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The Principle of Legal Protection in the Provision of Emergency Contraception Services for Rape Victims under Law 36 of 2009 on Health

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ABSTRACT

Rape, a violent act involving coerced sexual intercourse, necessitates the provision of emergency contraception services to prevent unwanted pregnancies. Competent and authorized healthcare professionals are responsible for delivering these services, which are governed by government regulations in accordance with the health law. Thus, the author explores the legal protection that emergency contraception services offer to both rape victims and healthcare providers, highlighting the underlying principles of this implementation. This research employs a descriptive analysis using a normative juridical approach. Findings indicate several barriers to service provision, including limited doctor knowledge, inadequate standard operating procedures, and exclusion from the hospital's essential medicine formulary. Emergency contraception services are legally regulated as part of the Health law, as they fulfill the legal needs of rape victims, surpassing the hierarchy of Government Regulations. By preventing unwanted pregnancies without the need for complicated procedures like abortion, emergency contraception services significantly enhance the protection of rape victims and healthcare workers. However, the current regulations lack provisions mandating the provision of information and emergency contraception services to rape victims by healthcare providers. Consequently, not all healthcare workers are willing to offer these services due to the absence of legal obligations. To ensure the availability of emergency contraception services, legislative changes should be made by introducing new articles into the health law, explicitly stating the obligation of healthcare providers to offer emergency contraception services to rape victims.

Keywords: Victim's rights, Emergency contraception, medical services Pregnancy Prevention, Rape.



INTRODUCTION

Rape is a criminal offense characterized by sexual conduct wherein one person forcibly or violently compels another individual to engage in sexual intercourse involving vaginal penetration with a penis. The regulation of sexual violence crimes is founded upon principles of human dignity, non-discrimination, the best interests of the victim, justice, utility, and legal certainty.¹

The outcome of rape can result in pregnancy for the victim, as supported by research data conducted in South Carolina, United States, indicating a 5% occurrence of pregnancy in rape cases.² Based on data from the Ministry of Social Affairs until January 2022, there were a total of 780 cases of pregnancies resulting from rape.³ Similarly, according to research conducted by the Institute for Criminal Justice Reform (ICJR) from 2018 to 2021, the majority of rape cases involve victims between the ages of 6 and 18, accounting for 72.1% of the total.

This is attributed to the fact that perpetrators often target victims within the reproductive age range. Additionally, the presence of stigma, fear, and intimidation from the perpetrators prevents victims from reporting the crime at an early stage, resulting in cases of pregnancy following rape. This, in turn, contributes to an increase in post-rape pregnancy cases. ⁴ According to a report from the quantitative study conducted by the Gender Equality Barometer of INFID (International NGO Forum on Indonesian Development) and

¹ Undang-Undang No.12 Tahun 2002 Tentang Tindak Pidana Kekerasan Seksual

² Melisa M.Holmes et.al., *Rape-related pregnancy: Estimates and descriptive characteristics from a national sample of women*, American Journal of Obstetrics and Gynecology Volume 175, ssue 2, August 1996, Pages 320-325, https://www.sciencedirect.com/science/article/abs/pii/S0002937896701412

³ Biro Hubungan Masyarakat Kementerian Sosial RI, Terbitkan Surat Edaran, Mensos Perkuat Pengamanan dan Perlindungan Anak di Berbagai Lingkungan https://kemensos.go.id/terbitkan-surat-edaran-mensos-perkuat-pengamanan-dan-perlindungan-anak-di-berbagai-lingkungan, diakses 23 April 2022

⁴ Naskah Akademik Rancangan Undang-Undang Tentang Penghapusan Kekerasan Seksual 10 Februari 2017.

the Indonesia Judicial Research Society (IJRS) in 2020, the reasons for victims not reporting incidents of rape (57.2%) vary, ranging from fear, shame, lack of knowledge about reporting procedures, to feelings of guilt.⁵

Based on Article 66 paragraph (1), Article 67 paragraph (2), and Article 68 of Law Number 12 of 2022 concerning Sexual Violence Crimes, rape victims have the right to receive healthcare services, including medical examination, procedures, and treatment, from the moment the crime of rape occurs. The fulfillment of victims' rights is the obligation of the state and should be carried out according to the victims' conditions and needs. One of the necessary medical services for rape victims from the moment the crime occurs is emergency contraception services to prevent pregnancy. The provision of emergency contraception to rape victims to prevent pregnancy should be performed by healthcare professionals following the established standards stated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health..

The provision of emergency contraception to rape victims by healthcare professionals is the implementation of reproductive health services conducted in accordance with religious values and legal provisions, as stated in Article 74 of Law Number 36 of 2009 concerning Health. Emergency contraception services, including the provision of emergency contraceptive pills to prevent pregnancy, should be given within 5 (five) days after sexual intercourse or the occurrence of rape by doctors and/or other healthcare professionals who have the competence and authority, as outlined in Article 27 and 30 of the Minister of Health Regulation Number 21 of 2021 regarding the Implementation of Pre-pregnancy, Pregnancy, Childbirth, Postnatal and Contraception Services, and Sexual Health Services.

The existence of stigma from society and the lack of knowledge among victims make it difficult to provide preventive services for

⁵ Dio Ansar Wisaksana et al, Indek Akses Keadilan di Indonesia Tahun 2019, Jakarta Konsorsium Masyarakat Sipil untuk Indeks Akses Keadilan, 2020, hal 9

pregnancy. Due to the delayed presentation of victims, the effectiveness of pregnancy prevention measures cannot be guaranteed. Additionally, the guidelines for providing information have not been established as standard operating procedures in handling rape cases, resulting in healthcare professionals rarely or never explaining this matter.

Based on Article 72 of Law Number 36 of 2009 concerning Health, every individual has the right to a safe reproductive and sexual life, free from coercion and/or violence within a legitimate partnership. They have the right to determine their reproductive life and live free from discrimination, coercion, and/or violence, while respecting the noble values that uphold human dignity in accordance with religious norms.

Based on the aforementioned article, the state has an obligation towards the health of rape victims, and such situations should not occur. However, if the focus of pregnancy prevention is directed towards rape victims, who are predominantly unmarried, it raises important considerations. Although the provision of emergency contraception for rape victims is regulated in Article 30 of Minister of Health Regulation Number 21 of 2021, it does not provide detailed guidance on the specific actions that healthcare professionals should take to fulfill the reproductive rights of rape victims.

The failure of healthcare professionals to provide services or information regarding pregnancy prevention to rape victims, which is one of the state's obligations, can exacerbate the suffering of the victims. Given this background, the author is interested in writing about the Principle of Legal Protection in the Implementation of Emergency Contraceptive Services for Rape Victims based on Law Number 36 of 2009 concerning Health.

Emergency contraception is one of the medical services commonly provided to couples to prevent pregnancy after sexual intercourse. 6 Emergency contraception is a Family Planning (FP) method that can be used in cases of unprotected sexual intercourse or when the chosen FP method fails. It is important to note that emergency contraception does not cause abortion when taken by a person who is already pregnant. Its mechanism of action is similar to natural hormones produced by the ovaries, which are believed to prevent or delay the release of an egg (ovulation), thereby preventing pregnancy from occurring.7 This is often referred to as "post-coital contraception" or "morning-after treatment." It is hoped that with emergency contraception, unintended pregnancies can be prevented.8

Emergency contraception does not provide ongoing protection against pregnancy if a woman engages in unprotected sexual intercourse at any time after taking the emergency contraceptive pill. Therefore, this medication cannot be used as a regular contraceptive method. Hence, emergency contraception is ideally provided to rape victims because those who have reported or come to the emergency unit as rape victims are not likely to be subjected to repeated incidents or engage in multiple sexual encounters during the post-reporting period, thus preventing pregnancy.9

The question often arises as to who can use emergency contraception. Most women can use emergency contraceptive pills, including those who cannot use hormonal contraceptives. Girls under the age of 16 who are victims of rape can also be provided with emergency contraception as a measure to prevent pregnancy resulting from rape. However, if the victim has allergies to the components of the medication, suffers from severe asthma, or is taking medications that can interact with emergency contraception

⁶ Emergency Contraseption (morning after pill, IUD) your Contrasepstion Guiide, https://www.nhs.uk/conditions/contraception/emergency-contraception/ 22 February 2021 accepted 21 November 2022

⁷ Finer, L.B., Zolna, M.R. Declines in unintended pregnancy in the United States, 2008-2011. The New England Journal of Medicine; . (2016)374(9):843-52.

⁸ Raymond E, Pradhan A, Keder L. Practice bulletin No.152: *Emergency contraception*. Obstetry Gyncool. 2015;126(3): e1-11

⁹ Curtis, K.M., Tepper, N.K., Jatlaoui, T.C., et alU.S. Medical Eligibility Criteria for Contraceptive Use, 2016. MMWR Recomm Rep; 65(RR-3):1-104. Appendix A.

such as epilepsy medication, HIV or TB drugs, gastric medication, and certain antibiotics that can affect the effectiveness of emergency contraception, it is advisable not to administer it. Therefore, if the victim is currently taking any of the aforementioned medications, it is necessary to inform the healthcare provider in order to adjust the dosage or type of emergency contraception to be provided.¹⁰

Every medication inevitably has side effects, and the same goes for emergency contraception. However, the side effects associated with emergency contraception can be classified as mild, such as headache, abdominal pain, and changes in the subsequent menstrual cycle. If severe side effects occur within 2 to 3 hours after taking the contraceptive pill, it is imperative to promptly report them to a doctor or paramedic.¹¹

In accordance with established legal principles, it is acknowledged that every medication inherently entails certain side effects, including emergency contraception. However, it is essential to note that the side effects stemming from the use of emergency contraception can generally be categorized as mild in nature, encompassing symptoms such as headaches, abdominal discomfort, and alterations in the subsequent menstrual patterns. Nevertheless, in the event of experiencing severe side effects within a period of 2 to 3 hours subsequent to the administration of the contraceptive pill, it is of utmost importance to expeditiously report such occurrences to a qualified medical practitioner or certified paramedic. 12

The provision of emergency contraception to rape victims not only prevents unwanted pregnancies but also affords them the opportunity to exercise their reproductive health rights in accordance with Article 78 of the health law.

¹⁰ Emergency Contraseption (morning after pill, IUD) op cit

¹¹ Ihid

¹² American College of Obstetricians and Gynecologists, *Emergency Contraception, Practice Bulletin*, PB Number 152 September 2015, https://www.acog.org/clinical/guidance/practice-bulletin/articles/2015/09/emergency-contraception

The problem approach in this research is a normative juridical approach, which involves examining written legal norms in the form of legislation (statute approach) and conceptual analysis (conceptual approach) regarding the legal protection for healthcare professionals in performing medical procedures related to the fulfillment of the criminal victims' rights to reproductive healthcare services. 13 The author will explore the aspects of legal protection for healthcare professionals and victims in the provision of emergency contraception services for rape victims.

THE LEGAL PROTECTION FOR RAPE **VICTIMS**

1. Legal Basis for the Provision of Emergency Contraception by Healthcare Providers to Rape Victims

Every activity and effort to enhance the well-being of rape victims shall be carried out based on the principle of protection in accordance with the national objectives stated in the preamble of the 1945 Constitution. Protection, as stipulated in Law Number 12 of 2022 concerning Sexual Violence, encompasses all efforts to fulfill rights and provide assistance to ensure the safety of rape victims, which must be implemented by witness and victim protection institutions or other relevant bodies in accordance with the provisions of the laws and regulations. Legal protection, according to Soetjipto Rahardjo, refers to the efforts to safeguard an individual's interests by allocating power to them, and one of the inherent qualities and goals of the law itself is to provide protection to society.

¹³ Rianto Adi, Metode Penelitian Sosial dan Hukum, Jakarta: Granit, 2004, h.128.

This is manifested in the form of legal certainty, ensuring that the society can enjoy the rights bestowed upon them as legal protection for the community.¹⁴

According to Philipus M. Hadjon, Legal Protection is the safeguarding of the dignity and integrity of individuals and the recognition of their fundamental human rights possessed by legal subjects based on the provisions of the law derived from the authority, rooted in Pancasila and the concept of the rule of law. According to Philipus M. Hadjon, there are two types of legal protection mechanisms, namely preventive legal protection and repressive legal protection.¹⁵

After the incident of rape, the victim experiences physical and mental suffering. The victim requires protection for the fulfillment of their violated rights by the perpetrator. The victim requires comprehensive services that provide integrated, multi-aspect, crossfunctional, and cross-sectoral assistance. The most urgent form of assistance for the victim after the rape incident is to receive healthcare services. Access to healthcare services is a right that should be promptly provided after the incident of rape.

After receiving healthcare services, it is expected that healthcare professionals can assist the victim in recovering their health and conducting an examination of the evidence of the rape for inclusion in the medical report. Healthcare professionals responsible for examining the victim are required to coordinate with the local Technical Implementation Unit for the protection of women to ensure comprehensive services for rape victims.

One of the legal protections that must be provided is the right to medical services and prevention of unwanted pregnancies, with the aim of creating a situation where rape victims no longer feel afraid to

¹⁴ Qur'ani Dewi Kusumawardhani, "Hukum Progresif dan Perkembangan Kecerdasan Buatan", Jurnal Veritas et Justitia, Vol. 5 No. 1, Juni 2019.

¹⁵ Nikan Savitri, *Pembuktian Dalam Tindak Pidana Kekerasan Seksual Terhadap Anak,* Jurnal Bina Mulia Hukum, Volume 4, Nomor 2 Maret 2022 isi 17 Desember 2019, DOI: http://dx.doi.org/10.23920/jbmh.v4i2.323, Halaman Publikasi: http://jurnal.fh.unpad.ac.id/index.php/jbmh/issue/archive

report the incidents, they have experienced to law enforcement authorities. Based on Article 68, letter e of the Law on the Elimination of Sexual Violence, Article 6, paragraph 1, letter a of Law Number 13 of 2006 as amended by Law Number 31 of 2014 on the Protection of Witnesses and Victims, the right of rape victims to access healthcare services includes medical examination, procedures, and treatment, including prevention of unwanted pregnancies. However, it is evident that the specific provision for such healthcare services is not explicitly stated in the health law and the Law on the Elimination of Sexual Violence.

The health law implicitly only regulates reproductive rights and mandates further regulation through Government Regulations and Minister of Health Regulations in the form of emergency contraception services. Emergency contraception services are not specifically regulated in the provisions of the Health law, but rather as a follow-up to the implementing rules of Article 74 paragraph (3) of the Health law. The provision of emergency contraception services is clearly regulated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health, Article 27 paragraph (2) letter d, and Article 30 of the Minister of Health Regulation of the Republic of Indonesia Number 21 of 2021 concerning the Provision of Health Services during Pre-pregnancy, Pregnancy, Delivery, Postpartum Period, Contraceptive Services, and Sexual Health Services.

Emergency contraception services are provided to rape victims to prevent pregnancy by competent and authorized healthcare providers. Emergency contraception services are given to rape victims to prevent pregnancy within 5 (five) days after sexual intercourse or the occurrence of rape. The provision of emergency contraception services is a right of rape victims to pursue a reproductive and sexual life free from coercion and/or violence, respecting the noble values that uphold human dignity in accordance with religious norms.

To realize Indonesia as a legal state, the government is obligated to implement national legal development in a planned, integrated, and sustainable manner within the national legal system that guarantees the protection of the rights and obligations of all Indonesian citizens based on the 1945 Constitution of the Republic of Indonesia. The enactment of laws must be based on the mandate of the Constitution and the common legal needs that should be reflected in the content or substance of the laws formed collectively by the President and the DPR (People's Consultative Assembly).

The Substance of Legislation refers to the content contained within legislation in accordance with the type, function, and hierarchy of the legislation. Based on Article 10 of Law Number 12 of 2011 concerning the Formation of Legislation, the Substance of Legislation that must be regulated by Law includes: a. further regulation regarding provisions of the 1945 Constitution of the Republic of Indonesia; b. the instruction for a Law to be regulated by Law; c. the ratification of certain international agreements; d. the follow-up to decisions of the Constitutional Court; and/or e. the fulfillment of legal needs within society. On the other hand, the Substance of Government Regulations contains provisions to properly implement the Law.

The legal force of Legislation is determined by its hierarchy based on Article 7 paragraph (1) of Law Number 12 of 2011 concerning the Formation of Legislation, which consists of: a. the 1945 Constitution of the Republic of Indonesia; b. the Decree of the People's Consultative Assembly; c. Laws/Regulations in lieu of Laws; d. Government Regulations; e. Presidential Regulations; f. Provincial Regional Regulations; and g. District/City Regional Regulations.

The provision of emergency contraception is clearly regulated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health, seemingly covering the deficiencies that should have been addressed in the content of the Health law. The regulation of emergency contraception services in the form of

Government Regulations, such as the overlooked provisions in the Health law, serves as supplementary rules that prevent general practitioners and other healthcare professionals in Emergency Departments from providing emergency contraception services. This is due to the lack of mandatory training, expertise, and standardized operating procedures for emergency contraception services in Emergency Departments. As a result, victims of sexual assault are deprived of access to emergency contraception services.

The provision of emergency contraception, as regulated in Article 24 of Government Regulation Number 61 of 2014 concerning Reproductive Health, constitutes material that should be regulated by an Act of Law, as it pertains to the fulfillment of legal needs within society in accordance with the provisions of Article 10 paragraph 1 letter e of Law Number 12 of 2011 concerning the Formation of Legislation.

Furthermore, as a means to address the legal needs of society, particularly victims of sexual assault, the law governing emergency contraception must include provisions regarding the responsibilities of healthcare professionals in providing emergency contraception services, in order to fulfill the reproductive rights of victims of sexual assault, as well as prescribe sanctions in the event that healthcare professionals fail to provide information and pregnancy prevention services to victims of sexual assault. The existence of binding regulations, accompanied by sanctions and standardized operating procedures or guidelines, will compel healthcare professionals to provide information and pregnancy prevention services to victims of sexual assault.

2. The Legal Protection for Victims of Sexual Assault and Healthcare Professionals Providing Emergency Contraception to Victims of Sexual Assault

The protection of healthcare professionals or doctors providing emergency contraception to victims of sexual assault, as described, will be ensured, as healthcare professionals are granted legal protection while carrying out their duties in accordance with professional standards and operational procedures. Based on Article 57 letter a of Law Number 36 of 2014 concerning Healthcare Professionals, it is also stated that healthcare professionals are entitled to legal protection while performing their practice in accordance with professional standards, professional service standards, and operational procedures.

Healthcare/medical services constitute a complex system with tight interconnections, particularly in emergency rooms, operating theaters, and intensive care units. Complex systems are typically characterized by specialization and interdependence. Within such a complex system, components can interact with many other components, sometimes in unexpected or imperceptible ways. The more complex and tightly coupled a system is, the more susceptible it is to accidents. Therefore, healthcare/medical practices must be carried out with a high level of caution.¹⁶

The inherent principles in every healthcare service, such as the principles of legality, balance, timeliness, good faith, honesty, caution, and transparency, serve as guidelines and standards for providing healthcare services to individuals receiving such services. ¹⁷ Regarding the provision of emergency contraception to rape victims, it can be inferred that the law provides protection for both rape

¹⁶ Sofia J. A, *Kajian Penerapan Etika Dokter Pada Pemberian Pelayanan Kesehatan di Era Pademi Covid-19*, Jurnal Hukum dan Pembangunan Ekonomi, Volume 8, Nomor 2, 2020 ISSN (Print) 2338-1051, ISSN (Online) 2777-0818

¹⁷ Dr. Veronica Komalawati, S.H., M.H. Peranan Informed Consent Dalam Transaksi Terapeutik (persetujuan dalam Hubungan Dokter dan Pasien) Suatu Tinjauan Yuridis. PT, Citra Aditya Bakti. 1999 hal 125

victims and healthcare providers who administer emergency contraception to them. Emergency contraception services can protect rape victims from unwanted pregnancies.

In accordance with Law Number 36 of 2014 concerning Healthcare Providers, the government is empowered to enforce legal provisions that ensure legal protection for healthcare providers. Article 28D paragraph (1) of the 1945 Constitution states that every person has the right to recognition, guarantees, fair legal protection, and equal treatment before the law. This is similar to Article 5 paragraph (1) of Law Number 39 of 1999 concerning Human Rights, which also states that every person is recognized as an individual entitled to demand and obtain equal treatment and protection in accordance with their human dignity before the law. Article 27 paragraph (1) of Law Number 36 of 2009 concerning Health states that healthcare providers have the right to receive compensation and legal protection in carrying out their duties in accordance with their profession. 18

Basically, both the health law, Healthcare Providers Law, and Medical Practice Law provide guidelines regarding legal protection for the medical profession. Considering that the medical relationship between doctors and patients is a legal contractual relationship, both parties, the doctor and the patient, have equal and balanced positions. This balanced relationship is also regulated in Article 3 of the Medical Practice Law, which states that the provision of medical practice should provide protection not only to patients but also to doctors. Similarly, in the case of rape victims, if the victim receives medical services, they have two rights as a victim: the right to collect evidence in the form of a medical examination report, regulated in Article 133 of the Criminal Procedure Code (KUHAP), and the right as a patient, which is governed by the health law.

¹⁸ Liana Endah Susanti, 'Economic Law Creation Beautiful Global Indonesia', Bestuur, 7.1 (2019), 47-53.

The standards of protection for doctors in providing healthcare can be seen in several articles as follows. Article 27 of Law Number 36 of 2009 concerning Health states that healthcare professionals have the right to receive compensation and legal protection in carrying out their duties in accordance with their profession. Article 24 of Government Regulation Number 32 of 1996 concerning

Healthcare states that legal protection is provided to healthcare professionals who perform their duties in accordance with the professional standards of healthcare professionals. Specifically, it is regulated in Article 44 of Law Number 29 of 2004, which states that doctors and dentists, in carrying out medical practice, are obliged to follow medical service standards. If a doctor's actions deviate from the elements of professional standards, the doctor is considered to have committed negligence or an error, and therefore may not be granted legal protection.

Based on Article 46 and Article 50 of Law Number 29 of 2004 concerning Medical Practice, it states that doctors receive legal protection as long as they carry out their duties in accordance with professional standards and operational procedures. Based on the law, doctors have an obligation to practice medicine in accordance with professional and operational standards, including in fulfilling the rights of rape victims for emergency contraception to prevent pregnancy. If we analyze it further, it is evident that law enforcement provides legal certainty to the justiciable or seekers of justice. In the medical relationship, both victims and doctors must receive legal protection. There is no distinction in providing legal protection between doctors and rape victims because there is already an equality before the law.

If emergency contraception services for rape victims are not provided, it would not provide protection for both the victims and the healthcare providers. Whether the failure to provide such services by healthcare providers can be considered a violation of rights or negligence is still a subject of debate. This is because the regulations pertaining to this matter are only stated in ministerial regulations and government regulations, which do not possess the same binding or compliance power as laws. As a result, it becomes difficult to ensure the fulfillment of rape victims' rights to reproductive prevention of pregnancy, unlike the clear regulations regarding the right to abortion for rape victims.

Furthermore, the implementation guidelines issued by the government do not specify the responsibilities of each healthcare professional involved, such as whether it is the general physician conducting the examination in the emergency unit, the forensic medical examiner with the authority to conduct examinations and collect evidence without intervention, or the obstetrician who only practices during scheduled clinics. The ambiguous nature of the protection provided raises significant doubts regarding the provision of reproductive rights for rape victims, along with delayed reporting patterns by the victims.

Emergency contraception services provide greater protection for both rape victims and healthcare providers because they do not require complex conditions like abortion procedures for rape victims. It is hoped that with information about emergency contraception services for rape victims, more rape victims will be willing to report the crime as early as possible in order to access these services. This will contribute to their overall well-being and ensure their timely access to necessary healthcare.

THE IMPLEMENTATION OF EMERGENCY CONTRACEPTION SERVICES FOR RAPE VICTIMS BY HEALTHCARE PROVIDERS BASED ON THE PRINCIPLE OF LEGAL PROTECTION

The implementation of a regulation or policy is one of the stages in the public policy process. Typically, implementation takes place after a policy is formulated with clear objectives. Implementation is a series of activities aimed at delivering the policy to the public, so that the policy can yield the desired outcomes. For instance, from an enacted law, various government regulations, presidential decrees, or local regulations may arise. Implementation involves preparing human resources, finances, and determining the responsible parties for carrying out the policy, as well as devising concrete methods to deliver the policy to the public.¹⁹

According to Law Number 44 of 2009, a Hospital is a healthcare institution that provides comprehensive individual healthcare services, including inpatient, outpatient, and emergency care. In delivering medical services, hospitals are required to have operational standards in place. ²⁰ Comprehensive healthcare services refer to healthcare services that encompass promotion, prevention, treatment, and rehabilitation. Hospitals, as one of the healthcare facilities, are essential resources in supporting healthcare initiatives. It is mandatory for hospitals to provide high-quality services with a focus on patient safety. ²¹ The victim arriving at the hospital also possesses rights, not only as a victim but also as a patient entitled to

¹⁹ Afan Gaffar, *Otonomi Daerah Dalam Negara Kesatuan* (Yogyakarta: pustaka pelajar kerjasama, 2009)cet ke-4 hal, 295.

²⁰ Peraturan Pemerintah Republik Indonesia Nomor 47 Tahun 2021 Tentang Penyelenggaraan Bidang Perumahsakitan. 229, 1–15.

 $^{^{21}}$ Peraturan Menteri Kesehatan Republik Indonesia Nomor80 Tahun 2020 Tentang Komite Mutu Rumah Sakit

medical services. If a rape victim presents with physical or psychological abnormalities, whether mild, moderate, or severe, they have the same rights as comprehensive patients, including legal protection. Therefore, there is a need for Special Procedures for Forensic Services in Women and Child Violence Clinics in every hospital, including cases of rape.²²

The concept of providing services to victims of sexual violence in hospitals is implemented in a comprehensive manner (promotive, preventive, curative, and rehabilitative) and is able to meet the needs of the victims (medical, psychosocial, and medico-legal). It involves a multidisciplinary approach considering the complexity of the issues faced in handling victims.

The personnel involved in handling cases of victims form a team consisting of medical professionals (doctors, psychiatrists, non-medical midwives, and nurses) and professionals (psychologists/social workers, police, and NGOs). The services should be available and accessible 24 hours, ensuring good quality. The services are conducted in accordance with the established standards, and the available equipment must meet the required specifications. All actions must be properly documented, and there should be a monitoring and evaluation system in place.²³

In cases where healthcare facilities have limitations in terms of human resources, they may refer to more comprehensive medical and medico-legal examinations. In situations where guidelines are lacking or healthcare providers have doubts in delivering services, it is necessary to update the guidelines and provide specialized training for general practitioners with the required qualifications and competence to handle rape cases. Similar to the provision of abortion for rape victims, general practitioners who have undergone training and supervision and have been declared competent by the local health

²² Kementerian Kesehatan RI, Keputusan. (2009). Keputusan Menteri Kesehatan nomor 12226/Menkes/SK/VII/2009 tentang Pedoman Penatalaksanaan Palayanan Terpadu Korban Kekerasasn terhadap Peerempuan dan Anak.

²³ Keputusan Menteri Kesehatan nomor 12226/Menkes/SK/VII/2009

department may be authorized to handle such cases. This authorization should be reviewed simultaneously with the renewal of their practice licenses to determine their continued eligibility for such competence. It is important to emphasize that this does not undermine the importance of standardized professional training for doctors and nurses who encounter female rape victims, as they play a crucial role in providing quality care for women who have survived rape.

The recording and storage of medical records must be accurate, maintaining their confidentiality. Evidence and services provided as part of fulfilling the reproductive rights of rape victims should be documented in the medical records. Timeliness in the effectiveness of emergency contraception is highly encouraged, and therefore, victims should report as early as possible to ensure the implementation of reproductive health services for pregnancy prevention. Services are provided based on the request or consent of the respective rape victim and with the informed written consent of the rape victim. In cases where the rape victim is not of legal age to provide consent through informed consent, consent may be given by the family of the rape victim. Safe, high-quality, and responsible emergency contraception services must be conducted at healthcare facilities designated by the Minister and are referral hospitals for cases of violence against women and children.

Emergency rooms have failed to offer pregnancy prevention through emergency contraception to rape victims. They even fail to inform the victims about the availability of pregnancy prevention options, as such treatments are not provided. Based on research conducted by the ACLU, less than 40% of the eleven hospitals studied in the state do not offer emergency contraception as a means of pregnancy prevention, thereby putting victims at risk of pregnancy following the assault. The provision of emergency contraception significantly protects victims from the risk of pregnancy. Emergency contraception is a comprehensive form of care that fulfills the victim's

right to reproductive health, and therefore, it should be informed and provided to the victims.²⁴ Emergency contraception is a standard of care for rape victims.²⁵

The government should establish more detailed regulations and provide greater support for emergency contraception services. It is expected that all Type A and Type B hospitals are required to provide emergency contraception services for rape victims and disseminate information through banners and their websites about the availability of emergency contraception services for rape victims. Public awareness campaigns should be conducted to inform the community about the protection and prevention of pregnancy that can be provided to rape victims.

The government should also provide training and certification for healthcare professionals to assist rape victims. The cost of emergency contraception services should be covered by the national and local budgets, ensuring that no rape victim is unable to access emergency contraception due to financial constraints. This provision is already stipulated in Article 87 of the Law on the Elimination of Sexual Violence, which guarantees that the state funds the protection of sexual violence victims for necessary medical examinations and healthcare services.

The victims are not the only ones lacking knowledge about emergency contraception; healthcare providers often lack information regarding the availability of emergency contraception that can be provided to rape victims who report their cases within a timeframe of less than five days as part of pregnancy prevention services. This occurs because the provision of emergency contraception has not been included and regulated in the Health law Number 36 of 2009 and Government Regulation Number 47 of 2018 on Emergency Services.

²⁴ Ensuring Acces To Emmergency Contraception After Rape. https://www.aclu.org/other/ensuring-access-emergency-contraception-after-rape, acepted 21 November 2022

²⁵ Steven S. Smugar, MD, Bernadette J. Spina, BA, and Jon F. Merz, JD, PhD, *Informed Consent for Emergency Contraception: Variability in Hospital Care of Rape Victims*, American Journal of Public Health, September 2000, Vol. 90, No. 9

The components of medication and pregnancy prevention measures are not included in the required drugs provided by hospitals, even though these hospitals are designated as integrated facilities for handling violence against women and children. ²⁶

At the policy level, the provision and logistics pose the greatest challenge as the exclusion of the said medication from the hospital formulary prevents all hospitals from having access to emergency contraception. The author acknowledges the difficulty in advocating for emergency contraception for rape victims in society due to moral or religious issues, the stigma associated with justifying casual sex, rape, or incest. The World Health Organization (WHO) has provided clear guidelines for preventing unintended pregnancies and reducing the rate of unsafe abortions in Indonesia, sparking debates surrounding reproductive health as a fundamental human right.

The author earnestly hopes for changes in the Health law by incorporating provisions regarding emergency contraception for rape victims, ensuring that healthcare providers and hospitals are legally protected in providing emergency contraception services to rape victims. Additionally, continuous training, guidelines, and comprehensive socialization aligned with evidence-based guidelines from the World Health Organization (WHO) are essential for access to emergency contraception and safe abortion services for rape victims.

This will eliminate any doubts surrounding the provision of pregnancy prevention services for rape victims. In order to establish legal certainty, legal protection, and organize concepts related to the laws governing emergency contraception services for rape victims in accordance with the existing norms in Indonesian society, which encompass religious, moral, ethical considerations, as well as advancements in science and technology, it is necessary to regulate the implementation of emergency contraception services for rape

²⁶ Peraturan Pemerintah Nomor 47 tahun 2018 tentang Pelayanan Kegawatdaruratan

victims in detail within the Health law, following the provisions on abortion and after the Reproductive Health Article.

CONCLUSION

The legal protection for rape victims and healthcare providers in Emergency Contraception Services is regulated by Government Regulation as the implementing regulation of the Health law. The provision of emergency contraception services, as regulated by the Government Regulation, should ideally be addressed in the Health law itself, as it pertains to the legal needs of rape victims, and hierarchically, the Health law holds higher authority than Government Regulation. Emergency contraception services provide enhanced protection for rape victims and healthcare providers, as they prevent unwanted pregnancies and do not require complex requirements such as abortion procedures for rape victims.

The implementation of provisions regarding emergency contraception services for rape victims does not currently specify the obligation to provide information and emergency contraception services by healthcare providers to rape victims. Due to the absence of regulations mandating the provision of emergency contraception, not all healthcare providers are willing to offer such services, citing the lack of provisions in the law and the regulation being limited to ministerial regulations and government regulations. To ensure the consistent provision of these services, a revision of the content of the Health law is necessary.

In order to fulfill the legal needs of rape victims, it is advisable to undertake a revision of the Law to incorporate provisions regarding emergency contraception and the obligation of healthcare providers to provide emergency contraception services in order to fulfill the reproductive rights of rape victims.

It is advisable to harmonize the Health law with the Law on Sexual Violence Offenses to mandate training on emergency contraception services for healthcare providers and require emergency units in hospitals serving rape victims to include emergency contraception drugs and related healthcare equipment that are readily available and accessible to both rape victims and healthcare providers.

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