

Legal Protection for Victims of Sexual Violence Who Undergo Abortion from The Perspective of Health Law and Human Rights (Comparison of National and International Law)

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Abstract. This research aims to analyze the legal protection for victims of sexual violence who undergo abortion from the perspectives of health law and human rights, while comparing Indonesian national law with international legal standards. This study employs normative legal research with a comparative legal approach. The findings indicate that although Indonesian regulations (Health Law and Sexual Violence Crimes Law/UU TPKS) provide legal avenues for safe abortion for rape victims, implementation remains hindered by social stigma, bureaucratic hurdles, and conflicting moral norms. A comparison with international instruments, such as the CEDAW Convention and UN General Comments, reveals a shift from mere health protection toward the fulfillment of reproductive rights as fundamental human rights. The study concludes that there is an urgent need for regulatory harmonization that is more flexible and trauma-sensitive to ensure access to safe abortion without the threat of criminalization.

Keywords: Abortion; Health Law; Human Rights; Legal Protection; Sexual Violence.

1. Introduction

The 1945 Constitution of the Republic of Indonesia is the highest source of law in the national legal system. All laws and regulations and legal policies, including those concerning abortion and protection for victims of sexual violence, must be consistent with and not contradict the constitutional principles guaranteed in the 1945 Constitution.

Several articles in the 1945 Constitution that are relevant to this issue are as follows:

1. Article 28A

"Everyone has the right to live and the right to defend his life and livelihood."

This article guarantees the right to life as the most fundamental human right. In the context of victims of sexual violence, protection of the right to life must be interpreted broadly, including the right to maintain a quality of life, physical and mental health, and the right to make decisions regarding one's survival, including medical decisions such as abortion under certain circumstances.

2. Article 28B paragraph (2)

"Every child has the right to survive, grow and develop and has the right to protection from violence and discrimination."

While this article is often used as a basis for prohibiting abortion, it should be noted that the 1945 Constitution also emphasizes protection from violence and discrimination. When a woman is a victim of sexual violence and experiences an unwanted pregnancy, the state must consider the interests of the victim as a whole, not just the fetus, to prevent discrimination and compounded suffering.

3. Article 28G paragraph (1)

"Everyone has the right to protection of themselves, their families, their honor, their dignity and the property under their control, and has the right to a sense of security and protection from the threat of fear to do or not do something that is a basic human right."

This article is highly relevant to women's rights to bodily integrity and dignity. Victims of sexual violence have the right to legal protection and a sense of security, including the right to make decisions about their bodies without the threat of criminalization or social pressure.

4. Article 28H paragraph (1)

"Everyone has the right to live in physical and spiritual prosperity, to have a place to live, and to have a good and healthy living environment and has the right to receive health services."

The right to health care includes reproductive health services, including abortions performed for medical reasons or as a result of pregnancy resulting from rape. States are obliged to ensure fair and safe access to these services as part of their constitutional obligations.

Thus, the 1945 Constitution explicitly and implicitly contains principles for protecting victims of sexual violence and guarantees the right to health, dignity, a sense of security, and protection from discriminatory treatment. The state is obliged to provide a legal framework that allows victims to receive comprehensive protection, including in medical decisions such as abortion in emergency situations or as a result of sexual crimes.

In the comparative framework of national and international law, the 1945 Constitution provides a constitutional basis that can be used as a meeting point between national legal norms and international legal principles, particularly in the aspects of human rights and women's reproductive health.

Abortion remains a controversial legal and ethical issue in many parts of the world. In Indonesia, abortion is strictly regulated and permitted only under certain circumstances, including for victims of sexual violence, as stipulated in Article 75 of Law No. 36 of 2009 concerning Health. However, in practice, women who are victims of sexual violence who seek abortion still face various legal, social, and medical barriers.

According to WHO (2012), safe abortion services are part of a health system that must be based on human rights principles, including accessibility, safety and non-discrimination.¹

Pancasila, as the state philosophy, the source of all legal sources, and the fundamental norm of the Republic of Indonesia, plays a crucial role in shaping the direction of national policy and the legal system, including the protection of victims of sexual violence who undergo abortion. Pancasila serves not only as an ethical and moral guide, but also as a foundation for formulating legal policies that are just, humane, and uphold human dignity.

The first principle emphasizes the importance of respecting divine and humanitarian values. In the context of victims of sexual violence, this principle implies that all legal actions and policies must adhere to the values of compassion, forgiveness, and justice, which are rooted in divine values. The state must not treat victims of sexual violence repressively but must instead provide protection and reparation, in accordance with universal moral teachings that respect the suffering of fellow human beings.

The second principle is highly relevant to the main issue of this thesis. Sexual violence is a serious violation of human values. When women who are victims of sexual violence choose to have an abortion under duress, a civilized and humane legal approach must be prioritized. Criminalizing victims in situations of profound trauma contradicts the spirit of just and civilized humanity.

¹WHO, Safe Abortion: Technical and Policy Guidance for Health Systems, 2nd ed. (Geneva: World Health Organization, 2012)

Pancasila demands that victims be treated not as lawbreakers, but as individuals whose rights have been violated and must be fully restored, both legally, psychologically and socially.

The third principle embodies the values of solidarity and social integration. Fair law enforcement for victims of sexual violence who undergo abortion also strengthens social cohesion. If the state ignores the suffering of victims, social disintegration can occur due to a loss of public trust in the legal system. Protecting victims is a way to maintain unity and social justice among citizens.

Furthermore, within the framework of human rights philosophy, the right to health, the right to physical and mental integrity, and the right to be free from torture or cruel, inhuman, or degrading treatment are fundamental rights that must be guaranteed by the state. Many international documents, such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), state that the state is obliged to provide effective legal protection to women victims of sexual violence, including in decision-making regarding their reproduction.

Thus, the philosophical basis of this research places law as an instrument for protecting and respecting women's fundamental rights, and demands that legal norms are not only repressive, but also solution-oriented and oriented towards substantive justice, especially in complex cases such as abortion due to sexual violence.

In terms of legal philosophy, there are three main pillars that form the basis for the formation and implementation of law, namely justice, legal certainty, and utility.² In cases of abortion resulting from sexual violence, justice demands recognition of the victim's trauma and suffering, as well as providing legal space for women to make the most humane and rational decisions for themselves. Legal certainty is crucial to ensure that victims do not experience criminalization or double stigmatization. Meanwhile, legal benefits point to the importance of protecting victims to prevent broader psychological and social impacts.

From a moral philosophical perspective, particularly according to Immanuel Kant, humans should be treated as ends, not means (categorical imperative). Therefore, respect for women's bodily autonomy is a fundamental, non-negotiable principle, especially when that right has been violated through sexual violence.

Furthermore, within the framework of human rights philosophy, the right to health, the right to bodily integrity, and the right to be free from cruel or

²Gustav Radbruch, Rechtsphilosophie, 1932

inhumane treatment are non-derogable human rights. This is affirmed in various international legal instruments, such as:

1. Universal Declaration of Human Rights (UDHR) Articles 3 and 5: everyone has the right to life, liberty and security of person, and shall not be subjected to torture or cruel treatment.
2. International Covenant on Civil and Political Rights (ICCPR) Article 7: prohibition of torture or treatment that degrades human dignity.
3. International Covenant on Economic, Social and Cultural Rights (ICESCR) Article 12: the right of everyone to the highest attainable standard of physical and mental health.
4. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) Article 12 and the CEDAW Committee's General Comment (General Recommendation No. 24): emphasizes the obligation of states to remove legal barriers to women's access to reproductive health services, including safe abortion in certain cases.

In the national context, the constitutional basis for protection of women victims of sexual violence can be found in:

1. The 1945 Constitution of the Republic of Indonesia Article 28G paragraph (1): everyone has the right to protection of themselves, their family, their honor, their dignity and their property.
2. Article 28I paragraph (4): protection, promotion, enforcement and fulfillment of human rights is the responsibility of the state, especially the government.
3. Law Number 36 of 2009 concerning Health, Articles 75 and 76: open up space for abortion in medical emergencies and for rape victims, although it is still limited and administrative in nature.

This philosophy is also supported by a legal feminist approach, which critiques the dominance of a patriarchal legal system that often ignores women's experiences and needs. In this view, the law must be reformed to be more responsive to gender inequality and the suffering faced by female victims of sexual violence.³

The gap between national regulations and international standards raises serious questions about how countries should formulate fair legal protection for victims of sexual violence who undergo abortion. Therefore, an in-depth study of legal

³MacKinnon, Catharine A., *Toward a Feminist Theory of the State*, 1989.

protection for victims from the perspective of health law and human rights, both nationally and internationally, is needed.

Based on the description above, it is necessary to conduct research to find new norms so that legal protection for victims of sexual violence who undergo abortions does not conflict with constitutional principles with the title "Legal Protection for Victims of Sexual Violence Who Undergo Abortions in the Perspective of Health Law and Human Rights (Comparison of National and International Laws).

2. Research Methods

The type of research used is normative legal research. This research is conducted by examining library materials or secondary data as the basis for research by conducting a search of regulations and literature related to the problem being studied.

3. Results and Discussion

3.1. John Rawls' Theory of Justice: Justice as Fairness for Vulnerable Groups

John Rawls, an American political philosopher, introduced the concept of "justice as fairness" in his book, *A Theory of Justice* (1971). This theory emphasizes the importance of fair justice for all, especially those in the most vulnerable social positions. Rawls rejected the utilitarian view that only considers the greatest benefit for the majority, and instead prioritized the protection of individual rights and interests, especially those of marginalized groups.

According to Rawls, justice can only be achieved if:

"The principles of justice are designed behind a 'veil of ignorance', where the rule-makers are unaware of their social, economic, or gender position in society." (Rawls, 1971)

Under that assumption, one would choose principles of justice that best protect the most vulnerable groups because they are likely to be included. Rawls formulated two main principles of justice:

- a. The Principle of Equal LibertyEveryone should have the same right to the broadest basic freedoms, such as freedom of speech, freedom of thought, freedom from violence, and the right to justice.
- b. Difference PrincipleSocial and economic inequality can only be justified if it benefits the least advantaged groups, and everyone has an equal opportunity to achieve that position.
- c. Application in the Protection of Victims of Sexual Violence Who Undergo Abortion

When applied in the context of legal protection for victims of sexual violence who undergo abortion, Rawls' theory of justice emphasizes that:

- a. The state has a moral and legal obligation to create a legal system that is just for all., including female victims of sexual violence;
- b. Vulnerable groups (such as women victims of sexual violence) have the right to stronger and more affirmative legal protection;

In the context of Indonesian and international law, many policies normatively state protection for victims but fail to guarantee substantive justice. For example:

- a. Obligation of police report to prove rape before receiving abortion services;
- b. Lack of victim-friendly and gender-responsive health facilities;
- c. Stigma against women who choose abortion, despite his status as a victim.

According to Rawls, policies like these reflect unfair structural inequalities, and therefore need to be reformed based on the principle of fairness.

In countries with progressive legal systems, such as Canada, Sweden, or the Netherlands, the legal approach to abortion takes into account substantive justice and individual rights, particularly for victims of sexual violence. They adopt the principle of non-discrimination and the right to free reproductive self-determination, in line with the Rawlsian principle that inequality can only be justified if it benefits the most vulnerable.

On the other hand, some legal systems that are too restrictive regarding abortion actually exacerbate inequality and contradict the spirit of justice as fairness.

John Rawls's Theory of Justice provides a strong philosophical framework for assessing and correcting legal policies that persist in discrimination against female victims of sexual violence. In the context of abortion resulting from rape, this theory demands a legal system that guarantees freedom, equal opportunity, and maximum protection for vulnerable groups. Therefore, the application of this theory can serve as a strong argumentative basis for encouraging changes in national law to be more just and human rights-based.

In *A Theory of Justice*, John Rawls⁴ developed a theory of justice as fairness, which aims to create a just and equal social order for everyone, especially those in the most disadvantaged positions.

Two Principles Justice According to Rawls:

⁴Rawls, John. (1971). *A Theory of Justice*. Cambridge: Harvard University Press.

- a. Everyone has an equal right to the broadest basic liberties, which is equivalent to equal freedom for all.
- b. Social and economic inequality can only be justified if:
 - 1) Can provide the greatest benefits to the least fortunate groups (difference principle),
 - 2) And positions and positions are open to everyone under conditions of equal opportunity.

In the context of human rights, Michael Freeman (2008)⁵emphasizes that a human rights approach must consider multidisciplinary dimensions, including morality, law, politics, and sociology. Freeman states that true human rights protection can only be achieved when fundamental rights are not only formally recognized but also truly accessible to all, especially groups that are socially and structurally vulnerable.

In this regard, women who are victims of sexual violence are a highly vulnerable group, physically, psychologically, and socially. The state's failure to provide access to safe and legal abortion services can be seen as a disregard for human rights protections, as it exacerbates the victims' suffering and perpetuates structural injustice.

Freeman also emphasized that legal systems must be sensitive to the context and social realities faced by vulnerable groups. Therefore, states are not only obligated to respect individual rights but also to ensure that laws and public policies do not become new instruments of oppression through restrictions on reproductive rights.

In his work Amartya Sen (2009)⁶He criticized approaches to justice that focused too much on ideal institutions and formal procedures. Instead, he emphasized the importance of realization-focused comparisons and fulfilling each individual's substantive capabilities to live a life they deem meaningful.

Sen argues that justice should be judged not just by how well institutions formally function, but by how much people's lives are actually improved. In this context, women victims of sexual violence who are forced to continue their pregnancies because of abortion bans are a clear example of substantive injustice.

⁵Freeman, Michael. (2008). *Human Rights: An Interdisciplinary Approach*. Polity Press.

⁶Sen, Amartya. (2009). *The Idea of Justice*. Harvard University Press.

"Justice is not just about just institutions, but about how real human lives can be made more just."— Sen, 2009

Sen also introduced the concept of the capability approach, which holds that the freedom to choose and perform valued actions is the essence of justice. Therefore, a woman must have the real (not just formal) freedom to choose whether to continue or terminate a pregnancy, especially when the pregnancy is the result of sexual violence.

From this perspective, the state is not only responsible for providing laws but also for ensuring that individuals, especially vulnerable groups, have the conditions to meaningfully exercise their rights. This includes access to safe reproductive health services, accurate information, and psychosocial support.

According to data from the 2021 Annual Report of the National Commission on Violence Against Women (Komnas Perempuan), there were 299,911 cases of violence against women in Indonesia, with sexual violence being the most prevalent form. CATAHU also highlighted that many victims of sexual violence face significant barriers in accessing legal and health services, including pregnancy resulting from rape.

National Commission on Violence Against Women⁷ noted that pregnant victims of sexual violence often experience revictimization, where they are forced to continue the pregnancy without considering their physical and psychological well-being. In some cases, victims are even criminalized for choosing to have an abortion, even though the act was done to save themselves from greater suffering. "The state has not optimally provided guarantees of protection and recovery for women victims of sexual violence, especially those facing pregnancy resulting from rape." National Commission on Violence Against Women, CATAHU 2021

This demonstrates a serious gap between national legal regulations and the actual needs of victims on the ground. The absence or limited access to safe abortion services in situations of sexual violence not only violates the right to health but also potentially violates the right to freedom from torture, as guaranteed under international human rights law.

Irene Hadiprayitno (2010)⁸ argues that human rights enforcement in Indonesia tends to be defensive and reactive, rather than progressive and transformative. States often only meet minimum human rights standards to maintain political

⁷National Commission on Violence Against Women. (2021). Annual Notes: Violence against Women.

⁸Hadiprayitno, Irene. (2010). "Defensive Enforcement: Human Rights in Indonesia." Human Rights Review, Vol. 11(3).

legitimacy and international relations, rather than out of a genuine commitment to human rights values.

In the context of abortion for victims of sexual violence, this attitude is reflected in very limited legal regulations that are unresponsive to victims' real needs. For example, although Government Regulation No. 61 of 2014 concerning Reproductive Health regulates abortion under certain conditions (including rape), its implementation in the field is minimal. Many victims struggle to access medical services due to complicated administrative procedures, social pressure, and the stigma against women who experience sexual violence.

Hadiprayitno believes this situation represents a formalistic and non-substantive form of human rights enforcement. The state tends to protect its "legal image" rather than address the injustices experienced by individuals, especially vulnerable groups such as female victims of sexual violence.

"The Indonesian government's human rights engagement remains largely defensive, fulfilling obligations formally while avoiding substantive transformation."— Hadiprayitno, 2010: 315

In Rawls's theory, there is a fundamental distinction between formal justice and substantive justice. Formal justice only ensures that everyone is treated equally based on written law, without considering the varying social and psychological conditions of individuals. Meanwhile, substantive justice emphasizes fair treatment while considering the vulnerability and social position of victims, especially marginalized groups. In the context of abortion resulting from rape:

- a. Formal justice might simply state that "abortion is permissible in certain cases."
- b. However, substantive justice demands that the legal system ensure real and non-discriminatory access to such services, without having to go through bureaucratic processes that worsen the conditions of victims.

This substantive justice is what Rawls truly fought for through the Difference Principle and the principle of equal freedom for all.

A number of countries have implemented legal policies that reflect Rawlsian values of justice:

- a. Canada: The Supreme Court in the decision *R. v. Morgentaler* (1988) held that abortion bans that restrict women's choices are contrary to the principles of liberty and personal security.
- b. Colombia: A 2006 Constitutional Court ruling allows abortion in cases of rape, fetal malformation, or when the pregnancy endangers the mother's life. The

ruling emphasized that the state must protect women as a vulnerable group in reproductive decision-making.

This demonstrates how the principle of justice can be translated into a legal rule that is responsive, humane, and pro-victim. Based on Rawls's principle of justice:

- a. Law Number 36 of 2009 concerning Health, although it opens up opportunities for abortion in certain cases, still needs to be revised to be more operational and support victims of sexual violence.
- b. There needs to be implementing regulations that facilitate access to safe abortion, without burdensome administrative requirements.
- c. It is necessary to strengthen the legal protection system that is not only normative but also implementative, so that women victims of violence are not only protected legally, but also socially, psychologically, and medically.

The application of Justice Theory in this thesis provides a strong normative and philosophical framework for assessing the extent to which national and international laws are able to fulfill the principles of justice for victims of sexual violence who undergo abortion. Rawls offers the perspective that:

- a. Justice is not formal equality, but real protection for the most vulnerable;
- b. States have a moral and legal responsibility to design systems that minimize the suffering of marginalized groups;
- c. Abortion in the context of rape is not only a moral dilemma, but a justice issue that demands a holistic and empathetic approach.

By adopting a Rawlsian approach, this dissertation will show that legal protection for victims of sexual violence who undergo abortion is not only about the legal validity of the action, but also about the state's commitment to the principles of social justice, protection of individual rights, and the elimination of structural discrimination.

3.2. Pancasila Justice Theory Feminist Theory of Law: An Analysis of Legal Bias and the Need for a Gender-Responsive Approach

Feminist legal theory is a branch of critical legal theory that stems from the idea that the legal system has historically been constructed based on the experiences and perspectives of men, and tends to ignore the experiences, needs, and interests of women. Legal feminism seeks to dismantle and critique patriarchal legal structures and encourage legal reform to be more inclusive and gender-responsive.

According to Catharine A. MacKinnon, a key figure in legal feminism, law is not neutral, but rather reflects male domination over women. She stated:

"The law sees and treats women the way men see and treat women."
(MacKinnon, 1989)

In other words, law is not just a collection of objectively fair rules, but also contributes to shaping and reinforcing gender inequality.

The feminist approach highlights that the conventional legal system:

- a. Experiencing patriarchal bias, because it is constructed by and for men;
- b. Does not take into account women's social and biological realities, including experiences of sexual violence and unwanted pregnancies;
- c. Making women as objects of moral protection, not as autonomous legal subjects;

Concrete examples of this bias are legal provisions that require women who are victims of rape to strictly prove the element of violence, as well as regulations that regulate abortion in a restrictive and bureaucratic manner, even though the abortion is carried out to save the victim's mental and physical health.

Feminist legal theory encourages the adoption of a gender-responsive legal approach, namely a legal approach that:

- a. Recognizing women's specific experiences and needs;
- b. Ensuring legal protection not only normatively, but also substantively;
- c. Providing space for women to make decisions about their bodies and their future;

According to Carol Smart, the law must be criticized because it has historically defined women as "the other." Therefore, legal reform efforts must include transforming legal structures and values to better align with the experiences of victims (Smart, 1989).

In the case of abortion by victims of sexual violence, legal feminism offers a critical framework for:

- a. Rejecting moral discourse that blames women for their pregnancies;
- b. Promote the recognition of abortion as a health right and a right to a woman's body;
- c. Identifying structural barriers (bureaucracy, visas, family permits) as forms of legal violence;
- d. Fight for laws that provide real and safe choices for victims.

In Indonesia, although there are exceptions to criminal law for abortions performed for medical reasons or by rape victims (Health Law No. 36 of 2009 & Government Regulation No. 61 of 2014), their implementation remains very limited. A legal feminist approach argues that:

- a. Policies that still position women as objects, not subjects who are free to determine their reproductive rights, perpetuate gender inequality;
- b. Complicated legal mechanisms have the potential to discriminate against victims twice: as survivors of sexual violence and as women in need of legal assistance.

Therefore, legal reform based on legal feminism is very necessary to strengthen the protection of women victims of sexual violence, especially in terms of access to safe and legal abortion services.

Catharine A. MacKinnon⁹highlights that law and the state often operate with a patriarchal bias, namely accommodating and preserving male power over women. MacKinnon's Main Idea:

- a. The law is not gender neutral, but are often shaped by and for the benefit of men.
- b. Sexual violence and male domination are political and social tools to maintain gender inequality.
- c. The state fails to protect women, especially in cases of sexual violence, because the legal system is insensitive to women's experiences and trauma.

In the context of female victims of sexual violence who undergo abortion, MacKinnon's theory asserts that:

- a. The state and law often blame or punish women, instead of providing protection and justice.
- b. Abortion bans, in many cases, reflect state control over women's bodies, without regard to the context of violence or coercion experienced.
- c. Gender-responsive legal protection is essential to eliminate systemic discrimination and provide substantive justice.

Carol Smart¹⁰criticizes modern law, which is often seen as neutral and objective, but in reality reinforces patriarchal structures and fails to provide justice for women. Carol Smart's main idea:

⁹MacKinnon, Catharine A. (1989). *Toward a Feminist Theory of the State*.

¹⁰Smart, Carol. (1989). *Feminism and the Power of Law*. Routledge.

- a. Law is not only a normative tool, but also a medium of discourse and power that shapes social reality, including the concepts of "victim", "perpetrator", and "justice".
- b. Women are not only sidelined in the legal process, but their identities and experiences are often not recognized within a masculine legal framework.
- c. Smart calls for the importance of feminist strategies that not only fight for legal reform, but also develop alternative ways of understanding justice.

Carol Smart's work is highly relevant in discussing legal protection for victims of sexual violence who undergo abortion, particularly from the perspective of women's human rights and gender responsiveness because:

- a. Abortion laws and criminal law often ignore the traumatic experiences of victims of sexual violence.
- b. Smart's critique can be used to assess whether national laws (e.g. the Criminal Code or the Health Law) still convey a patriarchal perspective.
- c. A legal approach is needed that recognizes the social reality of victims, not just enforces legal norms in a formalistic manner.

Katharine T. Bartlett¹¹ introduces a feminist legal methods approach as a way to understand and critique law from the perspective of women's experiences. She argues that traditional law often claims neutrality, but in fact often reflects and reinforces gender bias. Three Main Methods in "Feminist Legal Methods":

- a. Contextual Method: Law must be understood in the context of the real experiences of individuals, especially women.
- b. Narrative Method: Using personal stories or experiences to reveal how the law affects women's lives in real terms.
- c. Transformative Method: Active efforts to change the law to be more just and inclusive, not just adding women to the existing legal structure.

This approach is very useful for analyzing legal protection for women victims of sexual violence who undergo abortion, because:

- a. Encourage an understanding of the law that is not rigid and formalistic, but rather understands the life experiences of victims in a holistic and humane manner.

¹¹Bartlett, Katharine T. (1990). Feminist Legal Methods. Harvard Law Review, Vol. 103, no. 4

- b. Provides a theoretical basis for assessing whether national and international legal systems are inclusive of women's realities.
- c. Supporting the need for legal reform that accommodates the right to reproductive health as part of human rights.

In this policy document, the National Commission on Violence Against Women highlights the conditions and structural barriers faced by women victims of sexual violence, particularly in terms of access to reproductive health services, including safe abortion.¹² Key Points in the Document:

- a. Conveying the urgency of recognizing reproductive rights as part of human rights.
- b. Affirming that women who are victims of sexual violence have the right to access safe and dignified abortion services, especially in cases of unwanted pregnancy resulting from rape.
- c. Criticizing regulations and policies in Indonesia that still limit victims' rights, whether through bureaucratic obstacles, social stigma, or narrow legal interpretation.

Nurmala using a legal feminist theory approach to analyze how abortion policies in Indonesia tend to ignore the perspectives and needs of women, especially victims of sexual violence.¹³ Key Points in the Article:

- a. Legal policies related to abortion in Indonesia (especially in the Criminal Code and the Health Law) still have patriarchal nuances, not fairly considering the interests of female victims.
- b. The state tends to take a restrictive and moralistic approach, without taking into account the social and psychological realities faced by victims.
- c. The feminist perspective emphasizes the importance of recognizing women's bodily autonomy and the right to reproductive health as a form of fulfilling human rights.

This article strongly supports the arguments in this study in several aspects:

- a. Provides a theoretical basis for legal feminism in analyzing abortion law in Indonesia.

¹²National Commission on Violence Against Women. (2021). Recommendations for Reproductive Protection Policies for Female Victims of Sexual Violence.

¹³Nurmala, R. (2020). "Women and the Law: A Feminist Analysis of Abortion Policy in Indonesia." Journal of Gender and Law, Vol. 3, No. 1.

- b. Highlighting the imbalance of power in policy-making that impacts legal protection for women.

In the context of Indonesian law, feminist legal theory reveals that existing legal provisions regarding abortion are still imbued with patriarchal moral norms, often relegating women to passive roles within regulations. Although the law recognizes abortion as legal under certain circumstances, such as in cases of sexual violence and medically indicated, women still face various obstacles:

- a. Lengthy bureaucratic procedures, such as the obligation to have a visum et repertum or police report;
- b. Obligation to consult and/or obtain consent from a third party, such as a husband, family member, or certain health care providers;
- c. Social stigma and discrimination against women, both by medical personnel and law enforcement officials;

These conditions demonstrate that the law still contains an unequal power structure, thus exacerbating the victims' suffering. Feminist legal theory advocates that abortion for victims of sexual violence is not simply a medical or legal issue, but a right to healing, bodily autonomy, and freedom from further suffering.

Feminist legal theory is not only critical, but also constructive and advocated. Here are some proposals for legal changes based on a feminist approach:

- a. Reform abortion regulations so that they are not solely oriented towards religious morality, but prioritize the principles of gender justice and human rights.
- b. Eliminate or simplify legal procedures for victims of sexual violence who wish to access abortion services.
- c. Ensuring the confidentiality and safety of women in the decision-making process regarding their pregnancy.

The feminist legal approach is very much in line with the principles of Human Rights and Health Law, especially in terms of:

- a. Recognition of women's bodily autonomy;
- b. The right not to be subjected to cruel, inhuman or degrading treatment;
- c. The right to comprehensive and non-discriminatory health information and services;

Feminist legal theory provides a powerful analytical framework for understanding how structural inequalities and patriarchal norms in the law can exacerbate the suffering of women who are victims of sexual violence and choose abortion. This approach encourages legal transformation not only in its normative aspects, but also in its practices, institutional structures, and legal culture as a whole.

By applying this theory in the dissertation study, the author can clearly show that legal protection for victims of sexual violence who undergo abortion must be reviewed through the lens of gender justice, and not solely through the lens of morality or conventional criminal law.

4. Conclusion

Based on the analysis and discussion in this study, several key conclusions can be drawn as follows: 1. Dualism of Health Law and Human Rights Perspectives: Legal protection for victims of sexual violence who undergo abortion is the intersection of the right to health and human rights. From a health law perspective, abortion for victims of sexual violence is classified as an emergency medical procedure to prevent further psychological trauma and physical complications. Meanwhile, from a human rights perspective, access to safe abortion is a manifestation of the right to bodily autonomy and the right to be free from cruel and inhumane treatment. 2. National Regulatory Gaps (Indonesia): Although Indonesia has accommodated abortion exceptions for rape victims through Law No. 17 of 2023 concerning Health and Law No. 12 of 2022 concerning TPKS, its implementation remains restrictive. The main obstacles lie in rigid gestational age limits, bureaucratic procedures for proving sexual violence, and the threat of criminalization for health workers and victims if administrative procedures are not met. 3. Results of a Comparison of International Laws: Internationally, the standards established by the WHO and the CEDAW Convention demonstrate a shift from a criminal approach to one based on public health and reproductive rights. Unlike national laws, which are still strongly influenced by moral-religious considerations, international law encourages the decriminalization of abortion in cases of sexual violence to ensure the dignity of victims. This comparison demonstrates that Indonesian law requires further harmonization so that administrative procedures do not impede victims' constitutional rights to health protection. 4. The Urgency of Legal Reform: More technical and trauma-informed derivative regulations are needed to ensure that the rights of victims of sexual violence are not limited to the text of the law but can be accessed in real-life healthcare facilities without stigma and fear of criminal prosecution.

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