services.¹⁷

Legal bases pertaining to abortion have provisioned support services, such as determining appropriate health care facilities and authorised personnels to process abortion requests. The Permenkes 2/2025 in Art. 63(1) Abortion services can only be performed at advance health care facilities that meet the standards set by the Minister. Henceforth, it is the authority of the Minister of Health to decide which health care facilities are appropriate to that criterion. However, this does not meet the principle because:

- 1) Advance health care facilities are located in bigger cities or regencies. Taking into account Indonesia is an archipelagic country which takes up very large territorial

¹⁷Aziz and Moussa, “Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women.”

borders, women live in desolated rural areas are limited from accessing such facility. While it is appreciated that advance health care facilities can provide safer and more professional procedure for abortion, until today, difficulty in accessing the service is still an issue that prevent women from accessing it. The government is encouraged to make it more accessible, but it has not met any realizations. The provision would be ideal if the accessibility of such facilities is guaranteed. It is also concerning that the Permenkes 2/2025 requires an advisory board of doctors who decide for abortions. An advisory board constituted to determine abortion process as provisioned in the Permenkes 2/2025 is not a new concept. The previous Permenkes 71/2014 also mentioned an advisory board as seen in Article 2(3) and (4): “*The doctor who performed abortion must not a member of the advisory board.*” “*In the event that in a particular area the advisory board member is not sufficient, the performing doctor may become a member of the consideration team.*” The narration of the provisions is similar to Permenkes 2/2025 and PP 28/2024. While it is a crucial issue that advanced health care facilities are not available in remote and rural area, consequently the availability of competence doctors is also limited, let alone to constitute a medical advisory board just to perform abortion.

- 2) The Permenkes 2/2025 emphasized that the authorized first responder is the police. It determined only police investigators as the only authority to provide evidence for the alleged sexual violence. Whereas, Art. 39 of the Anti-Sexual Violence Law 12/2022 (UU TPKS) says that reporting of sexual violence can be reported to the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA). Meaning, not all sexual violence victims report to the police.¹⁸ Thus, support services for victims are not coordinated because the laws are not harmonious.
- 3) Following the appointment of police as the determinator for abortion procedure is the report and certificate established by them to be the pre-requisites for abortion eligibility. This is reducing the rights of women in accessing safe abortion and very much lacking in prioritizing women’s right of their reproductive health. Many cases of sexual violence have not been reported or take a long time to be reported because the victims’ fear to report.¹⁹ Thus, they do not have official police certificate or their pregnancy have exceeded the maximum gestational age for abortion.

¹⁸Nafisa Putri Rozaq and Budiarsih, “Analisis Hukum Praktik Aborsi Oleh Tenaga Medis,” *Yustitiabelen* 111 (January 2025): 38–51.

¹⁹PKBI DIY, “Korban Kekerasan Seksual Masih Takut Melapor? Salah Siapa?,” PKBI DIY, December 7, 2023, <https://pkbi-diy.info/korban-kekerasan-seksual-masih-takut-melapor-salah-siapa/>.

- 4) Fulfilment of the rights of sexual violence victims has not been optimal because there are still implementational regulations have not been ratified by the President; not all Provinces/Districts/Cities have formed regional Women and Children Protection Services as the main implementers of sexual violence law; education and training for law enforcement officers and service institutions is not yet systematic.²⁰

Indonesian National Commission for Anti-Violence against Women (Komisi Nasional Anti Kekerasan terhadap Perempuan/Komnas Perempuan) reported that there were 103 rape victims who reported their cases directly to the Komnas Perempuan from 2018 to 2023. Almost all of them did not get access to safe abortion.²¹ This is very concerning that, when this service is not available, victims are at risk of undergoing unsafe abortion practices that have fatal consequences for them or that the abortion resulted in criminal sanction for all persons involved, including the victim.

3.3 Provision of redress and reparation of victims/survivors

The last indicator of state responsibility in eliminating violence against women is how the state able to put redress and reparation for victims and survivors. It is crucial that, while laws have been provided, actual implementation of redress and reparation that prioritizing victims and survivors perspective to be upheld. The key point of this principle that relevant to the article is, ‘adopting a Victim/Survivor-oriented Perspective’.²²

Safe abortion is one of remedies victims may require. Rape victims who are pregnant as a result, maybe need to undergo abortion to remove the traumatic unwanted pregnancy. To ensure that abortion is adequate based on the victim’s physical and psychological conditions, safe abortion procedures as constituted in the Permenkes 2/2025 appreciate the importance of counselling, both pre-abortion and post-abortion. This allows counsellors to guide victims throughout the process. However, taking into account that Permenkes 2/2025 already set pre-requisites of eligibility for safe abortion service, as previously discussed; to achieve this stage of counselling procedure, victims will already be daunted by the list of requirements. Pre-requisites that most victims would feel difficult to know, understand,

²⁰ Komnas Perempuan, “Ringkasan Eksekutif ‘Menata Data, Menajamkan Arah: Refleksi Pendokumentasian Dan Tren Kasus Kekerasan Terhadap Perempuan 2024’ Catatan Tahunan Kekerasan Terhadap Perempuan Tahun 2024,” March 7, 2025, <https://komnasperempuan.go.id/download-file/1316>.

²¹ Komisi Nasional Anti Kekerasan terhadap Perempuan, “Pernyataan Sikap Komnas Perempuan Terhadap Ketentuan Aborsi Bagi Korban Tindak Pidana Kekerasan Seksual Dalam PP No. 28 Tahun 2024 Tentang Kesehatan,” August 3, 2024, <https://komnasperempuan.go.id/pernyataan-sikap-detail/pernyataan-sikap-komnas-perempuan-terhadap-ketentuan-aborsi-bagi-korban-tindak-pidana-kekerasan-seksual-dalam-pp-no-28-tahun-2024-tentang-kesehatan>.

²² Aziz and Moussa, “Due Diligence Framework: State Accountability Framework for Eliminating Violence against Women.”

or want to fulfil due to many circumstances, such as, education level, maturity level, religious or societal norms surrounds the victims.

To adopt victim/survivor-oriented perspective, it is natural that the laws about abortion are also adopting the same perspective. The root of this complication is state's perspective towards abortion that still essentially leans on the religious and political lens, instead of gender lens. Abortion has not fully appreciated as women's rights toward reproductive health, but rather, abortion is a crime. Henceforth, abortion is very strictly regulated. Women are highly restricted from accessing safe abortion. Only those who are victims of rape or those can prove that their pregnancy is endangering, may be allowed for safe abortion, and also only if their spouse or their families consented to it. Otherwise, they are criminalized. These notions are far from victim/survivor-oriented perspective.

While it is appreciated that the procedure for ensuring the most appropriate treatment for the woman, it is also within concern that long and complicated procedures has caused, and will continue to, a reluctance to access safe abortion. Adding to that preposition is the lack of knowledge of the boundaries of legal and illegal abortion. Women worry if abortion will lead to criminalization.

Resonated with that, Indonesia's National Women Commission (Komnas Perempuan) in their public statement mentioned that,

“Based on the above procedural guidelines, Komnas Perempuan recognizes the potential for reducing access for victims of sexual violence with unwanted pregnancies to this abortion exception right related to more restrictive regulations compared to the Minister of Health Regulation (Permenkes) No. 3 of 2016 concerning Training and Provision of Abortion Services for Pregnancy with Indications of Medical Emergency and Pregnancy resulted from Rape.”²³

3.4 National approach on abortion is not in accordance to International Law

It can be examined from the discussion above that Permenkes 2/2025 as well as other laws regarding abortion have not been oriented towards victims' protection and women's right. Rather constituted from the basis of criminalizing abortion because it is against cultural and religious norms. Whereas, this approach is not in accordance to international instruments in which Indonesia has already ratified.

These aspects on consent, limitation of health care facility, and criminalization for women choosing for abortion are against the General Recommendation Number 24 of

²³Komisi Nasional Anti Kekerasan terhadap Perempuan, “Pernyataan Sikap Komnas Perempuan Terhadap Ketentuan Aborsi Bagi Korban Tindak Pidana Kekerasan Seksual Dalam PP No. 28 Tahun 2024 Tentang Kesehatan.”

Convention on the Elimination of All Form of Discrimination against Women (CEDAW) which stated:

“The obligation to respect rights requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. States parties should report on how public and private health care providers meet their duties to respect women's rights to have access to health care. For example, States parties should not restrict women's access to health services or to the clinics that provide those services on the ground that women do not have the authorization of husbands, partners, parents or health authorities, because they are unmarried or because they are women. Other barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures.”²⁴

The formulation of laws pertaining to abortion in the current legal system is taking from the perspective that abortion is a sin and a crime towards life. If the perception is shifted towards a notion that abortion is women’s reproductive health, the law would have been provisioned differently.

The low number of rape victims in accessing safe abortion in Indonesia is reflecting the slow development in government side to ensure the accessibility of safe abortion services in all levels. This is not affirming another recommendation from CEDAW which stated:

“States parties should report on measures taken to eliminate barriers that women face in gaining access to health care services and what measures they have taken to ensure women timely and affordable access to such services. Barriers include requirements or conditions that prejudice women's access such as high fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and absence of convenient and affordable public transport.”²⁵

Whereas, the latest PP and Permenkes require only advanced tier of health care facilities allowed to provide abortion. They limit to only advanced facilities that can provide abortion exception service, while previously abortion could also be done at health facilities in health centres, primary clinics, primary clinics or equivalent and hospitals.²⁶

The New Penal Code 1/2023 that is going to enter into force in January 2026 provisioned 14 weeks of gestational age as the maximum fetus’ age that is allowed for

²⁴UN Women, “Convention on the Elimination of All Form of Discrimination against Women General Recommendation No. 24,” Pub. L. No. General Recommendation Number 24 (20th session, 1999), un.org (1999), <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>.

²⁵ *Ibid.*

²⁶Komisi Nasional Anti Kekerasan terhadap Perempuan, “Pernyataan Sikap Komnas Perempuan Terhadap Ketentuan Aborsi Bagi Korban Tindak Pidana Kekerasan Seksual Dalam PP No. 28 Tahun 2024 Tentang Kesehatan.”

abortion. This aligns with a religious belief that fetus becomes alive when it reaches 4 months inside the womb. Thus, abortion can only be allowed before that, when a fetus is not considered a human-being. Although, there is also a perspective that fetus is a human being since its first conception. However, this provision adds the barrier for rape victims in accessing justice, because not all victims know or willing to report her case immediately, or, she is not aware that she was pregnant until her pregnancy exceeding a legitimate gestational age.²⁷

Normatively, it can be explained that there are sufficient number of policies that guarantee the implementation of safe abortions for pregnancies with indications of medical emergencies and pregnancies resulting from rape. However, despite the policies being in place, the way the laws are constituted and narrated set some complicated measures which open doors for undue process of law that will result in revictimization or criminalization for victims. Whereas, abortion services for rape victims are still difficult to access.²⁸

Complications in access to justice also appear in inconsistencies between regulations. Article 118 of PP 28/2024 states that evidence of rape can only be proven by the testimony of a doctor and police investigator. The requirements listed there are different from those regulated by PP 61/2014 about Reproductive Health which allows evidence regarding alleged rape not only from investigators, but also psychologists, and/or other experts. The PP 61/2014 also provisioned an Art. 37 that in the paragraph (1) and (3) which stated:

“Abortion based on indications of medical emergencies and pregnancy resulting from rape can only be carried out after counselling.”

“Pre-procedure counselling is carried out with the aim of: a. exploring the needs of women who wish to have an abortion;.....”

These two Articles imply to prioritize the women, therefore, these two articles are the only article that strongly deliver a gender-lens capacity in protecting victimized women. This also shows that the latest Permenkes and PP (government regulation) created more limitation for available services for victims.

In Indonesian law enforcement context, particularly in sexual violence against women, there is a reluctance for a rape victim to decide to meet an investigator (police), or psychologist, or other expert in the near future after the crime has occurred.²⁹ In sexual

²⁷Rahmat Fahri Rajak Abdullah and Sri Wiyanti Eddyono, “Trauma Psikologis Sebagai Alasan Dilakukan Aborsi Terhadap Korban Perkosaan.” (Universitas Gajah Mada, 2019).

²⁸*Ibid.*

²⁹Zumrotin K Susilo and Dony Hendrocahyono, “DESK REVIEW: Tentang Pengaturan Aborsi Aman Dalam Peraturan Pemerintah No 61 Tahun 2014 Tentang Kesehatan Reproduksi,” June 30, 2019, <https://ykp.or.id/wp-content/uploads/2021/01/Desk-Review-YKP-1.pdf>.

violence against women, it is always involving intersectionality. Thence, adequate approach for abortion rights for rape victims must not be based on legal approach only, but must also prioritize victims-oriented settlement.

4. CONCLUSION

States responsibility for eliminating violence against women in the context of providing safe abortion for rape victims can be analysed through the principle of prevention, protection, and provision of redress and reparation of victims/survivors. Based on prevention principle, Indonesia has provided legal bases about safe abortion, including the Permenkes 2/2025 to ensure legal certainty has been achieved by having a written laws to make abortion policy executable. However, based on the principle of protection and provision of redress and reparation of victims/survivors, the available laws are not adequate in achieving victims'-oriented settlement in sexual violence cases. Permenkes 2/2025 requires too many pre-requisites before safe abortion can be undergone; it is also criminalizing abortion as the ground principle; the provisions are not in accordance to international instruments that has been ratified (CEDAW); it discriminates women with disabilities and does not respect women to decide independently for her reproductive needs; an actual case evidently showed that a rape victim who performed abortion was criminalized. Thus, in implementational level, states responsibility to ensure safe abortion is accessible for victims is not achieved.

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