



## Evaluation of Abortion Measures in Government Regulation No. 28 of 2024 on The Right to Life of the Fetus From a Human Rights Perspective

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### ABSTRACT

Indonesia has legalized abortion under certain conditions, such as pregnancy resulting from rape, through Government Regulation No. 28/2004. This policy has sparked heated debate because it contradicts the principle of protecting the right to life of the fetus. This study aims to provide a complex overview of the issue of abortion in Indonesia and its implications for human rights. The method used is normative legal research. This research is conducted by examining library materials or secondary data. The two approaches used are a statutory approach related to the legal issue of abortion and a conceptual approach to examine the medical legal understanding of abortion due to rape. Cases of sexual violence and rape in Indonesia are still high. In 2023, Komnas Perempuan recorded 2,078 cases of sexual violence, of which 143 were rapes. Abortion, in this context, is often used as a solution to address unwanted pregnancies. This research shows that while Government Regulation No. 28 of 2024 provides legitimacy to abortion, it is still contrary to the right to life of the fetus guaranteed by law. While abortion is considered a violation of the right to life, this policy is also considered a protection for women victims of sexual violence. Despite arguments to protect women's rights, the right to life of the fetus as a non-derogable right should not be ignored. Therefore, there needs to be a review of this regulation to ensure that all human rights, including the right to life of the fetus, are optimally protected.

**Keywords:** Government Regulation, abortion, human rights, Law, Criminal Code, right to life, fetus

### INTRODUCTION

In a global context, the issue of abortion is one of the most complex and controversial debates, involving legal, ethical and health aspects. According to the World Health Organization (WHO), there are approximately 25 million unsafe abortions each year, which are the leading cause of maternal death in many countries (Filippi et al., 2016; Organization, 2015). Diverse abortion policies around the world create uncertainty and injustice for women, especially in countries with strict regulations. In many

places, women are still forced to undergo high-risk procedures due to lack of access to safe and legal health services.

In Indonesia, this situation is exacerbated by Government Regulation No. 28/2004, which regulates abortion under certain conditions, such as pregnancy resulting from rape (Ngema, 2023). This policy sparked a heated debate between the protection of the fetus' right to life and the rights of women as victims of sexual violence. Although the law provides some exceptions, many argue that it still violates fundamental human rights principles, especially the right to life (Goodwin, 2014).

Several studies have been conducted to evaluate the impact of abortion policy in Indonesia. For example, a study by Erna Tri Rusmala Ratnawati (2022) showed that legalizing abortion under certain conditions not only impacts women's physical health, but also their mental health. In addition, another study by Tanti & Ninon (2022) revealed that existing regulations are often inadequate in protecting women's rights, as well as socially stigmatizing those who have abortions.

The urgency of this research arises from the need to evaluate Government Regulation No. 28 Year 2024 from a human rights perspective. With increasing rates of sexual violence and rape in Indonesia, it is important to understand how abortion policy can provide adequate protection for women without compromising the right to life of the fetus. This research aims to answer the important question of balancing these rights within the context of the existing law.

The novelty of this research lies in the normative legal approach used to analyze abortion regulations and their impact on human rights. Unlike previous studies, this research will compare Indonesia's policies with those of other ASEAN countries, as well as examine how these regulations are implemented in a broader social and cultural context. In this way, it is expected to make a more in-depth contribution to the discussion on human rights in Indonesia.

The main objective of this study is to evaluate the regulation of abortion in Government Regulation No. 28 Year 2024 and its implications for the right to life of the fetus and women's rights. It also aims to provide policy recommendations that can assist the government in formulating fairer and more sustainable regulations.

The benefits of this research are expected to provide insights for policy makers, academics, and the general public regarding the importance of human rights protection in the context of abortion. In addition, the results of this study are expected to serve as a reference for future research in the field of health law and human rights, as well as contribute to efforts to raise social awareness about the issue of abortion in Indonesia.

## **RESEARCH METHODS**

The research method used in this research is Normative Legal Research. Normative Legal Research is legal research conducted by examining library materials or secondary data. The type of research used in the preparation of this research is normative juridical research. Normative juridical research method is library legal research conducted by examining library materials or secondary data only. There are two types of approaches used in this research. The statute approach and regulations related to legal issues regarding abortion due to rape are being addressed in Law No. 17 of 2023 concerning Health, Government Regulation No. 28 of 2024 and Law No. 39 of 1999 concerning Human Rights. Another

approach used is a conceptual approach, this approach is used to examine the understanding and scope of medical law related to the actions of doctors to perform abortions due to rape.

## **RESULTS AND DISCUSSION**

Cases of sexual violence and rape in Indonesia are still high from year to year. In 2023, Komnas Perempuan recorded a total of 2,078 cases of sexual violence, with 143 of them being rape. Rape is an act where someone forcibly gives free rein to their sexual desires, which can be seen as a violation of social norms and order. Rape causes physical, mental and social disruption to the victim (Bourke, 2015). Psychologically, rape can also lead to unwanted pregnancies in its victims. In this context, abortion is sometimes used to treat unwanted pregnancies. In this regard, there has been an increase in both legal and illegal abortions which is actually like an iceberg phenomenon. Abortion is the untimely release of the result of fertilization (fetus) from the mother's womb and can not live outside the womb. Medically, abortion is the end or loss of pregnancy before the womb reaches 20 weeks or the baby weighs less than 500 g, that is, before the fetus can live outside the womb independently. Not all countries legalize abortion, if any, it depends on the situation faced by the woman who performs the abortion (Foster, 2021; Swanson & Liu, 2022). In Malaysia, Brunei Darussalam, and Myanmar, abortion is legal only if it is done in good faith to save the life of the pregnant woman, and there are no exceptions for rape victims. In Thailand, abortion is legal only if the pregnancy is at least 20 weeks and was caused by sexual violence or incest, and unconditionally for pregnancies up to 12 weeks.

In contrast, the Philippines is among the countries that criminalize abortion, without any exceptions, abortion is illegal without any exceptions in the Philippines. On July 30, 2024, the President signed Government Regulation No. 28 of 2024 (Health Regulation) on the Implementing Rules of the Health Act (Act No. 17 of 2023). This regulation reinforces the same rules regarding abortion. Abortion is the untimely discharge of the result of fertilization (fetus) from the mother's womb and cannot live outside the womb. With the passing of Law No. 17 of 2023 on Health, which replaces the previous Health Law, Law No. 36 of 2009 on Health, the issue of abortion has been legitimized and affirmed. Explicitly, in this law there are articles that regulate abortion, although in medical practice it contains various reactions and causes controversy in various layers of society. In addition to Law No. 17 of 2023, there is a new government regulation derived from Law No. 17 of 2023 that supports abortion with exceptions, namely Government Regulation (PP) No. 28 of 2024 on Health. Although juridically the fetus in the womb has no human status, it still has its own juridical characteristics.

The fetus in the womb is a unit with its mother, but it cannot be equated with other body parts of the mother, because it has its own life. He is only temporarily in his mother's body. It can happen that the mother dies and the fetus in her womb is still alive, or vice versa the fetus dies while the mother continues to live (Kuebelbeck & Davis, 2023; Speckhard, 2022). In the Charter of Human Rights, it is stated that humans are the chosen creatures of God Almighty who manage and protect nature on earth for the welfare of mankind, who carry out their obligations with full devotion and responsibility, therefore humans are endowed with human rights and burdened with obligations to ensure the existence, dignity, and glory of themselves and the honor of their environment. Human rights are basic rights that are inherent in human nature, universal and lasting as a gift from God Almighty (Woodman & Sieff, 2014). They include the right to life, the right to have a family to continue offspring, the right to self-development, the right to justice, the right to independence, the right to security, and the right to welfare which functions to maintain the integrity of his existence, therefore it should not be ignored or taken away by anyone.

Article 346 of the Criminal Code states that a woman who intentionally aborts or kills her pregnancy or orders another person to do so, shall be punished by a maximum imprisonment of four years. Abortion is also regulated in Articles 347 and 348 of the Criminal Code which prohibit abortion in any form. The government needs to review Government Regulation No. 28 Year 2024, because there are conflicting norms. This can be seen from the principle of *lex superior derogat legi inferiori* where the higher law defeats the lower law. For example, a law trumps a government regulation. Government Regulation no 28 of 2024 clearly contradicts the Human Rights Act and the Criminal Code which prohibit acts of abortion under any circumstances. Thus, this regulation can be optimally implemented to protect women and ensure justice for victims of sexual violence.

Regarding the concept of the exclusion of the right to life, it departs from the idea that the exclusion of not all rights must be fulfilled absolutely, there are also rights that can be limited in their fulfillment and there are rights that cannot be limited in their fulfillment even in an emergency. Rights that may be restricted in an emergency are derogable rights. However, rights that are non-derogable rights in any circumstances cannot be excluded or limited, which is the right to life.

## CONCLUSION

Based on the discussion, it can be concluded that the regulation of abortion due to rape victims in Government Regulation No. 28 of 2024 has mandated further rules regarding the exclusion of abortion, it has been explained in Article 116 which states that " Everyone is prohibited from performing abortions, except for indications of medical emergencies or against victims of criminal acts of rape or other criminal acts of sexual violence that cause pregnancy in accordance with the provisions in the criminal code ". Indications of sexual violence referred to in Criminal Code Article 603 are rape, sexual slavery, forced prostitution, forced pregnancy, forced spaying or sterilization, or other equivalent forms of sexual violence. The regulation on this matter is very contrary to human rights. Because it is a "*non-derogable right*" this human right cannot be reduced in its fulfillment under any circumstances. Therefore, the right to life should not be lost in humans and this right must be defended from every human being, including the fetus. Second, the regulation of abortion in Article 75 paragraph (2) letter b of the Health Act which provides legitimacy for abortion due to rape that can cause psychological trauma for rape victims is contrary to the right to life of the fetus in the womb. The interests of the rape victim (personal integrity of women) cannot take precedence over the interests of the fetus (right to life) and this cannot be used as an excuse for limiting legitimate human rights because it does not meet the criteria.

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