

# Legal Protection of Doctors As Executors of Conditional Abortions For Rape Victims

Indrawati<sup>1\*</sup>, Soetarno<sup>1</sup>, Ninis Nugraheni<sup>1</sup>

<sup>1</sup> Faculty of Law, Hang Tuah Surabaya University, Indonesia

\*Corresponding Author E-mail: email: [ayin.indrawati@gmail.com](mailto:ayin.indrawati@gmail.com)

**Article History: Received: July 26, 2024; Accepted: August 09, 2024**

## ABSTRACT

This study explores the historical and contemporary practices of abortion, focusing on the legal and psychological implications for rape victims and the role of doctors as executors. Abortion has been practiced since ancient times using various methods across different cultures. Modern discussions about abortion remain contentious, especially concerning the rights of rape victims who often face severe psychological trauma. The primary objective of this research is to examine the evolution of abortion laws in Indonesia, particularly those providing legal protection for medical professionals. This normative juridical research employs statute and conceptual approaches to analyze laws, regulations, and legal doctrines, connecting them with current positive law to address the main thesis issues. Key findings indicate that Indonesian laws have progressively recognized the necessity of abortion in specific circumstances, culminating in the 2023 amendments to the Criminal Code and Health Law. These legal frameworks aim to protect women's mental health and uphold their human rights, as enshrined in international conventions. The research concludes that although legal provisions for abortion have progressed, there is still a need for improved implementation and support systems to safeguard medical professionals due to lingering ambiguities in the law.

**Keywords:** Legal Protection, Doctor, Rape, Abortion, Medical Ethics

## 1. INTRODUCTION

Rape victims also vary greatly, not only among adult women, but also among teenagers and children. In September 2022, a report of rape was reported by the parents of a 5th grade elementary school student with hearing loss in Yogyakarta. (Pangaribowo, 2024) Apart from that, cases of rape of minors also occurred in Banyumas, Central Java. This rape case was carried out by 9 people, most of whom were elderly and a 15 year old child with mental retardation. The rape was not only committed once, but lasted for a year, namely from 2021 to mid-July 2022, at different times and places. The results of the midwife's examination stated that the victim was 3 months pregnant. (Gani, 2024) Apart from that, the latest case that is being widely discussed is a father in Mojokerto who raped his own child who was still in grade 2 of junior high school until she became pregnant. The perpetrator admitted to the authorities that he had raped his own child in the last 2 years with the threat of not supporting the victim if he refused his advances. (Budianto, 2024) The same case also occurred in North Jakarta, where a father had the heart to rape his 17 year old stepson until she became pregnant. Just like before, this coercive action has been carried out for

years, from 2013 to 2023 with the threat that the perpetrator would beat the victim if he refused and reported it to someone else. (Noviansah, 2024)

Many criminal cases of rape experience difficulties in resolving them, both at the investigation, prosecution and decision stages. Proving cases of rape or obscene acts is also difficult in the presence of other parties. Many criminal acts of rape have been processed to court, but the perpetrators have not been given maximum sentences to provide a deterrent effect. The punishment for perpetrators of rape is regulated in the Criminal Code (KUHP) CHAPTER If a woman has sexual intercourse with him outside of marriage, he is threatened with a maximum prison sentence of twelve years for committing rape." In overcoming this crime, rational efforts are needed from the community, namely by efforts to protect the community or social defence. The main goal of criminal politics is the protection of society to achieve social welfare. Many rape cases are not reported by the victim to the authorities due to several factors, such as the victim feeling embarrassed, not wanting the disgrace that befell her to be known to others or being afraid of the perpetrator's threats. These reasons influence the psychological aspects of the victims and of course influence the law enforcement process.

The crime of rape, whether or not it results in pregnancy, is a form of violence against women. Protection of victims of the crime of rape through the criminal justice process and social care means is an absolute consideration in upholding justice. Rape for sexual intercourse in Article 285 of the Criminal Code. The provisions of this article apply with proof of the presence or absence of rape from several elements, namely: (a) violence or threats of violence, (b) forcing a woman and (c) having sex outside of marriage with her (the perpetrator). The most detrimental impact for rape victims is the occurrence of unwanted pregnancies which is in direct conflict with reproductive rights. Not only does it bring physical suffering, pregnancy also has a negative impact on the mental and social aspects of the victim. Psychological trauma is also prone to occur in victims. These reasons encourage most pregnant rape victims to have illegal abortions or unsafe abortion which could endanger the victim's life.

In the context, when a patient and doctor undergo a therapeutic contract, there are two statuses attached to the patient, namely as a sick person and as a legal subject. When the patient's position is a legal subject, their interests become different, because they are bound by the patient's rights and obligations, one of which is the element of freedom within the patient. This becomes an interesting issue if the patient as a legal subject who has an element of freedom expects a therapeutic contract that deprives the unborn baby of the right to life. (Pujiono, 2022)

Abortion is also called by the term abortion is the act of terminating a pregnancy prematurely. Basically, the act of abortion is a hidden phenomenon because its practice often does



not appear on the surface, and even tends to be covered up by the perpetrator, executor and the surrounding community. This closure is influenced by several factors, including formal law, political, social, cultural and religious values that live in Indonesian society. Based on health and medical science, abortion can be categorized into two types, namely spontaneous abortion is a miscarriage that occurs naturally, without intention or human intervention, which is caused by things such as abnormalities in the ovaries due to an illness suffered by the pregnant woman. Whereas induced abortion, can be interpreted as a miscarriage due to deliberate, human intervention. Abortion induced further divided into 2 (two), namely therapeutic/medically induced abortion and aa provocation of a criminal. (Perdanakusuma, 1984)

The issue of abortion again received public attention in Indonesia when Law Number 17 of 2023 concerning Health, hereinafter referred to as the new Health Law, was passed, replacing the previous health law, namely Law Number 36 of 2009 concerning Health. In the new Health Law, the issue of abortion gains legitimacy and affirmation. Explicitly, in this law there are articles that regulate abortion. Even though the law prohibits abortion, it is permissible under certain circumstances. In Indonesia, abortion is a criminal offense, except for rape victims who expect legal protection for the act of aborting the fetus in order to reduce the suffering experienced. According to statistics, abortions also increase every year, both with the help of traditional healers, medical personnel and even by doing it yourself. However, debates about abortion still occur everywhere, from print to electronic media.

Many people believe that abortion should be legalized, for example in cases of pregnancy resulting from rape or pregnancies that endanger the life of the mother, so termination of the pregnancy is necessary. However, the act of abortion needs to meet the requirements set out in the Criminal Code and legislation. This is what is called a conditional abortion. In the case of rape victims, the legalization of abortion can be viewed from reproductive health rights from feminist, religious and human rights groups. Abortion can be performed because a rape victim will suffer physically, mentally and socially. Thus, pregnancy as a result of rape will worsen the mental condition of the victim who had previously experienced severe trauma due to the rape incident. Severe mental trauma will also have a negative impact on the development of the victim's fetus.

The regulations that legalize abortion contain relatively complicated requirements, because the indication of pregnancy resulting from rape is an absolute key word for abortion to be carried out legally in Indonesia. Regulations and requirements that have been established regarding the implementation of the legalization of abortion, such as pregnant women who meet the requirements, parties involved in making policies/decisions for carrying out abortions, parties involved and technically authorized in carrying out abortions, as well as the availability of facilities



Health services that can facilitate the implementation of conditional abortions need to be reviewed because the reality on the ground is often more complex. Although there is a legal framework that regulates the legality of abortion for rape victims, factors such as medical ethics, public opinion, and legal uncertainty often influence doctors' decisions in carrying out abortions, especially due to rape. It is hoped that the new Health Law will ease the requirements for pregnant rape victims to undergo conditional abortions and provide certainty and protection for executors. However, whether or not these improvements and reliefs exist cannot be studied in more depth because Government Regulations have not yet been established, so the old requirements which tend to still be burdensome for victims and executors still apply.

## **2. RESEARCH METHODS**

The type of method used in this research is the normative legal research method. The normative legal research method is a procedure for finding legal rules, legal principles and legal doctrines to answer the legal problems faced. (Marzuki, 2017) The sources of legal materials used are primary legal materials, secondary legal materials and tertiary legal materials. The approach used in this writing is the statutory or legal approach statute approach, namely an approach through the use of legislation and regulations and also paying attention to the hierarchy and principles in statutory regulations. (Achmad, 2015) Then, this research uses a conceptual approach (conceptual approach) because one part of this research will begin by identifying existing doctrinal principles or views to then generate new ideas. As well as a historical approach (historical approaches). This normative legal research is descriptive in nature as part of legal science activities to explain the law, only the facts which are the primary legal material for explaining the law in making decisions about law in the legal field. (Rahayu, 2020)

## **3. RESULTS AND DISCUSSION**

### **Ethical Foundations of Doctors as Conditional Abortion Executors in Cases of Rape Victims**

Juridically-sociologically, the right to self-determination or right of self-determination reflects the position of humans who have the right to determine the future for themselves. This relates to abortion due to rape which takes into account a woman's rights to her pregnancy. In an effort to anticipate and protect women, especially rape victims, so that they can protect mental health, in 2009 Law no. 36 of 2009 concerning Health. It is explained in Article 75 that it is legal to abort a pregnancy caused by an act of rape if it causes psychological trauma to the victim. Then, regulations regarding conditional abortion are explained in Government Regulation no. 61 of 2014 concerning Reproductive Health. Later, in 2023, there will be updates to the provisions regarding



abortion as outlined in Law no. 1 of 2023 concerning the Criminal Code and Law no. 17 of 2023 concerning Health. However, of course there are several conditions that must be met for abortion due to rape, as written in Government Regulation no. 61 of 2014 concerning Reproductive Health in Article 34. The provisions of this article refer to the Criminal Code in Article 285 where to prove an act of rape requires proof of violence or threats of violence accompanied by sexual intercourse. In proving that violence and sexual intercourse are the main elements of rape, investigators have the authority to ask for assistance and information from medical experts. Later, a TKP (crime scene) inspection will be carried out and an examination of the rape victim to obtain objective data. This data can be used to fulfill conditional abortion requirements as regulated in Health Law no. 17 of 2023.

The right to freedom to determine reproductive function is also stated in Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also found a statement in Article 11. At United Nations International Covenant on Civil and Political Rights (ICCPR) also emphasizes that all individuals have the right to choose and make decisions for themselves (all people have the right of self determination). Meanwhile on International Covenant on Economic, Social and Cultural Right (ICESCR) Article 12 emphasizes that every human being has the right to enjoy the best physical and mental health. (Astutik, 2020) The state has an obligation to always look after and protect its people so that they can live in peace, security, peace, happiness and prosperity both physically and mentally, as explained in Article 9 of Law no. 39 of 1999 concerning Human Rights. (Mughtar, 2015) Based on this statement, women who are victims of rape have the freedom to make decisions for themselves, especially when it comes to unwanted pregnancies. Moreover, pregnancy as a result of rape will have negative social and psychological impacts on the victim.

The bad stigma regarding abortion continues to haunt victims, so that quite a few choose to ask for help from non-medical personnel to terminate their pregnancies in dangerous ways. (Rochayati, 2018) In cases of pregnancy due to rape, many negative things arise, such as depression and physical side effects which in the future will pose big challenges and risks to their health and survival. Apart from the negative aspects for the victim, the negative effects will also be felt by the baby in the future. When women are forced to maintain a pregnancy, many of them will abandon their babies. Children born as a result of rape can also suffer from health and developmental problems related to the circumstances of pregnancy, birth, and psychosocial trauma experienced by the mother during pregnancy.

With the high number of cases of rape and abortion, of course doctors as a profession have a special responsibility to do so. Until now, the medical profession is still seen as a very noble and



respected profession in society. Not many of them view doctors as "demigods" because they can make sick people healthy again and also because doctors heal patients with all their heart regardless of material things. Before being able to carry out their duties, doctors need to go through a very long education, so there are various expectations and hopes that doctors must bear. Therefore, a guideline is needed for doctors in carrying out all actions, from examinations to healing actions for patients, which are stated in the Indonesian Medical Code of Ethics (KODEKI). The regulations in KODEKI are based on Pancasila as the ideal basis and the 1945 Constitution as the structural basis and are stipulated based on the Decree of the Minister of Health of the Republic of Indonesia No. 434/Menkes/SK/X/1983 concerning Recitation of the Doctor's Oath and updated with IDI Executive Board Decree No. 221/PB/A- 4/04/2002. This was prepared with the aim that doctors can carry out their obligations seriously and optimally after the doctor takes the Doctor's Oath. (Amri, 1991)

The Indonesian Doctors Association (IDI) rejects the involvement of doctors as executors of conditional abortions due to rape. This rejection occurred because abortion was considered to be contrary to KODEKI. The medical profession adheres to the principles of medical bioethics as specific ethical and social values, practical rules and moral or normative philosophy that serve as guidelines (that should) and its implementation (that be). A doctor is obliged to prioritize the interests of other people, so he must have Intellectual Quotient (IQ), Emotional Quotient (EQ) and Spiritual Quotient (SQ). KODEKI is prepared based on the doctor's oath in accordance with the Geneva Declaration (1948) and has been approved by General Assembly WMA and translated into Indonesian in Sydney in 1968. In some views, abortion is considered to violate principles beneficence (carrying out actions for the good of the patient), non-maleficence (worsens the patient's condition), autonomy (respecting patient rights) and justice (treating patients equally). However, it needs to be emphasized that by carrying out abortions in pregnancies resulting from rape for the good of the victim, there is no violation of ethical principles. (Astutik, 2020)

In Article 10 of the KODEKI, it is stated that a doctor is obliged to respect the patient's rights and maintain the patient's trust. This underlines that a doctor must always defend and protect the patient's wishes, as in the concept of principles autonomy, namely the patient's freedom to determine the actions and things that will be obtained. Then, Article 12 of the Indonesian Medical Code of Ethics also explains that in carrying out their work, a doctor must pay attention to all aspects of health services, both physical and psycho-social-cultural of the patient. Things that need to be paid attention to are actions that are not in accordance with KODEKI, even though doctors are considered as educators and community servants. However, from the patient's perspective, in this case a rape victim, abortion actually gives hope, both physically and psycho-socially-culturally





to the patient. This is due to deep trauma for rape victims and if the pregnancy continues, it can increase the possibility of becoming a trigger that can worsen the victim's physical and psychological condition. Preserving a pregnancy resulting from rape is also an unfair decision and not in accordance with principles justice which states that each individual gets balanced benefits and burdens.

Punishment must be based on a written law or law (written law), that is, a law must regulate actions that can be considered criminal acts. Without a law that regulates it, this act cannot be punished. Apart from that, clear and detailed laws are needed regarding the criminal acts in question (Lex Certa or certainty commands). Therefore, the principle can be applied the higher law derogate from the lower law, which means higher regulations can override lower regulations. In this case, conditional abortion regulations, including those resulting from rape, are regulated in law, while KODEKI is regulated in a Minister of Health Regulation, which means that abortion resulting from rape can be legalized. (Iksan, 2017) The use of *as aini* can achieve legal certainty because medical ethics regulated in the Minister of Health Regulation has a lower status so it is required to comply with laws of a higher level. Apart from that, collaboration between government sectors can also be carried out, in this case the Ministry of Health and the Ministry of Social Affairs, to join in realizing the implementation of laws and regulations relating to the technical implementation of conditional abortion in cases of rape.

### **Legal Protection for Doctors Executing Abortions in Cases of Rape Victims Based on Positive Law**

The right to authority has a very important position and role in daily life and can only be owned by someone with a position in a government which of course has been regulated in a set of rules. Authority itself can be closely related to existing positive law and is a formal power possessed by a public official or an agency. In general, the authority of doctors in treating patients is regulated in Article 35 of Law no. 29 of 2004 concerning Medical Practice. In the law, it is stated that a doctor is allowed to (1) interview a patient or take anamnesis; (2) examine the patient, both physically and mentally; (3) determine supporting examinations; (4) establish a diagnosis; (5) determine and provide management to patients, both in the form of procedures and writing prescriptions for drugs or medical devices; (6) write and provide a doctor's certificate; (7) store drugs in permitted quantities and types; and (8) dispensing and administering medication to patients, if there is no pharmacy in a particular area.

With this authority, it can be interpreted that the doctor can provide appropriate action for the patient according to the patient's condition, after carrying out an anamnesis, physical and mental examination, supporting examinations and establishing a diagnosis. In certain cases, such as



pregnancy resulting from rape which can cause various complications for the victim, it is possible that abortion is the most appropriate choice of action for the victim. Abortion for rape victims is regulated in articles 60 to 62, which in the future will also be regulated in Law no. 17 of 2023 concerning Health Law no. 1 of 2023 concerning the Criminal Code (KUHP), especially Articles 463, 464 and 465. The existence of a law that regulates abortion due to rape gives rise to the authority of attribution for doctors which is an authority to make decisions that refer directly to law in a material sense. Doctors have the authority to carry out abortion procedures as long as the conditions stated in the Health Law are met. Previously, the requirements for abortion due to rape were explained in Government Regulation no. 61 of 2014 concerning Reproductive Health Articles 34 to. 37 and Article 39.

Pregnancy resulting from rape is defined as pregnancy resulting from sexual intercourse carried out without the victim's consent, in accordance with the rape incident as proven by a certificate from a doctor, investigator and/or psychologist. Apart from that, abortion due to rape must also be carried out by a doctor in accordance with the standards in health facilities set by the Minister of Health. Doctors who perform abortions must also receive training from an accredited training provider and can only do so after undergoing pre-operative counseling by competent personnel. This pre-action counseling is intended to educate victims about the existence of side effects and complications as well as assisting victims in making decisions. Later, every act of abortion resulting from rape must be reported to the head of the district/city health service and the head of the provincial health service. When all the terms and conditions outlined in the law are fulfilled, the authority arises which is the right for the doctor to be the executor of the conditional abortion. In this process, doctors are allowed to perform abortions without fear of legal action. Likewise with the victim and the hospital where the abortion was carried out, because all abortion procedures resulting from rape should be legally legal.

Abortion is essentially a covert act of killing a fetus, so based on Articles 346 s.d. 350 of the Criminal Code prohibits abortion and provides severe penalties for women who abort their pregnancies and all those involved in the abortion process. In general, abortion is a criminal act, but not all acts of abortion will be punished with a crime according to the current law. Abortion that cannot be threatened by criminal law is a pregnancy with medical indications and the result of rape that meets the requirements explained in the previous sub-chapter. So, if these conditions have been fulfilled, then the perpetrator, executor and all parties involved in the abortion act cannot be punished for violating the law. The issue of abortion due to rape can cause things that can be detrimental to both the victim and the doctor as the executor. Then, the question arises to what extent the law in Indonesia can protect the legal certainty of medical personnel who perform





abortions on rape victims and how the law can guarantee the human rights (HAM) of these rape victims. In cases like these, it is hoped that the law can be harmonious, so that order can be realized. (Bertens, 2009)

In providing evidence, an investigator can ask for help from a doctor who is an expert in their field. Judicial medicine experts will carry out the process of examining the crime scene and examining victims who claim to have been raped to obtain objective results. From the results of this examination, it will be concluded and proven to be true, because without intercourse, pregnancy will not occur. This proof is very important to carry out as a condition for allowing abortion due to rape, as regulated in Article 31 paragraph (1) letter b Government Regulation no. 61 of 2014. If the act of rape has been proven, then proof must also be carried out regarding the pregnancy, whether the pregnancy was the result of an act of rape or not. The victim's pregnancy will be examined and confirmed by a certificate from both the doctor and investigator regarding the appropriateness of gestational age, the results of a physical examination or post-mortem on suspicion of rape. Psychologists also play a role in determining the victim's condition at the time of the rape. This evidence is often hampered because many rape victims delay reporting to the police for various reasons. So, the longer the rape case takes, the more difficult it is to find evidence of the victim's confession, especially evidence regarding sexual intercourse.

There is a stigma in society that women who are victims of rape are despicable women. There are also those who think that the rape case was the woman's fault. Wrong views, such as assuming that female rape victims deliberately tempt and challenge the perpetrators of rape by dressing attractively, wearing mini-dresses or wearing sexy clothes that can arouse the lust of the perpetrators. Things like this make victims even more afraid to express and report the traumatic events they have experienced. The victim feels afraid of tarnishing the family's good name and chooses to keep the incident to himself or even blame himself. (Faturochman, 2022)

After proof of pregnancy and rape, the victim will receive a consultation and be given the option to have an abortion after hearing information about the act of abortion itself. Explanation of this information is the victim's right to health and the right to self-determination or right to self-determination or right of self-determination. According to Mason and McCall Smith, information regarding the patient's complaints or health is one of the elements of a valid consent. Without valid consent, the act of abortion will become a criminal act. If after receiving all the explanations regarding the procedure and implications of the abortion act, it is the victim's right to decide whether to continue having the abortion or to cancel the abortion. Abortion as a result of rape can only be carried out and is not a criminal offense if it meets the requirements. The existence of regulations governing abortion due to rape, such as in the Criminal Code, the Health Law and



Government Regulations on Reproductive Health, must be kept in mind, especially by doctors and medical personnel who may participate in this action. On the other hand, if the conditions are not met, the action will still be considered an unlawful act and the action must be held legally accountable. Accountability has also been regulated in Law no. 17 of 2023, especially in Article 428 and Article 429.

The first element in Article 428 paragraph (1) of the Health Law is "every person", which can be interpreted as the perpetrator as a human being, and anyone can carry out this action. So, in this case of abortion, anyone can do it, including pregnant victims or doctors or other medical personnel who carry out and/or assist in carrying out the abortion. From this interpretation, doctors can be sentenced to prison and have their right to practice their profession revoked, if they do not fulfill the requirements set out in Article 60 of the Health Law. The second element in Article 428 paragraph (1) of the Health Law is "carrying out an abortion", namely the act of removing a fetus before it can live outside the womb. Before proving an abortion, it must first be confirmed that the woman is truly pregnant. Pregnancy lasts 280 days or 40 weeks and is divided into trimesters, namely trimester 1 (0-12 weeks), trimester 2 (13-26 weeks) and trimester 3 (27-40 weeks). The presence of fertilization and implantation of the products of conception in the uterus will give rise to uncertain, possible and definite signs of pregnancy. (Umrah, 2017)

The reason is, to this day there are still many unclear regulations, especially for executors, so that these provisions can be implemented properly. For example, regarding certification for doctors to have the authority to perform abortions, as well as health facilities designated to perform conditional abortions. The existence of legal certainty is also one of the basic principles of law (idea of law) which is composed of two basic values (basic word) others, namely justice (justice) and usefulness (expediency). These three basics are also the objectives of the existence of law. Legal certainty can contain two meanings, namely the existence of general regulations that explain actions that may and may not be carried out and legal security for each individual from government arbitrariness. Legal certainty is not just about the articles in the law, but also pays attention to consistency in every judge's decision in similar cases. (Shidarta, 2006)

However, until now, there are no definite terms and conditions that regulate the eligibility of doctors and health facilities who will be authorized to perform conditional abortions. In fact, in Article 60 paragraph (2) letter a, it is written that conditional abortions can only be carried out by medical personnel and assisted by health personnel who have competence and authority. However, if the procedure for obtaining certification is still not clearly regulated, then to date there are no doctors authorized to perform conditional abortions, nor are there any health facilities that may be used to perform conditional abortions. This lack of clarity can be detrimental to doctors and all



parties who are part of the execution of conditional abortions. This is because there are no laws and regulations that regulate it, so that different interpretations can emerge regarding the phrase "meets the requirements" as explained in the law. In general, the legalization of conditional abortion is a form of compulsion to protect other legal interests, namely to save the victim, so that abortion, which was initially an unlawful act, becomes an act that is not against the law.

The conditions for legalizing abortion due to rape in Indonesia do have a number of ambiguities and challenges in their implementation. Here are some issues to pay attention to:

1. Proving Rape, especially if the incident occurred quite long ago. Physical evidence may no longer exist, and victims may have difficulty providing evidence or witnesses to support their claims.
2. Information from Various Parties, the process of obtaining information from various parties, such as police, medical personnel and witnesses, can take a long time and is complicated, which can slow down the process of legalizing abortion.
3. Short Time to Fulfill Requirements, the time given to fulfill all required requirements is very short, making victims and medical personnel experience pressure and difficulty in complying with existing procedures.
4. Provisions for Doctors as Executors, not all doctors are allowed to perform abortions. Only doctors who have received special training and are accredited can perform it, and this can limit victims' access to safe and legal abortion services.
5. Health Facilities Abortion Execution Sites, not all health facilities are permitted to perform abortions. These facilities must meet certain standards, which may not be available in all areas, especially in remote areas.
6. Limitations on Maternal Disorders, the limits regarding the mother's health conditions that allow abortion to be carried out are often unclear, giving rise to different interpretations among medical personnel and the courts.
7. Physician Training and Accreditation, bodies that provide training for doctors who perform abortions must be accredited, but the availability and accessibility of such training can be a problem, especially in areas with limited resources. Apart from that, the training being held has not been clearly explained, so there is no authorized party to organize this training.

The existence of ambiguity regarding these regulations means that the effectiveness of the preventive legal protection that doctors as conditional abortion performers should receive is still not optimal. Without clear statutory regulations, various interpretations may arise from various related parties, giving rise to a greater possibility for the executor to be punished. The existence of



ambiguity in regulations regarding abortion due to rape means that the effectiveness of the preventive legal protection that doctors as conditional abortion performers should receive is still not optimal. Without clear legal regulations, various interpretations can arise from various related parties, which ultimately increases the risk of doctors being punished. Doctors who perform abortions in rape cases need legal certainty so they can carry out their duties without fear of legal consequences. The lack of clarity in the rules means doctors may be hesitant to perform abortions even if the situation meets legal requirements.

#### 4. CONCLUSION

The foundation of medical ethics sees abortion as a violation because it takes the life of the fetus. Based on the science of bioethics, life is counted from the moment fertilization occurs, so that abortion violates established ethics. But on the other hand, based on principles beneficence, autonomy, non-maleficence, And justice, abortion in cases of rape can be considered to protect the victim and respect the victim's reproductive rights, of course after fulfilling certain conditions. As a member of the UN, Indonesia is obliged to protect women's reproductive life. Thus, abortion in some cases, including pregnancies resulting from rape, can be carried out. Law no. 17 of 2023 concerning Health provides attribution authority for doctors who are competent and certified to be conditional abortion executors, including rape victims who have met the requirements. However, in Criminal Code Articles 347 to 349, anyone who performs an abortion for any reason is sentenced to prison, contrary to the Health Law which allows abortion in certain cases. Thus, doctors as executors are still not fully protected by law because there are several uncertainties in the law regulating conditional abortion, including differences in the provisions of the Criminal Code and the applicable Health Law. Apart from that, the provisions for doctors who are authorized to be executors, as stated in Article 60 of the Health Law, are "...by medical personnel and assisted by health personnel who have competence and authority," where the competency and authority referred to are appropriate and have not been explained in the statutory regulations. Apart from that, there are still no restrictions regarding harm to pregnant victims due to rape, so that abortion is permitted, as well as the body providing training for prospective executor doctors. This lack of clarity can lead to different interpretations from judges, so that the legal protection that should be received by victims, executors and related parties is still not guaranteed.

In realizing justice and following up on the reproductive health rights of pregnant victims of rape, doctors and other parties should not hesitate to allow abortion after fulfilling the conditions set out in the law. Ethics is also a belief in morals and it is possible for one person to another to have slightly different beliefs. So that in the future, it is permissible for doctors who, according to



their beliefs, want and are able to help rape victims to have abortions, undertake training organized by accredited bodies so that they can become executors who are authorized to carry out conditional abortions, including abortions resulting from rape. The authority of doctors to perform conditional abortions is still being questioned because an explanation of the competency and training that doctors need to undergo is still not included. Apart from that, the training organizing body has not yet been determined, so there is a need for more detailed regulations regarding this issue, for example in Government Regulations or subsequent laws. A more in-depth explanation can be given regarding all types of training so that it can create authority for doctors who have undergone the training. So, executors can really get protection when they become executors of conditional abortions.

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