

## Sexual and Reproductive Health and Rights and Gender Justice

### Editorial

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### Articles

My Body Is Not Mine: Analysing the Article 463 of Indonesia's New Penal Code from the Feminist Legal Perspective  
*Lidwina Inge Nurtjahyo*

Fulfillment of Sexual and Reproductive Health and Rights in the Fragile Community Food Systems in Rural Indonesia  
*Widya Hasian Situmeang, Fairuz Rafidah Aflaha, & Wahyu Ridwan Nanta*

*Sexual Violence: Intertwined Between Legal and Religious Norm*  
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Oppression and Power Over Women's Body in the Tradition of Cultural Society (A Case Study: Female Genital Mutilation in Banten)  
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Women's Right to Sexual and Reproductive Health: A Comparative Study of Abortion Legal Frameworks in Nepal and Indonesia  
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The Knowledge and Skill to Articulate Sexual and Reproductive Health and Rights among Indigenous Young Women in Papua  
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Feminism and Reproductive Justice: Shaping Abortion Discourse Based on the Experience of SRHR Activism  
*Abby Gina Boang Manalu & Asri Pratiwi Wulandari*

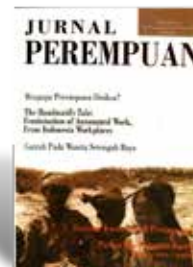
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# Sexual and Reproductive Health and Rights and Gender Justice

Inclusive and full realisation is essential for the well-being of everyone's SRHR. Realisation of SRHR is also a prerequisite for achieving gender equity. SRHR cannot be isolated as a health issue alone. Non-realisation of this right can lead to women's powerlessness and them being trapped in various vicious circles, such as deprivation of access to education, work, health, vulnerability to sexual violence, domestic violence, and so on.

Sexual and reproductive health and rights (SRHR) is an issue of feminism and human rights. A number of feminist scholars believe that history has shown that women's reproductive capacity has been used as a tool to oppress women. To ensure gender equality, reproductive autonomy and freedom are at the centre of the struggle for reproductive rights (Collins 1987). Feminist struggles have led to the recognition of SRHR as a right that must be protected globally. Since the adoption of the ICDP by 179 countries in the world in 1994, SRHR is a right that must be protected by every country that ratifies the ICDP, including Indonesia. Equality in reproductive health includes access to non-discriminatory and affordable health services, quality contraceptives including emergency contraceptives (UHHCR 2017). However, almost 30 years since then there are still many barriers for women, children, and other vulnerable groups to access SRHR.

UNFPA, in its report on the 2018-2023 programme in Indonesia, stated that in 2018 Indonesia faced a number of challenges related to the equitable provision of sexual and reproductive health services. There are at least several issues that are the main challenges, namely maternal mortality and sub-optimal quality of health services; unmet family planning needs; teenage pregnancy and lack of access to sexual and reproductive health information and services; and gender-based violence and harmful practices against women and girls (UNFPA 2023). All of these issues continue to be reproduced in Indonesia as the implementation of SRHR is often challenged by conflating it with religious and cultural values (UNHCR 2017), resulting in the exclusion of women from receiving life-saving and comprehensive sexual and reproductive care, treatment, medicines, and information. This means that rights-based reproductive struggles alone are not enough.

In sexual and reproductive discourse, there has been a paradigm shift. The initial struggle started

from the demand for access to health, moving to the level of reproductive rights that focus on women's reproductive freedom through the legal system. The rights framework has contributed greatly to gender justice in reproduction, with contentious issues including abortion rights, sex education, and family planning. It has enabled feminist movements around the world to press for state responsibility for women's SRHR. However, the effectiveness of the applicable law in guaranteeing reproductive rights does not proportionally see that there are intersectional issues in the framework of its discussion. The enforcement of reproductive rights must be accompanied by the struggle for social justice (Pacia 2020; Ross 2017). If not, then what happens is: Firstly, the presence of SRHR policies that do not accommodate and discriminate against women. Secondly, even though there are regulations that bring ideas or opportunities for the realisation of SRHR, in its implementation, women will still find it difficult or even impossible to access it because of the values and practices of local institutions and communities. According to Ross (2017), the relation between race, class, gender identity, disability, indigenous peoples, gender diversity, and other identities needs to be examined alongside reproductive rights (2017).

Issues such as abortion, contraception, HIV/AIDS, harmful cultural practices, and gender-based violence are some of the reproductive justice issues raised in the 114th edition of *Jurnal Perempuan* using the lens of feminism. In reproductive justice and in JP 114, abortion is an important issue in the struggle of feminism because issues, such as the criminalisation of abortion, the unavailability of abortion services, and public stigma are issues that are always intertwined in it. For example, **Lidwina Inge**, in her article, discusses how abortion is perceived in Article 463 of the New Penal Code compared to Law Number 36 of 2009 on Health through a feminist legal perspective in 2 Supreme Court decisions. **Maria Ulfah Anshor** questions the rights of victims of sexual violence to access abortion. According to her, the law and religious understanding are problematic because they do not have the logic of siding with victims. **Yogi Paramitha Dewi** examines the regulations of abortion as part of sexual and reproductive health rights through the lens of feminism by scrutinising the degree of recognition of women's bodily integrity, personhood, equality, and diversity. **Abby Gina Boang Manalu & Asri Pratiwi Wulandari** critically reflect, with a feminist lens,

about reproductive injustice in the issue of abortion in Indonesia based on the knowledge of women activists who advocate for SRHR. In addition to the issue of abortion, this edition also critically discusses the relationship between Reproductive and Sexual Health and Rights in the Fragility of Community Food Systems in Rural Indonesia, especially in Darim Village using the lens of feminist political ecology in the articles by **Widya Hasian Situmeang**, **Fairuz Rafidah Aflaha**, and **Wahyu Ridwan Nanta**. This edition also discusses the fulfilment of SRHR in the context of Papua, which covers specific issues, such as domestic violence, HIV/AIDS, and violence against women, written by **Desintha Dwi Asriani**, **Godefridus Samderubun**, and **Eling Wening Pangestu**.

Another very important topic that occurs in Indonesia is cultural practices that are harmful to women. **Adinda Putri Kirana Lutfi** and **Sri Lestari Wahyuningrum** examine the issue of female circumcision in Banten based on a critique of identity politics. The thinking of Okin (1989) and Young (1990) is used as a tool to examine the inequalities in the tradition.

All of this research shows that reproductive justice is an issue that is intertwined with health, rights, and culture. It builds on struggles at local, national, and global levels that accommodate pluralised situations of reproductive injustice. This research aims to enrich the discourse on reproductive justice in Indonesia (**Abby Gina**).

Abstracts

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**Lidwina Inge Nurtjahyo**

Faculty of Law, University of Indonesia

**My Body Is Not Mine: Analysing the Article 463 of Indonesia's New Penal Code from the Feminist Legal Perspective**

Jurnal Perempuan, Vol. 28 No. 1, April 2023, page. 1—9, 18 bibliographies

This article discusses abortion as perceived in Article 463 of the New Criminal Code as compared to Law No. 36 of 2009 concerning Health. This article is analyzed using the feminist legal perspective. To illustrate the state's intervention on women's reproductive health issues in terms of abortion, two cases obtained from the search results of the Supreme Court's decision directory are included. Article 463 of the New Criminal Code does not provide access for abortion in the context of the health condition of pregnant women as stipulated in the Health Law. Then in the explanatory part of the article, it tends to narrow the concept of sexual violence where abortion is only allowed to be carried out by victims of sexual violence in the form of sexual exploitation/forced prostitution. The findings of this research is that the law does not accommodate women's experience as a whole, and the fact that pregnancy can occur after a single case of rape. Furthermore, the law does not accommodate the necessity of abortion for pregnant women in emergency health condition. The government and the legislative should produce regulations which accommodate women's unique experience, especially in terms of reproductive rights issues.

Keywords: unwanted pregnancy, abortion, feminist legal perspective, health reproduction

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**Widya Hasian Situmeang<sup>1</sup>, Fairuz Rafidah Aflaha<sup>2</sup>, & Wahyu Ridwan Nanta<sup>3</sup>**

Agricultural Production Technology and Community Development Study Program, IPB Vocational School<sup>1</sup>, Yeungnam University<sup>2</sup>, & Koalisi Rakyat untuk Keadaulatan Pangan<sup>3</sup>

**Fulfillment of Sexual and Reproductive Health and Rights in the Fragile Community Food Systems in Rural Indonesia**

Jurnal Perempuan, Vol. 28 No. 1, April 2023, page. 11—22, 1 table, 54 bibliographies

Women's authority over their bodies is often ignored due to limited choices and access to resources. This study intends to photograph the failure of development governance, especially in the food and environmental sectors, which places women as the exploited party. This research uses the concept of feminist ecology as a rationale in studying women's experiences and their relation to the fragility of the food system. The research method used in this research is a qualitative approach through in-depth interviews and observations in the area of Kampung Darim which is uniquely divided into the territories of Kedayakan Village and Puntang Village with a food-agricultural ecosystem background in Indramayu Regency, West Java. These two villages are one of the food barn areas and have a high tendency for the practice of early marriage to occur. The results of the study show that the commodification of natural resources, especially food, tends to reduce the function of food production to fulfilling daily needs. More than that, it also ignores cultural practices that are closely tied to the food system. This paper intends to raise the experience of women who are vulnerable to exploitation due to the failure of the food system. Apart from experiencing exploitation as a result of failure to manage natural resources, rural women in this study are also a group at high risk of experiencing sexual and reproductive health threats.

The development of the food system needs to be improved by placing women as equal subjects.

Keywords: exploitation, reproduction health, woman, food system

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**Maria Ulfah Anshor**

Komnas Perempuan

**Sexual Violence: Intertwined Between Legal and Religious Norm**

Jurnal Perempuan, Vol. 28 No. 1, April 2023, page. 23—33, 1 table, 38 bibliographies

Sexual violence experienced by women with a variety of experiences is at the risk of not being recognized by the public, even by law enforcement officials who are not conscious of a victim's perspective. This shows that there is a 'big' problem related to the public's perspective on legal norms which makes its implementation conflicting with the constitution which guarantees rights and access to justice for women as citizens. This problem is also supported by an interpretation of religion that is not in favor of victims of sexual violence. This research is carried out to ensure that women who became victims of rape have access to justice in safe abortion services guaranteed by the constitution and religion (Islam). This is the novelty of this research, which is expected to fill in the gaps in a number of previous studies. The research methodology uses a descriptive qualitative approach.

Keywords: sexual violence, gender conscious religious interpretation, gender conscious law, women rape victim, comprehensive abortion care

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**Adinda Putri Kirana Lutfi<sup>1</sup> & Sri Lestari Wahyuningroem<sup>2</sup>**  
Veteran National Development University Jakarta

**Oppression and Power Over Women's Body in the Tradition of Cultural Society (A Case Study: Female Genital Mutilation in Banten)**

Jurnal Perempuan, Vol. 28 No. 1, April 2023, page. 35—44, 19 bibliographies

This article discusses female genital mutilation which is generally based on the traditions and culture of the society, passed down from generation to generation, and strengthened through religious teachings. The practice of female circumcision is strongly related to sexual control and forms of power exerted over women. This study aims to examine the form of oppression experienced by women in cultural groups through a case study of female genital mutilation in Banten and its impact on the recognition of women's rights in indigenous peoples. In particular, this study elaborates on the theoretical framework of forms of oppression against women in the context of the politics of recognition of cultural group identity in Banten. The research paradigm used is qualitative research methods and in-depth interview. The results of data analysis using the Interpretative Phenomenological Analysis (IPA) method show that there are two forms of oppression that occur in the practice of female circumcision in Banten, namely powerlessness and violence. These forms of oppression are the impact of women's weakening in the practice of female genital mutilation which is one of the negative implications of the politics of recognition of cultural group identity in Indonesia.

Keywords: oppression, the politics of recognition, female genital mutilation

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**Yogi Paramitha Dewi**

Researcher, Centre for Southeast Asian Social Studies,  
Gadjah Mada University

**Women's Right to Sexual and Reproductive Health:  
A Comparative Study of Abortion Legal Frameworks in  
Nepal and Indonesia**

Jurnal Perempuan, Vol. 28 No. 1, April 2023, page. 45—55, 1 table, 46 bibliographies

The fulfillment of women's sexual and reproductive health and rights remains challenging, especially concerning one of its most controversial issues, namely abortion. While the maternal deaths caused by unsafe abortion continue to be a concern, many countries retain repressive laws by banning abortion which has often been influenced by moral and religious reasons. This article aims to examine the abortion legal framework as part of sexual and reproductive health and rights through the lens of feminism by dissecting the degree of recognition of bodily integrity, personhood, equality, and diversity of women. Through a comparative approach between Indonesia and Nepal, this paper argues that Nepal's abortion regulation has a stronger recognition of women's bodily integrity, personhood, equality, and diversity in its abortion legal framework compared to Indonesia. Therefore, Nepal's experience in regulating abortion can serve as an inspiration for Indonesia in ensuring women's sexual and reproductive health and rights.

Keywords: sexual and reproductive rights, abortion law, women, Nepal, Indonesia

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**Desintha Dwi Asriani<sup>1</sup>, Godefridus Samderubun<sup>2</sup>, & Eling Wening Pangestu<sup>3</sup>**

Department of Sociology FISIPOL Gadjah Mada University<sup>1&2</sup>  
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**The Knowledge and Skill to Articulate Sexual and Reproductive Health and Rights among Indigenous Young Women in Papua**

Jurnal Perempuan, Vol. 28 No. 1, April 2023, page. 57—67, 44 bibliographies

This article discusses the extent to which the SRHR narrative is reproduced in the Papuan context. In the process, data collection was carried out by combining document studies, self-reflexive, and

interviews. The involvement of one of the researchers who is also an Indigenous Papuan (Orang Asli Papua – OAP) allows for self-reflection regarding the context and issues of SRHR in Papua. While in the interview process, women's bodily experience is placed as a center for understanding the dynamics of reproductive health problems in the broader context of Papua. Specific issues such as unwanted pregnancies (Kehamilan Tidak Diinginkan – KTD) are key topics during the interview process. The results of the study show that SRHR issues among young people in Papua cover specific issues such as unwanted pregnancy, HIV/AIDS, and violence against women. However, in the exploration of specific topics such as KTD, it was found that there is a gap in knowledge and skills in understanding and translating the substance of SRHR due to conflicting economic issues, traditions, and changes in meaning around sexuality due to the influence of modernization. Therefore, the intersectionality framework, both theoretically and methodologically, has the potential to be developed for further studies to obtain a comprehensive mapping of the dynamics of SRHR challenges and the need for innovative approaches in Papua.

Keywords: SRHR, young women, gender, sexuality, Papua

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**Abby Gina Boang Manalu<sup>1</sup> & Asri Pratiwi Wulandari<sup>2</sup>**  
Jurnal Perempuan<sup>1</sup> & University of Indonesia<sup>2</sup>

**Feminism and Reproductive Justice: Shaping Abortion Discourse Based on the Experience of SRHR Activism**

Jurnal Perempuan, Vol. 28 No. 1, April 2023, page. 69—81, 2 picture, 2 table, 36 bibliographies

In Indonesia, abortion is categorized as an illegal and criminal act. Even though abortion due to medical indications and rape are exempt from criminal status, access to legal abortion is still almost impossible. Therefore, discussion about legal abortion and safe abortion cannot be done separately, for the criminalization of abortion is one of the factors behind unsafe abortions. Through focused discussions with 20 women activists representing civil society organizations who advocate for gender justice and SRHR in Indonesia, this research aims to document and reflect critically on the situation of reproductive injustice in the issue of abortion in Indonesia using a feminist lens. Building this research within the framework of reproductive justice thinking based on feminist praxis, we selected women activists as our informants. SRHR activists are the closest to and the most involved subjects in the feminist praxis of promoting reproductive justice, particularly on the issue of abortion.

Keyword: reproductive justice, intersectionality, safe abortion, legal abortion, feminist activism

## My Body Is Not Mine: Analysing Article 463 of Indonesia's New Penal Code from Feminist Legal Perspective

**Lidwina Inge Nurtjahyo**

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### Abstract

This article discusses abortion as perceived in Article 463 of the New Criminal Code as compared to Law No. 36 of 2009 concerning Health. This article is analyzed using the feminist legal perspective. To illustrate the state's intervention on women's reproductive health issues in terms of abortion, two cases obtained from the search results of the Supreme Court's decision directory are included. Article 463 of the New Criminal Code does not provide access for abortion in the context of the health condition of pregnant women as stipulated in the Health Law. Then in the explanatory part of the article, it tends to narrow the concept of sexual violence where abortion is only allowed to be carried out by victims of sexual violence in the form of sexual exploitation/forced prostitution. The findings of this research is that the law does not accommodate women's experience as a whole, and the fact that pregnancy can occur after a single case of rape. Furthermore, the law does not accommodate the necessity of abortion for pregnant women in emergency health condition. The government and the legislative should produce regulations which accommodate women's unique experience, especially in terms of reproductive rights issues.

Keywords: unwanted pregnancy, abortion, feminist legal perspective, health reproduction

### Introduction

At the launch of the State of World Population 2022 in Ciawi, West Java in July 2022, the United Nations Population Fund (UNFPA) reported that there were roughly 121 million unintended pregnancies globally each year. Of these, over 60% of unintended and unwanted pregnancies end in abortion. An estimated 45% of these abortions are unsafe (Shanti et al. 2022).

The context of unintended and/or unwanted pregnancies refers to pregnancies that occur when there is no desire or plan to have children (Lumbantobing et al. 2019). Lumbantobing et al.'s study looks at unintended pregnancies that occurred both inside and outside of marriage, including those experienced by victims of sexual violence. In a study conducted in eight provinces in Indonesia, namely Aceh, North Sumatra, West Sumatra, Riau, Jambi, Bengkulu, South Sumatra, and Lampung, several reasons or underlying causes of unintended pregnancies were found. These include age, economy, domestic violence from partners, having a large number of children, women's health conditions, irresponsible husbands/partners, women being bound by labour contracts, elopement, child marriage, and sexual violence (Lumbantobing et al. 2019).

Data released by the Guttmacher Institute in 2008 found that 66% of women having abortions were married and 87% of them lived in urban areas. Abortions related to unintended pregnancies were caused by, among others, contraceptive failure, or non-use of any contraceptive (Guttmacher Institute 2008). There was no mention of the reasons why contraceptives were not used. However, with an understanding of the socio-cultural conditions of Indonesian society, it can be assumed that non-use of contraceptives can be related to a number of things. Firstly, the issue of women's health conditions. Secondly, the prohibition of using contraceptives based on religious or customary rules (Lumbantobing et al. 2019). Thirdly, limited access to contraceptives, including limited knowledge about safe contraceptives.

This paper presents an analysis of the abortion law in Indonesia, specifically Article 463 of Indonesia's New Penal Code. Using a Feminist Legal Theory (FLT) perspective, the substance of a regulation is examined using the lens of women's experience to see whether the regulation has a positive impact or is detrimental to women when implemented. The critical analysis of Article 463 of the New Penal Code is conducted to examine whether the regulation has accommodated reproductive rights

and justice, as well as a gender-sensitive perspective in relation to safe abortion in the context of unintended pregnancies.

The scope of unintended and/or unwanted pregnancies includes pregnancies that occur due to sexual violence. Sexual violence includes incest. Pregnancies that endanger the health of the mother and foetus are among the underlying causes for unintended pregnancies discussed in the paper.

In analysing a legal product using a feminist legal perspective, a series of questions are asked to examine whether the legal product has accommodated women's experiences and has a gender perspective (Irianto 2020). In the context of Article 463 of the New Penal Code, which regulates abortion, it is important to 'examine' whether the rules contained in the article are in accordance with women's experiences. Rules that foster, strengthen, and fulfil a sense of justice in society should be born or inspired by the journeys, experiences, and struggles of the community. The law should be developed for humans (read: society), not forcing people into the legal frame.

A way of examining whether Article 463 of the New Penal Code has accommodated women's experiences and provided appropriate protection is to ask the following series of questions: Firstly, how does Article 463 of the New Penal Code regulate abortion? Does it accommodate women's experiences? Secondly, is the regulation on abortion relevant to Law No. 12 of 2022 on Crime of Sexual Violence, which in some articles (not all) accommodates the experiences of women victims of sexual violence? The second question needs to be asked because one of the acts of abortion that is not punishable lies in the context of when it is performed on a victim of sexual violence who becomes pregnant as a result of the sexual violence. Thirdly, how does Article 463 compare with the abortion provisions in Law No. 36/2009 on Health? Is the protection of women, especially victims of sexual violence, accommodated in both Article 463 of the New Penal Code and the Health Law? What are the legal impacts or consequences for women?

## Research Methodology

To answer the questions posed, this paper undertook several steps. Firstly, the search for articles related to the issue of abortion, especially in the Indonesian context. The articles were then selected to explain abortion in terms of the number of abortion cases in Indonesia, the reasons why women choose to have abortions, the procedure or method of abortion, and the impact experienced by women who have abortions.

This paper focuses on a critical analysis of Article 463 of the New Penal Code from a FLT perspective. Thus, the second step is to analyse the article, especially the explanatory part of the article. It then compares Article 463 with several other laws and regulations, namely Articles 75 and 77 of Law No. 36 of 2009 on Health and Article 4 Paragraphs (1) and (2) of Law No. 12 of 2022 on the Crime of Sexual Violence. Articles 75 and 77 of the Health Law were selected for comparison because they are relevant to the specific circumstances that exempt a woman who has an abortion from criminal prosecution. Article 4 Paragraphs (1) and (2) of the Crime of Sexual Violence Law were selected as they are relevant to the forms of sexual violence mentioned in the Explanation of Article 463 of the New Penal Code. If these forms of sexual violence are experienced by a woman and then cause her to become pregnant and then the pregnancy is aborted, the abortion can be free from criminal charges.

To strengthen the analysis, two court decisions related to abortion were also reviewed. These two decisions were selected from thousands of decisions in the Supreme Court Directory on abortion cases. The filter was based on two components: the method of abortion and the category of unintended pregnancies - specifically pregnancies caused by sexual violence. The women in the court decisions were either the women who had abortions or third parties who assisted in the abortion, such as medical personnel, traditional birth attendants (TBAs), or the parents of the women.

The first decision was that of the Rangkasbitung District Court in 2016. This decision was chosen because it represented a situation where an unintended pregnancy occurred when the woman was of legal age, but the partner did not want to take responsibility and influenced the woman to terminate the pregnancy on the grounds that the partner was still in college. The second decision was from the Jambi High Court which was linked to the 2018 decision from the Muara Bulian District Court. These two decisions were chosen because they represent cases of abortion performed in cases of sexual violence in the form of incest.

Reflecting on methodological issues, completing this article was not easy. Firstly, because of the discourse between the right to life of the foetus and the suffering of women who have abortions and the related women's health issues, especially those who choose unsafe abortion. Secondly, writing a scholarly article on the analysis of legislation and presenting it in a format that can be understood by non-legal audiences is not a simple matter. It is very easy for the discussions to fall

into the trap of being 'dry' because they tend to simply quote articles. In the analysis of legislation using a FLT perspective, such a tendency can be avoided because in this unique perspective, women's experience as 'the real-life problem' manifests in the legal issue itself.

## Discussions

This paper critically analyses a range of legal products on the issue of abortion, specifically abortion in cases of pregnancy in incestuous relationships; sexual violence; and/or health reasons. The analytical knife used is a FLT perspective. The FLT perspective is part of critical legal studies that seeks to dismantle the myth that the law is always formulated objectively and when applied can always be fair (Irianto 2020).

Menkel-Meadow (1988) has a different opinion regarding the relationship between the critical legal studies perspective and the FLT perspective. According to her, both schools of thought study, analyse, and even examine the rule of law. Both schools of thought focus on criticising domination and oppression and seek to explore new ways that are considered less oppressive - especially in legal issues. However, there are different ways in which the two schools of thought view the world. Criticism of law in a FLT perspective starts from the perspective of women's experiences of being oppressed, dominated, and devalued. On the other hand, critical legal studies critique begins and remains within the male standpoint (Menkel-Meadow 1988). Consequently, in critical legal studies, analyses of domination and oppression can be explained and imagined but are not fully grounded in real experiences. This means that it will be difficult for those using a critical legal studies perspective to understand why unintended pregnancies occur and the dilemma women face before deciding whether or not to have an abortion.

However, generally, both the critical legal studies perspective and the FLT perspective have several principles in common. The analysis of state regulations using these two perspectives understands the law as a construct of society in the form of ongoing behaviour and as a product of the ruler. Law cannot be separated from the values that are believed and prevail in society.

The next principle to note is that decision-making is often done by those with authority. Thus, legal products represent the interests of the ruler or authority. From a FLT perspective, authority is focused on humans, both men and women, who uphold patriarchal values and have a strong bargaining position and social, cultural, and economic capital (Sandiata 2022).

In the eyes of critical legal analysis and FLT perspective, the law is the result of political bargaining. Hence, the consequence is that the law is never objective and neutral, even though the study of positive legal science considers law as a positive norm, general, and supposedly objective (Irianto 2020). Analysing the law using feminist legal theories aims to dismantle the myth that the law is neutral and 'serves objectively and fairly'.

According to the perspective of FLT, the construction of injustice in society is often reinforced by legal products that contain patriarchal values because they are produced by groups that have authority in society with a dominant patriarchal mindset. In both critical legal studies and feminist legal perspective, how women are positioned and constructed in legal values will have an impact on women. Therefore, accommodating women's experiences in the rule of law is an important issue (Irianto 2020). Efforts to analyse using feminist legal theories are important in order to produce laws that are more just, do not ignore the experiences of marginalised groups, and to reform the law itself (Sandiata 2022).

Before entering into the discussion of Article 463 of the New Penal Code, it is important to understand how abortion is regulated in the old Penal Code. In order to present the context of the old Penal Code, the following is an explanation of court decisions related to abortion cases, which still use the old Penal Code.

The first court decision is from the Rangkasbitung District Court that was issued in 2016. The position of the case in brief from the decision is that an abortion was performed by a masseuse/ massage therapist on a woman (C). Woman C experienced unintended pregnancy due to the persuasion of her boyfriend to have pre-marital sexual intercourse.

Then C became pregnant as a result of the relationship (not using contraceptives). When C realised she was pregnant, she reported it to Supriadi (her boyfriend). The incident took place in January 2016. C told Supriadi, "I had missed my period by one month". After hearing C's story, Supriadi did not make any decision and instead told C to wait for three or four months. As C's pregnancy grew, Supriadi persuaded and told C to have an abortion at a massage healer, called Mak E. When Mak E met the couple, Mak E initially refused to perform the abortion as C had requested. Mak E even told Supriadi to marry C. However, Supriadi evaded her by stating that he was still in college, not ready, and unable to provide for her. Finally, because C begged Mak E, the massage process with the aim of having an abortion was carried out. After the baby died in C's womb, Supriadi buried the body. However, the

body was later found by residents. After an investigation, it was found that C had just given birth. Supriadi and C were then arrested and reported to the police and the case was processed. During the investigation phase, it was revealed that Mak E was the massage healer who performed the abortion on C. Both Mak E, C, and Supriadi were eventually sentenced to criminal sanctions. The full decision file that could be found was that of Mak E, which states that the concerned person receives a sanction in the form of imprisonment for 1 (one) year and 4 (four) months and a fine of Rp 200,000,000.00 (two hundred million rupiah) with the provision that if the fine is not paid, it will be replaced by imprisonment for 3 (three) months. The sentence was imposed because Mak E was deemed to have fulfilled the Public Prosecutor's charge that she has "participated in the deliberate abortion of a child still in the womb for reasons and procedures that are not justified by the provisions of laws and regulations", as regulated in Article 77 of the Old Penal Code. The case files of C and Supriadi could not be found in the directory of decisions.

In this case, the party who bears the consequences of the abortion is the woman who suffers pain and then receives criminal sanctions. The consequences for C were that her case was processed in court and she was sentenced to criminal sanctions. The massage healer, who warned the couple about the abortion also received a criminal sentence.

In the second decision, the decision of the Jambi High Court, which was an appeal from a case tried by the Muara Bulian District Court and decided in 2018, an abortion case was experienced by a teenage girl. The teenager (P) was sexually assaulted in her own home. The perpetrator was her brother, who was 19 years old at the time. P herself was 15 years old at the time. As a result, P became pregnant. P's mother felt anxious about P's pregnancy because P always complained of abdominal pain. She was also worried about the neighbours' reaction if they found out that P was pregnant. P's mother made a traditional turmeric mix and told P to drink it. Then P's mother massaged P's stomach. It turned out that P then had a miscarriage. P was then taken to hospital for treatment, but it was later discovered that she had just given birth. The case was immediately reported to the police. Eventually, P and her mother were brought to court. At the District Court level, P and her mother were sentenced to criminal sanctions. However, when the case was appealed to the High Court, P was acquitted because it was proven that P did not intend to have an abortion.

In both the first and second cases, C and P both experienced domestic violence. C experienced domestic violence because her partner did not want to take responsibility and tended to sacrifice C on the grounds that the man was still in college and was not ready to provide for her. In P's case, the situation was aggravated because she was pregnant due to incest.

In abortion cases, the dilemma faced by women when making the decision to part with their unborn child, as well as the physical and psychological health impacts, are not considered by the state. In P's case, the state (through the District Court) imposed sanctions on P, who was actually a victim of sexual violence.

What about the New Penal Code, specifically Article 463? Is there an opportunity or possibility of protection for women who experience unintended pregnancy either due to sexual violence, incest, or health issues?

Article 463 provides for criminal sanctions for those who perform abortions. Paragraph (1) of the article states that any woman who has an abortion will be sentenced to a maximum of four years' imprisonment. Note that the word woman is placed in the article as the only subject who performs an abortion. In fact, in cases of unintended pregnancies, it is not impossible for an abortion to be carried out under coercion of another party. This article places woman as the only potential abortion perpetrator due to society's gender construction of women's biological condition to become pregnant.

Thus, for any reason and any experience, unless the woman is pregnant as a consequence of rape, the act of abortion will incur criminal sanctions. Paragraph (2) of Article 463 provides for exceptions. Paragraph (2) stipulates that in the event that the woman who performs the abortion is a victim of sexual violence, either rape or other acts of sexual violence, who because of the violence becomes pregnant, her abortion cannot be punished.

Note also that Paragraph (2) of this Article contains a typographical error relating to the word 'emergency', which is written as *kedamratan*. The text of this Penal Code has been enacted and published although there is still a typographical error.

As an explanation of Article 463, the Elucidation section of the Article reads as follows:

"This provision is intended to protect the womb of a woman. If the aborted pregnancy is a dead pregnancy, the criminal provision in this article shall not apply. It is not relevant here to determine what ways and means are used

to perform an abortion. What is important and decisive is the effect, which is the death of the foetus.

Paragraph (1)

Self-explanatory.

Paragraph (2)

"Other forms of crime of sexual violence that lead to pregnancy" include, among others, forced prostitution, sexual exploitation, and/or sexual slavery."

Note that the explanation of Article 463 mentions 'protecting the womb of a woman'. It is true that CEDAW stipulates that pregnancy has a social function so that both the state and society need to take action in order to protect women's reproductive rights, including pregnancy. However, if the protection is interpreted as an intervention effort related to women's reproductive rights, it will become a new form of violence, namely forced pregnancy as it can be an unintended pregnancy. This intervention will have an impact on people's efforts to furtively perform unsafe abortions that are harmful to women's health.

Intervention to protect reproductive health can actually be done by providing education on reproductive health at the primary, secondary, and tertiary education levels so that the community understands reproductive health issues and the risks of unsafe abortions. It also includes the issue of responsible sexual behaviours, including education on the prevention and handling of sexual violence.

The second interesting thing about Article 463 is that Paragraph (2) mentions an exception, namely that abortion can be free from criminal sanctions if it is carried out on victims of sexual violence within 14 weeks of pregnancy.

The forms of sexual violence mentioned in the Elucidation of Article 463 Paragraph (2) include forced prostitution, sexual exploitation, and/or sexual slavery. Interestingly, in relation to the Law on the Crime of Sexual Violence, it appears that the forms of sexual violence are broader than the three acts mentioned in the Elucidation of Article 463. Article 4 Paragraphs (1) and (2) of the Law on the Crime of Sexual Violence states that rape, marital sexual violence, and incest, are among the forms of violence that have the potential to cause pregnancy. These forms of sexual violence also appear or are mentioned by respondents in the study by Lumbantobing et al. (2019).

Hence, a question arises: does Article 463 of the New Penal Code require that victims of sexual violence, who are allowed to have an abortion - other than in terms of gestational age - are only those who have been raped multiple times as in the case of forced prostitution, sexual exploitation, and/or sexual slavery? Did the drafters of such a provision not understand that even a single instance of physical sexual violence (rape and/or incest) against a woman can lead to pregnancy? Even if it is a one-time occurrence, pregnancy - which can happen because of one rape - then becomes the next thing the victim must endure, in addition to the trauma of violence.

This article shows that the act of abortion - which refers to pregnancy, is part of women's reproductive function, and thus within women's bodies and something that should be the autonomy of women - is vulnerable to state intervention. The state, as written by Frances K. Olsen (1995), not only intervenes in family life by regulating family structure (who is the father, who is the mother, what are the responsibilities and rights of each), but also enters into arrangements related to women's reproductive functions. Women are not independent beings, who have full authority over their bodies, including their reproductive functions.

Interestingly, there is a slight difference in the way the state views the issue of abortion in the context of when a woman is 'allowed' to have an abortion. When compared, there is a difference in the perspective on abortion between Article 463 of the New Penal Code and Law No. 36 of 2009 on Health, specifically in Articles 75, 76, and 77.

Article 75 Paragraph (1) of the Health Law stipulates that everyone (not just women) is prohibited from having an abortion. Paragraph (2) then provides for exceptions to the prohibition in Paragraph (1). These exceptions relate to two things. Firstly, that abortion is permissible as long as it is carried out due to an indication of a medical emergency that can be discovered when the pregnancy is still at an early age. The medical emergency must be a life-threatening condition for the mother or foetus, including severe genetic disease and/or hereditary defects, or an irreversible condition that makes it difficult for the baby to live outside the womb. The second exception is when an abortion is performed on a pregnancy resulting from rape, which has traumatised the victim.

In the Elucidation section, it is stated that the measures mentioned in Paragraph (2) can only be taken after pre-action counselling and/or consultation.

Afterwards, there should also be post-action counselling. All of these actions must be carried out by competent and authorised counsellors.

In Article 75 of the Health Law, there are two conditions for the exemption of abortion from criminal punishment as stipulated in Paragraph (2). Firstly, if the pregnancy is the result of sexual violence. Secondly, if the mother or foetus has a medical emergency. This medical emergency aspect can also be the basis for abortion for pregnant women with special health conditions. Paragraph (2) considers reasons related to the health condition of the mother and/or foetus. From a feminist legal perspective, the regulation of abortion in Article 75 of the Health Law, in terms of the recognition of medical emergencies of the mother and/or foetus, is still more accommodating of women's unique conditions and experiences than Article 463 of the New Penal Code. In Article 75, the condition of pregnant women who experience medical emergencies (due to special health reasons), which in fact is still often experienced by Indonesian women, is accommodated as one of the reasons that women are allowed to have an abortion. Data on medical emergencies that are often experienced by Indonesian women during pregnancy, for example, as recorded from the results of the last survey of Sample Registration System (SRS) of the Ministry of Health's Research and Development Department (*Litbangkes*) in 2016 on Indonesia's Maternal Mortality Rate (MMR) reached a ratio of 305 cases per 100,000 live births based on the Inter-Census Population Survey (SUPAS) of the Central Bureau of Statistics (*Badan Pusat Statistik, BPS*) (2015). The factors that cause the most maternal deaths in Indonesia are hypertension/preeclampsia/eclampsia, bleeding, and infection (Ministry of Health 2021).

Article 75 also has differences in formulating the aspects of sexual violence that can be the basis for abortion. Specifically in Paragraph (2) point (b), the form of sexual violence mentioned is rape. There is no information or further statement in point (b) that the rape must occur repeatedly. As such, it takes into account the possible circumstance that although it is a one-time assault, a pregnancy can occur. It also mentions the element of 'psychological trauma for a rape victim'. With the mention of this element, Article 75 is much more accommodating to the actual conditions and realities faced by victims of sexual violence who experience pregnancy.

Article 76 of the Health Law reiterates medical emergencies and rape as conditions for lawful abortion. This article lists a series of requirements that must be met in order for an abortion to be performed. First, before

the gestational age reaches six weeks calculated from the first day of the last menstrual period, except in the case of a medical emergency as referred to in Article 75 Paragraph (2). Second, it must be performed by a health worker with certain qualifications of skills and authority and has an official certificate issued by the Ministry. Third, it must be carried out with the consent of the pregnant woman and with the permission of her husband, except in the case where the pregnant woman is a victim of rape. Fourth, it must be carried out by a qualified health care provider set by the government (Ministry).

What is interesting about Article 76 is that it mentions the consent of the pregnant woman in point (c) as one of the requirements for abortion, referring to the conditions stipulated in Article 75. This requirement for the consent of the pregnant woman may not adequately or fully accommodate women's experiences. However, at least the mention of 'pregnant woman' shows that women are recognised as having authority over their bodies in this law, albeit a weak recognition. The weak point of Article 76 lies in the wording of point (c) "with the permission of her husband, except for victims of rape". If the perspective underlying point (c) is simply that pregnancy is the joint responsibility of husband and wife, then the inclusion of point (c) does not harm women's authority over their bodies. However, it is different if the rationale of the inclusion of point (c) is based on the reason that the wife's body is under the husband's authority as regulated in Marriage Law Number 1 Year 1974 that the wife is a housewife, and the husband is the head of the household. Thus, the husband is considered to have the right to make full decisions, including over his wife's reproductive functions. Consequently (if this perspective is the basis for point (c)), the regulation undoubtedly contains patriarchal aspects that do not respect women's authority over their bodies, including their reproductive functions.

This article also focuses on safe abortion. This includes the requirement that it be performed by a certified health worker with special skills and authority. Health care providers also need to fulfil requirements set by the Ministry, in this case the Ministry of Health.

In Article 77 of the Health Law, the government is obliged to protect and prevent women from having abortions that are not of good quality, unsafe, irresponsible, and contrary to the rules of religion and law. The elucidation of this article is quoted directly to emphasise what constitutes a poor-quality abortion, in the context of the state's responsibility.

### Article 77

A poor-quality, unsafe, and irresponsible abortion is an abortion that is conducted under coercion and without the consent of the concerned woman, performed by unprofessional health workers without following applicable professional and service standards, discriminatory, or prioritising material rewards over medical indications.

In Article 77, the state's responsibility to ensure safe abortion is reaffirmed. The elucidation of the article states that unsafe abortion is an abortion that is performed forcibly in the sense that they do not involve the consent of the pregnant woman. It also states that unsafe abortion includes that of performed by unprofessional health workers. The lawmakers' understanding of the term discriminatory in this article is that if the abortion provider has little regard for the pregnant woman's involvement. For example, because they prioritise material rewards over medical indications.

Looking at Article 463 of the New Penal Code as well as Articles 75, 76, and 77 of the Health Law, it is clear that there are differences between the two laws. Firstly, in the context of the implementation of the New Penal Code, abortion on the basis of the pregnant woman's health conditions will put the woman at risk of criminal punishment because it does not fall under the criteria or conditions for abortion that can be exempted from criminal punishment, which is only if the woman is a victim of sexual violence.

Secondly, the option of abortion where the pregnant woman is a victim of sexual violence is limited to victims of forced prostitution, sexual exploitation, and/or sexual slavery. In the case of a pregnancy resulting from sexual violence of rape or forced sexual intercourse preceded by deceitful promises of marriage or in dating relationships, the abortion option is closed as stipulated in the New Penal Code.

The regulation of abortion should take into account the experiences and conditions of women as those who have the function of pregnancy. This is especially true for pregnancies that occur after rape or other forms of sexual violence. It is important that the state protects women and their reproductive functions. It is also the responsibility of the state not to tolerate the number of deaths of pregnant women due to unsafe abortions.

The cases of P and C in the court decisions narrated in this paper are examples of the consequences that can be suffered by women who have unsafe abortions. These include bleeding, reproductive damage, unbearable pain, and even death (Gutmacher Institute 2008).

The option of marrying the perpetrator to the victim in cases of rape or other forms of sexual violence, with or without pregnancy, is not an option that favours women even though it is often advocated and even actually implemented in society. Marriage between the perpetrator of sexual violence and the victim in Indonesian society is still often an option for resolving cases of sexual violence against women because it is considered to save the victim and her family from shame, especially if the victim is pregnant. Abortion for women victims of sexual violence is considered a less favourable option than marriage.

In many such cases, the suffering of the victim and even the child she gives birth to is often increased. The victim has the potential to again suffer physical and psychological abuse and economic neglect from the perpetrator who feels compelled to marry the victim. Similarly, children born in such marriages also bear the burden of suffering. Children from marriages between perpetrators of sexual violence and victims often become witnesses or even further victims of violence committed by the perpetrators. This was found in various cases raised in reportage about child victims of sexual violence, who were forced into marriage in Sumbawa (Gustiana & Hartik 2022).

In the context of a pregnancy resulting from incest, it is not easy for the victim to continue the pregnancy. In addition to the trauma that must have been experienced by the victim of sexual violence, the victim is also dealing with the community's reaction to her pregnancy, to her incest story. Not only that, victims are also likely to deal with unequal power relations between the perpetrators, who are in fact fathers or uncles or grandfathers or older brothers, who have power over them and will still be able to have access to manipulate them (Hendrastiti & Wardhani 2021).

The law, if it is still expected to bring about change in society for the better, needs to be able to understand the real situation in society. Efforts to prevent and tackle unsafe abortion cannot be regulated solely by laws that contain prohibitions. The element of prohibition is important to be connected with what is actually experienced by the subject of law. In the context of Article 463 of the New Penal Code, the subject is a victim of sexual violence, who becomes pregnant and has an abortion. This case represents the failure of the state to protect women victims of sexual violence who experience pregnancy from the dangers of unsafe abortion. The opportunity for women victims of such violence has been closed in such a way with the elucidation of Article 463, which requires

that abortion for pregnant victims of sexual violence can only be done if the form of violence includes criminal offences of forced prostitution, sexual exploitation, and/or sexual slavery. Life-saving opportunities for women experiencing medical emergencies are also not taken into account in this article.

Returning to the initial statement of this paper, law is a construct of society and also a product of the ruler. Therefore, the law cannot be separated from the values that are believed and prevail in society. What about Article 463 of the New Penal Code? From the perspective of feminist legal analysis, Article 463 of the New Penal Code represents the 'spirit' of patriarchy in society. There are three things that signify the presence of this patriarchal perspective. Firstly, it is related to the assumption that pregnancy cannot occur in sexual intercourse (read: rape) that is committed only once. This can be seen in the explanation of the forms of sexual violence so that victims can have abortions due to trauma, which is limited to include only criminal offences of forced prostitution, sexual exploitation, and/or sexual slavery.

Secondly, this article also does not accommodate the need for abortion for victims of incest, who become pregnant and are forced to have an abortion due to their young age and or severely traumatised psychological condition. For example, in cases such as that experienced by P in Jambi High Court Decision Number: 6/Pid. Sus-Anak/2018/PTJMB or cases experienced by girls in Sumbawa (Gustiana & Hartik 2022).

Thirdly, this article does not even take into account the health conditions of women who experience risky pregnancies, as described in the Ministry of Health's 2015 survey results. In the Health Law, these conditions use the term 'medical emergencies'. In addition to not considering the conditions of Indonesian women, who still experience many medical emergencies related to their pregnancies, the drafters of the law also failed to take into account the diverse geographical conditions in which Indonesian people live. Not all pregnant women are fortunate enough to live in places where health care facilities are easily accessible in terms of distance and cost.

From the perspective of feminist legal studies of Article 463, it is important that the issue of abortion is not simply viewed as an act of violation of the law that must be punished. However, it is important for the lawmakers to first understand how the construction of legal values will affect women, and how women's experiences are accommodated in the rule of law (Irianto 2020; Sandiata

2022) so that the law will better represent the experience and sense of justice of the community at large, not just certain elite groups.

## Closing

State law needs to be an umbrella of protection for women's rights over their bodies and future, as the impact of abortion is severe and leaves a deep mark on both the bodies and the psychological state of women. Abortion is closely linked to ethical and child protection issues. This is especially true if it is done in an unsafe manner and beyond the safe gestational age limit for abortion according to medical standards. The state needs to revise laws and regulations that do not accommodate women's rights to protect their bodies, in this case their reproductive rights.

State intervention is needed not only on the issue of deciding whether or not women should continue their pregnancies. Revisions to regulations are needed to better protect women. In addition, the state must be present with the role of providing education related to reproductive health, prevention of sexual violence, responsibility, ethics, and respect in establishing relationships between individuals.

The state also needs to facilitate studies and research related to the development of accessible and affordable contraceptives within the framework of the availability of medical services for reproductive health that are not discriminatory. It is also important to ensure the availability of safe medical treatment mechanisms for unwanted pregnancies resulting from sexual violence - either rape or incest - immediately before the foetus grows. Because once the foetus has grown, the abortion process becomes dangerous for the mother, and there will also be violence against the foetus.

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## Fulfillment of Reproductive and Sexual Health Rights in the Fragile Community Food Systems in Rural Indonesia

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### Abstract

Women's authority over their bodies is often ignored due to limited choices and access to resources. This study intends to photograph the failure of development governance, especially in the food and environmental sectors, which places women as the exploited party. This research uses the concept of feminist ecology as a rationale in studying women's experiences and their relation to the fragility of the food system. The research method used in this research is a qualitative approach through in-depth interviews and observations in the area of Kampung Darim which is uniquely divided into the territories of Kedayakan Village and Puntang Village with a food-agricultural ecosystem background in Indramayu Regency, West Java. These two villages are one of the food barn areas and have a high tendency for the practice of early marriage to occur. The results of the study show that the commodification of natural resources, especially food, tends to reduce the function of food production to fulfilling daily needs. More than that, it also ignores cultural practices that are closely tied to the food system. This paper intends to raise the experience of women who are vulnerable to exploitation due to the failure of the food system. Apart from experiencing exploitation as a result of failure to manage natural resources, rural women in this study are also a group at high risk of experiencing sexual and reproductive health threats. The development of the food system needs to be improved by placing women as equal subjects.

Keywords: exploitation, reproduction health, woman, food system

### Introduction

Indonesia's rural areas are still the focus of food producers (Widiyanto 2018; Atem 2020). In its 2021 Annual Report, the Ministry of Agriculture of the Republic of Indonesia (2022) emphasises the position of villages as the main target of strategic programmes, one of which is the Horticultural Village. This programme promotes 'one village one variety' to improve the welfare of farmers in villages by increasing the added value and competitiveness of horticultural commodities. The target of 2,358 Horticultural Villages began to be built in line with the 2022 fiscal year. Furthermore, the Director General of Horticulture, Prihasto Setyanto, stated that 320 horticultural *Micro*, *Small* and *Medium Enterprises* (MSMEs) will be fostered with processed commodities of chilli, onions, and fruits and vegetables, as well as medicinal plants (Ministry of Agriculture Republic of Indonesia 2021).

The dichotomy of the welfare of villages, the majority of which live with the characteristics of the agricultural and urban economies, is also evident from several

aspects, especially the economic aspects (Ramdhon 2014; Priyambodo et al. 2015). Agricultural activities, which tend to be in the upstream sector, are increasingly uncompetitive when compared to the non-agricultural sector (Anugrah 2016; Pahlevi 2021). In some cases in rural Indonesia, policy makers do not seem empowered to protect agricultural land and food producers (Janti 2016; Syahyuti et al. 2016; Amalina 2018; Fauzin 2019; Sihombing et al. 2021), leading to fragile food systems.

Disconnected food systems and ecosystem interventions that prioritise food production add to the complexity of declining agricultural yields, especially in food barn villages. As an example of the fragility of the food system, the People's Coalition for Food Sovereignty (*Koalisi Rakyat untuk Kedaulatan Pangan*, KRKP) notes that there are farming villages in Indramayu that have experienced extreme land degradation. This situation occurs due to the governance of agriculture and food systems that do not consider the agroecosystem context,<sup>1</sup> even though villages play an essential role as

the spearhead of sustainable development (Jagustović et al. 2019; Mas 2021).

Climate change is also experienced by farmers. The shift in the growing season as a result of climate change is a shock to the cropping patterns and financial capital turnover for farming households (Badawi 2015). This situation makes rural households, which have relatively insufficient access and resources to work outside the agricultural sector, try to mobilise their capital as much as possible. In some cases in rural areas, women are the most vulnerable group to be mobilised (Badawi 2015; Tahir et al. 2019; Situmeang et al. 2022).

The mobilisation of rural women (Yuliana 2015) makes women vulnerable. This is inseparable from the power relations between men and women. Vulnerability is especially related to the context of fulfilling sexual and reproductive health and rights (SRHR) for development subjects at the village level (Irawan 2016; Sari & Hanifah 2020). Women experience various real conditions that have eliminated women's power over their bodies and reproductive health (Badawi 2015). Ironically, this risk does not only occur to individual women who experience exploitation, but often also involves offspring born to women (Chusna & Ramli 2017; Setiawati & Susanti 2017; Suryadi 2017; Utamidewi 2017; Syarif 2018; Santoso 2020; Wardi 2020; Rahmatullah & Suyanto 2021). This structure in gender relations is interpreted as a result of the patriarchal system, which Walby (1990) defines as a social structure and practice in which men dominate, operate, and exploit women.

The vulnerability of rural women is further exacerbated by the failure of natural resource management in rural Indonesia. This condition causes economic vulnerability, which makes women more vulnerable to exploitation in the forms of being married off at an early age, having unintended pregnancies, and losing authority over their bodies (Indanah et al. 2020). Girls are often considered a burden to the family that many parents in rural areas think of marrying off their children immediately when they enter the menstrual period (Kurniawati & Sari 2020; Samsi 2020). Marriage is considered a momentum to release the family burden and is used as a way to prevent girls from potentially bringing dishonour to the family (Istiqomah 2017; Asmarini 2021). Unfortunately, efforts to marry off girls become a trap because early marriages are generally not accompanied by efforts to prepare the bride and groom for marriage (Erna 2014; Yanti & Wiwita 2018). Women's families often bear the additional burden of caring for their pregnant children or granddaughters (Fauziningtyas et al. 2019; Rahmatullah et al. 2020).

This paper aims to highlight the experiences of women who are vulnerable to exploitation due to the failure of the food system. This paper also shows how the risks faced by women in fulfilling their sexual and reproductive health and rights as a consequence of the exploitation they experience. There are two forms of exploitation commonly experienced in the Darim case, namely women being mobilised as the backbone of the family by being directed to work outside Darim and the practice of underage marriage. Both of these forms of exploitation are essentially carried out for economic reasons. Darim women are excluded from access to Darim land in order to fulfil family needs that should be the responsibility of all family members. This study specifically addresses the case of a food producer community in Indramayu Regency, West Java Province.

### **Sexual and Reproductive Health and Rights (SRHR)**

Sexual and Reproductive Health and Rights (SRHR) are developed based on human rights. Law of the Republic of Indonesia Number 39 of 1999 on Human Rights Article 3 Paragraph (1) stipulates that "Everyone is born equal in dignity and human rights, and is bestowed with the intellect and reason to live with others in a spirit of brotherhood". These basic human principles are often associated with rights and responsibilities. However, the Indonesian Family Planning Association (*Perkumpulan Keluarga Berencana Indonesia, PKBI*) (2017) emphasises that the fulfilment of one's human rights essentially exists without having to be juxtaposed with the concept of 'responsibility' because human rights are inherent in every human being since they were born. PKBI (2017) also explains further about SRHR as part of human rights. The discourse on the premise of 'responsibilities precede rights' shapes people's mindset, especially on matters related to elements of human rights that relate to one's body. SRHR emerges to reaffirm the rights of each individual in fulfilling sexual and reproductive activities.

The International Conference on Population and Development (ICPD) held in Cairo on 5-13 September 1994 defines reproductive health as a state of complete physical, mental, and social well-being in all matters relating to the reproductive system and to its functions and processes. Reproductive rights are described as rights that include certain human rights that have been recognised by national laws, international documents on human rights, and other relevant United Nations (UN) treaties. In line with these rights, the National Commission on Human Rights (*Komnas HAM*) (2006) states that the discussion of reproductive health cannot be separated

from the quality of human resources, which also involves issues of access to and quality of health services and the relationship between the roles of men and women in society.

Fulfilment of reproductive health rights with justice and gender equality remains a big problem that is influenced by various factors. In the context of women's reproductive health, the influencing factors include (1) Poverty and impoverishment of women; (2) Lower education of women compared to men; (3) Low access of women to essential health services and information; (4) Women's lack of control over their right to receive basic health services; and (5) The position of women is considered inferior or as second-class citizens (Komnas HAM, 2006). In addition, based on the Mapping of Problems on the Right to Sexual and Reproductive Health for Women: Housewives & Singles, Children, Labourers, IDPs, Persons with Disabilities and the Elderly, and Minorities (Komnas HAM, 2006), there are twelve reproductive health problems that are commonly found in women. Some of these reproductive health problems, such as getting pregnant too often, complications of pregnancy and childbirth, and the status or position of women can be found in Darim Village.

### Research Methodology

This research was conducted with a qualitative approach and used the constructivism paradigm. The choice of this paradigm was based on the need to see social facts related to the situation experienced by women. The interpretation of data using this paradigm is done to maintain the integrity of the situation experienced by women, while still providing room for new interpretations along with relevant field findings (Denzin & Lincoln 2009; Lubis & Adian 2011). Data bias due to women's experiences that are often overshadowed by men's thinking, or what is known as

patriarchal terminology (Candraningrum 2013), is one of the challenges that the constructivism paradigm seeks to reduce.

The exploration of women's experiences, especially in the context of Sexual and Reproductive Health and Rights (SRHR) in this paper was conducted in Darim Village, which is administratively part of Kendayakan Village, Terisi Subdistrict and Puntang Village, Losarang Subdistrict, Indramayu Regency. Darim Village was chosen because the community in this village has interesting complexities in terms of genealogical, geographical, population, and politics related to women's experiences. Being situated between the administrative boundaries of two sub-districts and its remote geographical location in the middle of rice fields, makes it neglected in the context of development and access, including access to health facilities.

Data collection was conducted through observation and in-depth interviews using a list of questions that had been prepared by the researcher. The scope of the data included the history of Darim Village, the development of Darim, the experience of access to health for Darim residents, and the mobilisation of Darim residents. Observations were carried out by looking at the dynamics of Darim Village directly through regular monthly visits from 2021 to 2023. The observations made were broad observations covering population dynamics, dynamics of agricultural activities, and relationships between families.

Primary data collection through specific interviews on the situation of sexual and reproductive health was conducted between 2022-2023. The data extracted using in-depth interviews was the result of the informants' narrative consisting of 8 informants, namely a village midwife, *posyandu* cadres, parents, Javanese traditional healers, a woman migrant worker, and male figures. The description of the number of informants can be seen in Table 1.

**Table 1. Characteristics of research informants in Darim Village**

Informant	Number of Informant	Description
Village midwives	1	A health worker whose working area is in Darim Village. A reference for Darim residents to seek treatment when they are sick, especially those related to maternal and child health.
<i>Posyandu</i> cadres	2	A cadre who usually accompanies services at the monthly <i>posyandu</i> . Provides information related to maternal and child health and the findings of health cases related to pregnant women, infants, and toddlers in Darim Village.
Parents	2	Parents who marry off their daughters at an early age. Have experience of allowing their daughters to work outside Darim.

Informant	Number of Informant	Description
Javanese traditional healers	2	Elderly women who are believed to have the ability, knowledge, and wisdom to care for pregnant women, assist in the birthing process, and are entrusted with caring for women entering the postpartum period, as well as caring for babies. Javanese traditional healers are also known as <i>Paraji</i> or traditional birth attendants. Currently, the role of Javanese traditional healers has begun to diminish along with the increasing access to <i>posyandu</i> and <i>puskesmas</i> services to monitor pregnancies as well as the regulation that the delivery process must be accompanied by health workers, so Javanese traditional healers are no longer the sole actors who assist pregnant women. Until now, Javanese traditional healers are also a reference for alternative medicine for all people in Darim, both men and women who experience broken bones, sprains, or even 'colds' and 'not feeling well'.
Woman migrant worker	1	A Darim woman, who has experience as a migrant worker working as a spa worker in Jakarta.
Male figures	2	These informants are Darim residents, who have experience of allowing their wives or children to work outside Darim.
<b>Total informants</b>	<b>10</b>	

Source: primary data

Data was processed by grouping the findings based on issues, then sorted and analysed to see the red thread of the dynamics of the development of Darim Village and its relation to the fulfilment of sexual and reproductive health and rights (SRHR).

### Darim: An Island in the Middle of Rice Fields

Darim or Blok Darim is a village genealogically inhabited by people who identify themselves as descendants of Ki Darim, an actor believed to be a farming elder. Ki Darim is believed by the Darim community to be the first person to build a house in the current location of Darim. The People’s Coalition for Food Sovereignty (2021) notes that before it was inhabited, the location of Darim Village was known as *bunen*, which means drying activity and temporary storage of crops, both rice and secondary crops. This term was given because the location of Darim Village was a place for farmers to temporarily store their agricultural products. Ki Darim then became the first person to make shacks in Darim. Ki Darim’s name became the name of the village because his shack was then used as a shelter by many other farmers until finally this location began to be used as a place to live.

The village is located in the middle of rice fields, so the residents themselves often joke that they live on an ‘island’ surrounded by an ‘ocean’ of rice fields. There is only one access to the village via a narrow road that can only be travelled by one car. According to the records of the People’s Coalition for Food Sovereignty (Sagala et al. 2020), Darim’s main road used to be a farming road with

a width of 2 metres, and in 2018, the road was filled with sand and stones (*sirtu*). Road hardening began in 2022 for 1.5 km. Until February 2023, there were no markers in the form of road names or signboards to indicate that the road was the entrance to Darim Village.

Although it is located on one stretch surrounded by rice fields, Darim is administratively divided into two different villages that are in two different sub-districts. The right side of the main road of Darim Village is the area of Kendayakan Village, Terisi Sub-district, and the left side of the road is the area of Puntang Village, Losarang Sub-district. Both villages are located in Indramayu Regency. Darim is clearly on the border between Losarang and Terisi sub-districts. This situation makes Darim ‘marginalised’ and literally feels ignored by both sub-districts. The remote access makes Darim less strategic to receive development exposure. The youth of Darim feel that the two villages and the two sub-districts seem to be shifting responsibility to each other and are reluctant to develop Darim.

These administrative differences have also polarised Darim. The Kendayakan Village section belongs to the same neighbourhood association (*Rukun Tetangga, RT*), and the Puntang Village section also has its own RT. In 2021, the youth of Darim then formed a communication forum as an effort to reduce the existing polarisation. This forum is called United Darim Forum (*Forum Darim Bersatu, Forimber*). Unfortunately, this platform is utilised more by male youth than female youth.

## Darim Village's Food System

Massive interventions to the agricultural ecosystem in Darim Village began in early 2010. Farmers began to recognise the use of fertilisers and pesticides as a stimulant for rice cultivation. Synthetic fertilisers and pesticides have become an important part of rice cultivation in the fields for Darim farmers (Sagala et al. 2020). The use of synthetic fertilisers and pesticides initially proved effective in boosting agricultural production. However, intensive and unwise use of synthetic fertilisers and pesticides has damaged the ecosystem of rice fields and reduced soil fertility.

The People's Coalition for Food Sovereignty (Sagala et al. 2020) notes that high inputs of synthetic fertilisers and pesticides can cause changes in the physical, chemical, and biological properties of paddy fields. This will cause low soil water holding capacity, silty clay soil, unstable soil structure, and soil permeability getting lower and lower, resulting in the soil unable to absorb/store water. Therefore, the soil will lack water, triggering seawater intrusion into paddy fields, which will have an impact on increasing the salinity of paddy fields. The low water holding capacity of the soil can make the soil easily harden, cracking if rain does not fall in a few days during the dry season. Conversely, when the rainy season arrives, paddy fields will be inundated and potentially flooded.

In addition to the degradation of agricultural land, Darim also experienced a dark period related to the irrigation system. In the rice paddy ecosystem, the irrigation system plays a vital role in determining the success of a growing season. The absence of a political policy from the Darim government and the farmers' insensitivity in maintaining the waterways have caused the existing waterways in Darim to become unmaintained. The existing waterways have silted up and even started to deteriorate, making them no longer functional. The neglect of siltation and the absence of efforts to normalise the waterways have left the already dysfunctional channels neglected and become just dry pits. Old and damaged waterways are slowly stockpiled by farmers because they are no longer considered functional and can pragmatically be used to expand the planting and harvesting areas by planting rice.

The combination of land degradation and waterway degradation soon began to cause Darim's food system to become fragile: farmers were unable to plant on time due to water constraints and land readiness (the land was still flooded, or the land has not yet received water), the explosion of uncontrolled pest and disease attacks,

and other problems related to crops that did not get a fair purchase price due to middlemen's games, making Darim, which was once a food estate, suddenly entered difficult times (*paceklik*).

There was a period when Darim was completely submerged in water for days and all Darim residents were unable to leave the area. There were also experiences of successive crop failures due to flooding and crop pests that depleted the capital and food reserves of several families in Darim. The situation was not made any better by the fact that Darim, which is administratively controlled by two different villages and two different sub-districts, seems to be 'left out' of development policies. Darim residents have to find ways to fulfil their needs on their own.

When times of economic hardship due to crop failure occur, migrant labour era begins as an alternative to obtaining economic resources for the family, including food (Mulyana & Wirakusumah 2017). Indramayu does have a reputation as an area of origin for a high number of female migrant workers. Darim's village is not left out of the offers from the migrant worker recruiters. The recruitment system of migrant workers through recruiters as the channelling hub also offers young women in Darim the opportunity to find work outside Darim with the lure of facilities and salaries that would lift the women and their families out of poverty due to crop failure (Mulyana & Octavianti 2016).

## Cah Wadon<sup>2</sup> in Darim Village

The lives of women following the opportunity to work as migrant workers can be said to have undergone drastic changes. A daughter or commonly called *cah wadon*, who is once constructed to help her mother carry out domestic work and then marry off after reaching puberty or has been proposed to, becomes the much-awaited offspring. *Cah wadon* becomes the family's hope to get out of poverty in two ways: marrying a man with a better economic situation or becoming a migrant worker.

"...some women have been married more than once, but no sexually transmitted infection or HIV cases have been found in Darim..." (BPW 2023, Interview 4 March).

Marrying a man who has a good economic situation is one of the most common practices. Several cases show that the practice of remarriage and divorce is a combination of economic problems and the harmony of households married at a young age. *Cah wadon*, who marries at a young age is vulnerable to domestic violence,

hence, divorce is inevitable. After a divorce, *cah wadon* tends to try or be encouraged by her family to remarry in order to avoid widowhood. It is not uncommon for the same situation to be recurring in second and third marriages.

There are several ways for *cah wadon* to become a migrant worker: through education or spa (massage service) route. The opportunity for *cah wadon* to access the education route to become a migrant worker is considered relatively difficult, strenuous, and requires large capital. Schools that have connections with international companies or labour brokers are relatively few and the competition is fierce. Students also have to pay for tuition fees for three years (the duration of education at the vocational high school level). However, the education route provides a more respectable job: becoming an administrative or factory worker abroad. This job will bring in income that is considered bigger because it will be paid in foreign currency and the prestige gained will be higher given that the work location will be abroad.

"... you could say that now people here (Darim) are happy if they have a daughter. She can be the hope of the family..." (KOD 2023, Interview 3 March).

The spa (massage) route is a more popular option for the Darim community. The fast process through a broker service makes many families urge their *cah wadon* to take this opportunity. *Cah wadon* who are willing to join this route do not need to spend any money as they will be facilitated by the broker. When they have passed the training period and are paid, the entire cost of their departure and training will be deducted from the income. Brokers at Darim Village level will also receive a thank you from *cah wadon* who have been 'successful' overseas.

"...brokers can get up to 15 million per month from those who work at spa. A way of saying thank you..." (KOD 2023, Interview 3 March).

### Male-Female Relations in Darim Village and the Issue of SRHR

When Darim was first inhabited, its inhabitants still adhered to traditional knowledge about all aspects of life. Darim's culture was built on agricultural activities as the sole sector of livelihood for the entire Darim population. Working as a farmer has fulfilled all the needs of households in Darim. The social structure of the people living in Darim Village is founded on their agricultural culture.

In the early days of Darim Village, the division of labour between men and women was divided between domestic and productive roles. Both of them went to the fields to do agricultural activities. Women also held domestic responsibilities, such as cooking, cleaning the house, and looking after children. However, when their children were able to be left behind or could be taken to the fields, women continued to go to the fields. There was a view that man is the head of the household. When a Darim man got married, it was usually the man who was expected to build or give a house to the woman (his wife). Meanwhile, the woman's parents would provide their daughter with kitchen utensils, mattresses, and some other furniture.

Some informants stated that in the early days of Darim, boys would have a more useful role as family workers. Girls were expected to help with domestic work and when there were suitors, girls would be married off by their parents. The marriage of girls in Darim used to take place even before the girls reached puberty (menstruation). This situation is very vulnerable for reproductive and sexual health, but is still carried out on the basis of 'maintaining the good name of the family', 'it is not good to refuse good intentions (proposals)', 'releasing family dependents' or 'carrying out religious orders'.

Marriage at such an early age leads to unintended pregnancies, vulnerable pregnancies and postpartum care, and risky pregnancies and child-births for women. Parents also sometimes have to take part in raising their grandchildren (grandparenting) because couples who marry at an early age are not mentally and financially prepared to raise their babies. During this period, promising harvests make the practice of grandparenting very common and natural.

"...There are women in Darim who are already in their seventh pregnancy and this pregnancy is very risky for the mother and the baby-to-be..." (BPW 2023, Interview 4 March).

Some informants stated that there are several '*pamali*' (taboos) that a woman must observe during pregnancy, such as not eating spicy food, coconut milk-based food, 'fishy' food such as animal protein and certain vegetables. This '*pamali*' also applies to mothers during the postpartum period because it is believed to slow down the healing process after childbirth. This view is contrary to the nutritional requirements of pregnant women and mothers during the postpartum period as it narrows down the sources of protein that must be provided to mothers.

Access to health workers for pregnant women and women who were about to give birth in Darim during that period was also very limited to the role of Javanese traditional healers. Pregnant women would be told by their parents or in-laws to see Javanese traditional healers when entering the third trimester, giving birth, until postpartum. Pregnant women would have their womb position 'checked' when entering the third trimester by the Javanese traditional healers to ensure that the foetus is in the right position. If, according to the healers, the foetus is not in the right position, they will '*menggeol*' (massage the mother's abdomen to turn or position the foetus in the right position) the mother's abdomen to ensure the foetus is in the right position.

"...it is common here; pregnant women will get a massage. For example, if you feel that the baby is not in the right position, *Mak* will fix it. *Digeol*... If after the birth *Mak* is called, *Mak* will also take care of the baby..." (MHF 2023, Interview 2 March).

The easiest access to reproductive-related health workers at that time was the Javanese traditional healers. The term 'Javanese traditional healers' (*dukun jawa*) is used for traditional birth attendants, also known as *paraji* in Sundanese. According to one of the Javanese traditional healers interviewed, there is no specific reason why they are referred to as Javanese healers. This term has been used for a long time. A Javanese traditional healer has a dominant role in the care of Darim women from pregnancy to childbirth. They check whether the foetus is in the right position and leads to the birth canal, provide advice to the mother and her family on what the expectant mother and her husband should do, assist in the delivering process, care for the mother during the postpartum period, bathe the baby, and pray for the baby so that it is not 'disturbed' by spirits.

A Javanese traditional healer also handles toddlers and children with health problems. In the general public, a Javanese traditional healer may also be asked to massage an ailing body part as an alternative treatment. Javanese traditional healers tend to be more accessible in terms of distance and cost than *mantri* or formal health workers. Their profession is also closely embedded in the culture of the Darim community so that many families are more familiar and comfortable using their services and seeking their advice than formal health workers.

Some middle-income families may take their daughters or wives to see a *mantri* who lives outside Darim to be given womb-strengthening injections. Information on women's sexual and reproductive health

during that period was mostly limited to pregnancy and postpartum. Consultation services and even health treatments outside the pregnancy and postpartum period were not available because they were considered taboo.

After 2018, when access to Darim's main road started to improve, many families began to have their pregnancies checked by health workers at the public health centre (*Puskesmas*). However, the daily care of pregnant and postpartum women in Darim is still combined with old beliefs such as food *pamali* and assistance of the Javanese traditional healers.

"...In general, Darim's families support the health of pregnant women. To dismiss myths about pregnant women, the midwife conducts counselling on the sidelines of the women's recitation activities. Knowledge around pregnancy planning in the community is generally good, but awareness around closely spaced pregnancies among some young women is still lacking..." (BPW 2023, Interview 4 March).

"...Pap-smears and other reproductive health checks can be done at the nearest hospital (it organises periodic reproductive health check promotions to villages, including Darim)..." (BPW 2023, Interview 4 March).

As access in and out of Darim has improved, sexual and reproductive health services have evolved. The nearest health services at grassroots level are services through *posyandu*. Other health services related to reproductive health have also started to be available *Puskesmas*. However, these health services are still relatively rarely underutilised by Darim residents, especially women.

"...There are no cases of cervical cancer or serious reproductive diseases in Darim. Lactation consultation services can be accessed at *Puskesmas* but are rarely used by the Darim community..." (BPW 2023, Interview 4 March).

"...*Posyandu* is now crowded, with many mothers bring their babies to be weighed. Although there are still some who choose to give birth at home, most people still trust health workers to help mothers give birth. Supporting *Puskesmas* (*Puskesmas Pembantu, Pustu*) is a popular choice for treatment in addition to *mantri* and nurses..." (BPW 2023, Interview 4 March).

"...Counselling on family planning or reproductive health is conducted periodically by midwives in collaboration with the National Population and Family Planning Board (*Badan Kependudukan dan Keluarga Berencana Nasional, BKKBN*). *Puskesmas* also provides sexual education counselling to schools, assisted by the Sector Police (*Polsek*)..." (BPW 2023, Interview 4 March).

Based on the interviews, from the perspective of the health workers in charge of Kendayakan Village and

Puntang Village, health services have actually improved in recent years. Health workers have also made efforts to be proactive by visiting Darim Village for some services. However, these improvements cannot function optimally if Darim women continue to be mobilised to leave Darim.

Women's access to health services will be difficult given that the national health insurance system requires everyone to be registered with a level-1 health facility to be able to utilise the health services paid for each month. Leaving Darim risks distancing access to health services, especially those that are closely related to the fulfilment of SRHR. Moreover, not everyone understands the administrative procedures for changing health facilities according to domicile.

### **Darim Women's Livelihood Strategies and Sexual and Reproductive Health and Rights (SRHR)**

The two solutions given to *cah wadon* to get out of poverty due to the fragility of the food system both have risks to the fulfilment of sexual and reproductive health and rights. The practice of early marriage or remarriage carries the risk of sexually transmitted diseases due to changing partners, although no cases of sexually transmitted diseases have been found in Darim residents to date.

"...it is risky because of changing partners. But thank God, until now no HIV/AIDS cases have been found in Darim. No sexually transmitted diseases have been found either. But we health workers will only know if someone reports. If no one reports, then we consider there is no case..." (BPW 2023, Interview 4 March).

The pathway out of poverty through migrant labour route, especially the spa route, has a high risk of violating the fulfilment of sexual and reproductive health and rights because it puts women in a situation that is vulnerable to harassment, rape, human trafficking that leads to unintended pregnancies or sexually transmitted diseases.

"...I am sorry... I am ashamed to say it, you know... about working in a spa. Who knows how it is there. What is clear is that you go home with a lot of money... After seeing your friends who go home with a lot of money, build a house, buy a motorbike, maybe you will think, it is better to work in the city than here (Darim), the results are clear..." (BPD 2023, Interview 5 March).

"... there are also those who go home with children... Their children will be cared for here (Darim)." (BEG 2023, Interview 6 March).

This intense in and out mobility also makes it difficult for health workers around Darim to document the sexual and reproductive health of female migrant workers.

"...The high number of Darim women who migrate out of the village makes it difficult for health workers to monitor women's reproductive health, especially adolescent girls. Although *Puskesmas* has provided counselling services related to reproductive health for couples of reproductive age, the community rarely makes use of it. In general, people only visit health workers if they have complaints about pregnancy..." (BPW 2023, Interview 4 March).

### **Food System and Sexual and Reproductive Health and Rights (SRHR)**

Feminist political ecology explains the position of women in natural resource management. In general, natural resources are closely related to economic and political agendas because they are considered a commodity. But in reality, the roles of women and men in managing natural resources can be seen in unique patterns that differ from one region to another. Many scholars have tried to dig deeper into this feminist political ecology, including Rocheleau et al. (1996), Elmhirst (2015), and Hovorka (2006).

Dianne Rocheleau, Barbara Thomas-Slayter, and Esther Wangari, in their book "Feminist Political Ecology" published in 1996, explain that gender norms are always changing both on an individual and collective scale. Gender identity is closely related to a particular culture and can differ from one region to another. The main concept of feminist political ecology by Rocheleau et al. (1996) is divided into three things: (1) environmental knowledge and gender-based activities; (2) gender-based rights to natural resources and inequality of vulnerability to environmental change; and (3) gender-based environmental activism and organisations.

Through analysing the cases of gender inequality in natural resource management in several countries, Rocheleau et al. (1996) conclude that inequality will persist if women's involvement, knowledge, and activism in environmental management are neglected. In addition, there are four threads of concern that emerge from the analysed cases, namely: (1) survival; (2) the right to live and work in a healthy environment; (3) the responsibility to protect habitats, livelihoods, and life support systems from contamination, depletion or extraction, and destruction; and (4) the willingness to restore or rehabilitate damaged environment.

Through the experience of *cah wadon* of Darim, the conclusion of Rocheleau et al. (1996) is evident in the Darim community's choice to exclude women from environmental management of food agriculture ecosystem. In the end, the food agriculture sector becomes stagnant and is considered to have no future. Working outside Darim is the only hope for a better future, even with the risk of violating the fulfilment of SRHR for *cah wadon* of Darim.

The effort to assist the improvement of the food system encouraged by the People's Coalition for Food Sovereignty is aimed at having the four threads of concern to be fulfilled again. This effort is made to improve the food system to provide a safe space for Darim women to earn a decent livelihood, and indirectly regain authority over their life choices. Through the realisation that food is not just a commodity that must be forced to grow and harvested on time through ecosystem intervention, the Darim community is encouraged to 're-read' their experience of managing nature. This includes revisiting the relationship between men and women who are equal in managing agroecosystems.

In accordance with this spirit, Elmhirst (2015) defines feminist political ecology as a plural political approach. This approach is obtained by combining feminist theories with gender recognition into a tool to analyse the effects of the power of differences in social constitution. Some of the principles of feminist political ecology according to Elmhirst (2015) include (1) emphasising politics and power at different scales; (2) examining the dominant way of acquiring knowledge; (3) exploring connection between the dimension of social location and subject formation; (4) understanding the complex relationship between nature and humans; (5) analysing power relations and equality; and (6) exploring access and control over resources and their implications for environmental health and sustainable livelihoods.

Elmhirst's thinking is reflected in the context of the fulfilment of sexual and reproductive health rights. Darim women also did not have a sufficiently open consultation space until the main access road out of Darim Village was finally repaired. Darim women are now able to access health services at *Puskesmas*, after previously relying entirely on the services of Javanese traditional healers (*dukun beranak*), who are Darim residents. Sexual health services at the grassroots level are now accessible through *posyandu* cadres, who regularly hold monthly meetings. However, these services have not been able to fully counter the 'taboo' of talking about diseases and risks related to reproductive health. This experience is

an example of how the journey of gender recognition of women's needs takes place in Darim.

Hovorka (2006) uses feminist political ecology as an approach to understand rural-urban restructuring and transformation in Botswana. Her research shows that rural women, who understand challenges and opportunities well, can find alternatives to survive in a changing environment. Feminist political ecology in this case plays a role in analysing intersectional experiences and responses to the changing environment, politics, and economy.

The experience of *cah wadon* and the fragility of the food system in Darim is a social fact that shows the close relationship between political ecological relations and power relations between men and women. Sundberg (2017) states that gender is an important variable in relation to the political ecological dimension of life. This relationship shapes access, control, and knowledge of natural resources. The loss of space for *cah wadon* to express and compete in Darim's agricultural sector due to ecosystem damage has left them with no choice but to work outside Darim.

Tiominar & Afiff (2021) underline that the marginalisation of women in formal politics over access to natural resources is a critique of political ecological feminism. In the context of Darim, this marginalisation even reconstructs the mindset of *cah wadon* that they will be valued as women if they succeed in bringing home capital from outside Darim. This capital is similar to the capital of rural communities disclosed by Ellis (2000), which can be in the form of physical capital (ownership of a number of goods), human capital (better economic partners), social capital (work networks, acquaintances), financial capital (remittances), and natural capital (control of rice fields).

For *cah wadon*, the vulnerability of fulfilling SRHR, especially by working outside the Darim area and its surroundings is the result of marginalisation that should not be experienced by Darim women. The choice of agricultural model made by policy makers and the Darim farming community should ensure that Darim can be a safe space for women without feeling they have to try their luck and fight in the economic arena outside Darim in order to get an improved bargaining position and authority over their bodies.

## Conclusions and Recommendations

The food system plays an important role in maintaining equal relations between men and women.

The fragility of the food system in Darim Village has led to the disconnection of the food production and distribution cycle, which in turn limits the economic choices and capabilities of the Darim community, the majority of whom depend on the agricultural sector. This situation then results in farming households having to look for other sources of income outside the agricultural sector to make ends meet and cope with losses when the harvests fail.

The complexity of the social structure and the tendency towards greater mobilisation opportunities for women have led to a pattern of exploitation of women as the largest expected source of additional income for the family: being married off at an early age, becoming migrant workers through the education route or becoming migrant workers through the spa (massage) service route. Especially in doing risky work, such as becoming spa service workers and migrant workers (domestic or international), which leads to the risk of unintended pregnancies and sexually transmitted diseases. Women are also pressurised into thinking that they are better off leaving Darim and that it would be more beneficial for their families to marry wealthy men from outside Darim in order to lift the family's economy and dignity.

Other risks include early marriages and remarriages with different partners. Early marriage is practised as a shortcut for families to offload the responsibility of maintaining family honour and good name by keeping their daughters away from adultery, without considering the risks of sexual and reproductive health. Remarriage is also often done to avoid being labelled as a 'widow' despite the risks associated with changing sexual partners, even though no cases of sexually transmitted diseases have been found to date.

The disruption of food system sustainability is the root cause of the fulfilment of sexual and reproductive health rights for women in Darim Village. Improving the food system has a high urgency as an effort to improve opportunities for women to be able to have alternative life choices that provide space for efforts to realise the fulfilment of sexual and reproductive health rights. Women should be able to make life choices based on what they want, not because they are forced by the circumstances and structures above them. Improving the food system can start by improving the agroecosystem of rice farming across Darim's farmlands.

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## End Notes

- 1 Report of the Participatory Study on Community Perceptions of the Impacts of Climate Change on the Agricultural Sector (2021).
- 2 The traditional language of Darim, meaning a daughter.

## Sexual Violence: Intertwined Between Legal And Religious Norms

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### Abstract

Sexual violence experienced by women with a variety of experiences is at the risk of not being recognized by the public, even by law enforcement officials who are not conscious of a victim's perspective. This shows that there is a 'big' problem related to the public's perspective on legal norms which makes its implementation conflicting with the constitution which guarantees rights and access to justice for women as citizens. This problem is also supported by an interpretation of religion that is not in favor of victims of sexual violence. This research is carried out to ensure that women who became victims of rape have access to justice in safe abortion services guaranteed by the constitution and religion (Islam). This is the novelty of this research, which is expected to fill in the gaps in a number of previous studies. The research methodology uses a descriptive qualitative approach.

Keywords: sexual violence, gender conscious religious interpretation, gender conscious law, women rape victim, comprehensive abortion care

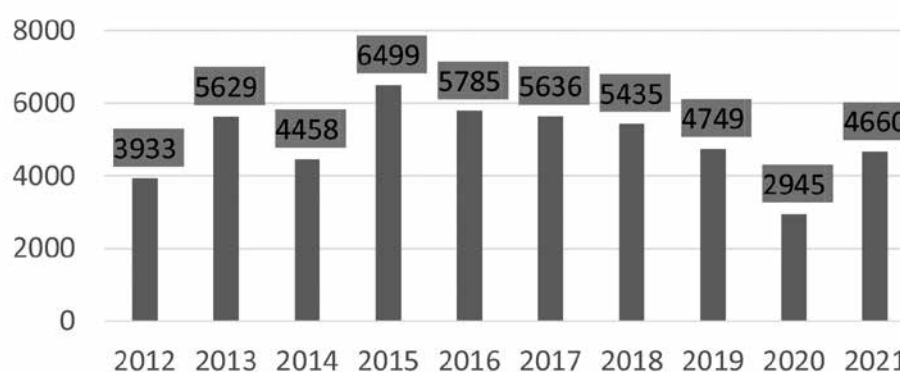
### Introduction

Sexual violence generally occurs due to unequal power relations between the perpetrator and the victim, leaving the victim in a position of powerlessness to resist. Women in this condition often become the object of sexual violence. If the sexual violence experienced results in pregnancy, of course this pregnancy is unwanted by the victim, and has a very complex impact. The victim needs comprehensive assistance, treatment, and recovery both physically, psychologically, and socially, including if she wants to continue her pregnancy or terminate it with an abortion. Under these conditions, the general public often blames, stigmatises, and criminalises victims.

Abortion is also often linked to gender-biased religious views for legitimisation. This cannot be allowed to continue and requires solutions that provide alternatives for victims to obtain comprehensive reproductive health services and access to substantive justice.

Komnas Perempuan's Annual Report (*Catatan Tahunan, Catahu*) (2022) shows that sexual violence over the past 10 (ten) years (data from 2012-2021) has continued to increase with increasingly complex cases. On average, there are 4,973 cases of sexual violence per year or 14 cases per day. The complete number is shown in the following table:

**Table 1. Sexual Violence 2012--2021**



Source: Komnas Perempuan

In 2021, out of 4,660 cases of sexual violence, there were 2,204 cases reported directly to Komnas Perempuan – 1,149 cases occurred in the personal sphere, 1,051 cases in the public sphere, and 4 cases in the state sphere. Compared to 2020, this number increased by 72%. Of the total number of sexual violence cases, the highest number, 597 cases, was rape (25%), 591 cases of marital rape (25%), 433 cases of incest (18%), 374 cases of sexual harassment (16%), 164 cases of sexual intercourse (7%), 63 cases of sexual abuse (3%), the rest were sexual exploitation, sexual slavery, and others (Komnas Perempuan 2022). This figure is an iceberg phenomenon so that the number who do not report is certainly much greater.

Victims of sexual violence generally do not report easily because they are often blamed, considered defaming the family, considered a 'disgrace' so the case must be closed. Victims who report their cases are often reported back by the perpetrators - under the pretext of defamation. This is a result of the construction of a patriarchal society that marginalises women's experiences, denying victims access to justice - even to be heard.

There are forms of sexual violence that are not easily understood by the public, including by law enforcement officials. For example, rape victims who experience unwanted pregnancies and end their pregnancies with unsafe abortions. One of them, NWR, who reported her case to *Komnas Perempuan* (2021), was a victim of repeated multiple violence over a period of almost two years. She was trapped in a cycle of dating violence that exposed her to sexual exploitation and forced abortion. When she had an unintended pregnancy, her boyfriend, a police officer, forced her to terminate the pregnancy in various ways, such as forcing her to take birth control pills, medicines and herbs, and even forcing her to have repeated sexual intercourse because he thought it could abort the foetus. The forced abortion happened twice. The second time, the victim was bleeding, had low platelets, and fell ill. The forced abortion by the perpetrator was also supported by the perpetrator's family, who initially prevented the marriage between the perpetrator and the victim on the grounds that the perpetrator's older sister was still unmarried. It was later discovered that the perpetrator was also in a relationship with another woman, but the perpetrator insisted that he did not want to break off his relationship with the victim. The case even became a viral topic on a number of social media in December 2021. According to the Deputy Chief of East Java Police, based on the Penal Code, the perpetrator was punishable by a maximum imprisonment of five years

and six months because the perpetrator was suspected of participating in the abortion and the act was carried out together. However, regarding rape, they have not found evidence of the perpetrator's actions that lead to the alleged rape (Pradewo 2021). This case is just one of many that show the lack of access to justice for rape victims who experience unintended pregnancies and end their pregnancies with unsafe abortions.

The presence of Law No. 12 Year 2022 on Crime of Sexual Violence (*Tindak Pidana Kekerasan Seksual, TPKS*) as a legal umbrella is expected to guarantee access to justice for victims of sexual violence. The regulations in the TPKS Law are based on the principles of: respect for human dignity; non-discrimination; best interests of the victim; justice; expedience; and legal certainty. Law No. 1 Year 2023 on the Penal Code (*Kitab Undang-Undang Hukum Pidana, KUHP*) also provides legal guarantees in line with the TPKS Law, especially regarding safe abortion services due to the crime of rape that can be performed before 14 weeks of pregnancy (Article 463).

The analysis of access to justice and fulfilment of the rights of victims of sexual violence in this paper uses the approach of Kate Millet's (1934-2017) sexual politics theory from her book entitled "Sexual Politics" published in 1970. In Indonesia, the guarantee of the rights of victims of sexual violence refers to the constitutional rights of women as citizens, which are guaranteed by the 1945 Constitution. The issue of abortion for victims of sexual violence, which is often confronted with the religious views of people who generally reject the legality of safe abortion services, will be analysed using the principles of Islamic law formation (*maqashid al-syari'ah*) in realising benefits and preventing harm for victims of sexual violence.

The analytical framework by combining feminist perspectives, the Constitution, and the principles of realising benefits in Islam (*maqashid al shari'ah*) is the novelty of this research. This research aims to answer the following two questions: (1) How do the Constitution and laws guarantee access to justice for victims of sexual violence, especially in pregnancies resulting from rape that require safe abortion services?; (2) How does religion (Islam) guarantee the benefits for victims of sexual violence in relation to the availability of safe abortion services for rape victims who choose to terminate their pregnancies or continue their pregnancies? These two questions are answered through in-depth discussion and analysis.

## Theoretical Foundations

This paper uses two theoretical foundations. The first is Kate Millett's theory of sexual politics - one of America's radical feminists. Millett's thinking provides a theoretical basis for the contemporary women's movement, which also contributed to the birth of the radical feminist movement or what is known as second-wave feminism. Millett's political concept refers to the power of patriarchal structures that give birth to a sexist society (2000). According to her, misogynistic sexual politics result in the institutional and personal oppression of women (Millett 2000). Each institution is interconnected in reinforcing the patriarchal system ideologically, biologically, sociologically, through class, economically, educationally, coercively, anthropologically in the form of religion and psychological myths.

Ideologically, sexual politics socialises the patriarchal system through the formation of interrelated temperaments, roles, and statuses of women and men. Temperament is perpetuated through the formation of personality stereotypes with masculine categories in men and feminine in women. Sex as a status category of men and women has broad political implications that cement the superiority of men with superior status and inferior status attached to women (Millett 2000, p. 26). The implication is that the patriarchal system perpetuates the subordinated status of women under male power - and is entrenched in society for generations. Biologically, patriarchal ideology also reinforces the biological differences between women and men. This ideology results in the internalisation of women's sense of inferiority of "Self" to men (Millett 2000, p. 28). This is the cause of various forms of injustice and violence against women including sexual violence.

In the context of sexual violence, especially a rape victim who experiences unintended pregnancy and terminate her pregnancy with abortion, there are complex facts, intertwined in the body of a female victim oppressed by patriarchal culture. Acts of sexual violence occur because of unequal power relations, solely fulfilling the interests of male 'power' by trampling on the human dignity of women. In this context, Kate Millett's idea of political personal issues (2000) becomes very relevant to analyse the issue of sexual violence that places public construction of the private body so that it is important for it to be voiced to the public sphere as a political issue and discussed openly in public spaces by policy makers. In Indonesia, this is manifested in the TPKS Law as a victim-oriented policy product - a legal umbrella in the

prevention, handling, and recovery of victims of sexual violence.

The second theoretical foundation used is the principle in *maqashid al-syari'ah* in realising benefits (*kemaslahatan*) and preventing harms (*kemadlaratan*) for victims of sexual violence. Islam as a religion that carries the mission of *rahmatan lil 'alamin*, strongly opposes the practice of violence in all forms, including the practice of sexual violence. The Qur'an has affirmed that women and men are two categories of human species that are given equal consideration, and endowed with equal potential. Nothing is excluded from the Qur'an's primary purpose of guiding mankind towards the knowledge and belief of certain truths. The Qur'an encourages all believers, women and men, to follow their beliefs with their actions. For this, Allah promises them a great reward. Thus, the Qur'an makes no distinction between men and women in terms of creation, in its purpose, as well as in the promised reward. The Qur'an also affirms the principles of justice (*al 'adalah*), equality (*al musawa*), and compassion that prohibit various forms of oppression, violence, and discrimination to be the foundation in realising the benefits for all mankind. However, the reality has not been fairly understood for victims of sexual violence due to a gender-biased view of the Qur'an that is influenced by patriarchal construction.

In this regard, Amina Wadud (1952- ) in her book published in 1992 entitled "Qur'an and Woman, Rereading the Sacred Text from a Woman's Perspective, proposes a hermeneutic of monotheism with the aim of overcoming the gap in understanding the universal and particular verses of the Qur'an (Wadud 1999). The Qur'an has built a universal foundation for moral guidance. According to Wadud, in reading texts with a hermeneutical model, there are three aspects that should be considered to support a conclusion: 1) the context in which the text was written or revealed (in the Qur'an it is called *asbabun nuzul* and in hadith it is called *asbabul wurud*); 2) the grammatical composition of the text; 3) the whole text (its *weltanschauung* or worldview). According to her, differences of opinion can be traced from these three aspects. Amina Wadud is among those who challenge some conventional interpretations, particularly of certain words in the Qur'an that are used to discuss and fulfil universal instructions (Wadud 1999, p. 3). In addition, it takes into account socio-historical information in the form of some historical information relating to the events of revelation and the general period when revelation was revealed. According to her, hermeneutics is important in understanding the Qur'an, including taking women's

experiences and voices into consideration to produce religious thoughts that contribute to justice in Islamic praxis.

The construction of the patriarchal system has implications for the way of understanding religious texts, resulting in a gender-biased understanding - including bias in understanding the experiences of victims of sexual violence. In an effort to produce an understanding of religion (Islam) that is in favour of victims of sexual violence, a new perspective is needed to understand religious texts, in relation to the socio-historical context and experiences of sexual violence. This is realised through reconstruction or reinterpretation of religious understanding with principles to realise benefits that are friendly to victims of sexual violence.

### Research Methodology

This research uses a descriptive qualitative approach, explaining the forms of data and from which data sources are obtained, processed, analysed, and concluded (Creswell 2009). The data in this study consist of primary and secondary data. First, primary data sourced from the Referral Service Unit (*Unit Pelayanan Rujukan, UPR*) of Komnas Perempuan as well as Komnas Perempuan's service provider partners that have been processed in Komnas Perempuan's Annual Report (*Catatan Tahunan, Catahu*). Other data used came from FGDs in the *KUPI Halaqa'sh* Report (2021). Second, secondary data are sourced from a number of literatures, documents, research results, laws and regulations, as well as knowledge published through journals and news in the media. The data collection technique is carried out in several stages, including collecting data from various sources through literature review of a number of selected sources. Third, data analysis and data interpretation are carried out by analysing all primary and secondary data that have been processed and described. Fourth, data validation is done by confirming and verifying the data used.

### Sexual Violence and Its Impacts on Victims

Sexual violence occurs in various domains, both personal and public. In the public sphere, sexual violence also occurs in the sphere of education – evenly found both from the kindergarten/early childhood level to universities, including religious education institutions. Sexual violence is most prevalent in universities, which ranks first at 35%, Islamic boarding schools at 16% (ranks second), and high schools/vocational schools at 15% (ranks third) – the rest are religious-based boarding

schools at 3%, special schools at 3%, elementary schools at 3%, and kindergarten/early childhood at 3%. The most common types are rape, sexual abuse, and sexual harassment at 91%, the rest are physical violence and discrimination in the form of sexual activity and physical violence, which results in being expelled from school (Komnas Perempuan 2022).

Sexual violence generally occurs because there is an unequal power relationship between the perpetrator and the victim. This is an indicator of the existing patriarchal system, which also applies within the scope of educational institutions. Sexual politics in educational institutions – both institutionally and individually – exploits unequal power relations. For example, in the case of lecturers as thesis supervisors and research supervisors, with the mode of inviting victims out of town, committing both physical and non-physical sexual harassment during thesis guidance – on and off campus. In the environment of religious-based *pesantren* or boarding schools, there are different cases of sexual violence found, including forced marriage, such as manipulating the student (*santri*) that there has been a marriage with the perpetrator, transferring knowledge (*kanuragan*), the threat of being punished, not graduating, and losing their memorisation. The situation is even more vulnerable in the case of students who have not paid tuition fees.

As for the impact of sexual violence on victims, apart from having an impact on physical health, victims also experience psychological disorders. Victims are made to feel helpless, dumped, wasted, and have the desire to hurt themselves, which leads to obsessive compulsive disorder (OCD) and other psychosomatic disorders (Komnas Perempuan 2021). These psychological problems also affect victims of sexual violence who experience pregnancy. Multiple forms of physical, psychological, social, and economic exploitation are often experienced by victims who become pregnant as a result of sexual violence. The problem does not stop with the rape. Various psychological problems also affect the victim's life afterwards. Many victims feel their self-esteem is lost, are hysterical, experience prolonged nightmares, have suicide attempts, use drugs, and are unable to enjoy sexual relations in the future (Alimat 2021). The depression experienced by victims arises from their inability to bear the psychological burden of their pregnancy, so they try to take various actions to end the pregnancy, including to end their lives. Some of them are forced to resort to unsafe abortions in various ways, which risk their health, both physical and psychological, even to the point of death.

According to Muhdi in the KUPI *Halaqah* Report (2021), post-abortion problems are still experienced by victims. Victims still need recovery because it often leads to depression and anxiety – even to the point of reducing the victim's self-confidence. Victims experience the torment of decreased self-esteem, feeling worthless, sinful, and dirty. These psychological disorders can last for a long time, even for the rest of their lives. According to her, socially, the community views the victims as worthless, thus lowering their social dignity – perpetuating the mental wounds suffered by the victims. This condition continues to haunt and affect their social relationships, thus, specialised therapy is needed.

### **Criminalisation of Sexual Violence Victims**

Victims of sexual violence are generally stigmatised and ostracised from society. Criminalisation is even experienced by victims of sexual violence who experience pregnancy and choose to have an abortion. In this situation, many victims do not easily get access to justice, which is their right to get treatment, protection, and recovery. Based on the KUPI *Halaqah* Report (2021), victims are in a complex situation. Often, families consider them a disgrace that must be kept under wraps and no one else should know about it. This is also the case in the eyes of the community. It is not uncommon for victims to be locked up or 'kicked out' of their homes, communities, and neighbourhoods. When victims report to the authorities, the attitude of the law enforcement apparatus (*Aparatur Penegak Hukum, APH*) still tends to blame the victims (victim blaming) and does not side with the victims. Another challenge is legal handling that is not integrated with the victim recovery system. In these conditions, victims need comprehensive, systemic, and integrated recovery without discrimination, in favour of the interests of victims (KUPI *Halaqah* Report 2021).

The influence of local traditions also inhibits rape victims from gaining access to justice, both to maintain their pregnancies as well as to terminate their pregnancies. One example, according to Fatmawati Hilal in the KUPI External FGD (2022), in the tradition of Makassar society, it is still strongly considered that rape cases are something taboo and a disgrace to be resolved even in danger. When a rape case occurs, the family is reluctant to report and sanction the perpetrator, especially if the perpetrator is someone close to the victim. Similar treatment, according to Nalini Muhdi, was also experienced in a case when the victim was tricked by the perpetrator into taking drugs, then raped until she became pregnant. The reaction of the surrounding

community included throwing stones at the victim's house because she was considered an adulterer and sinner while the perpetrator was not given any sanction. In another similar case in Sidoarjo, a pregnant victim of rape was expelled from her village because she was considered a disgrace and would bring bad things to the village (KUPI *Halaqah* Report 2021).

Another case in Aceh, according to Suraya Qamaruzzaman, shows the difficulty of accessing justice for rape victims, especially those who experience pregnancy. In the *Qanun Jinayat*, the initial evidence in rape cases must be submitted by the victim. If the victim cannot prove then she is required to take an oath in court. In fact, if the victim cannot prove and does not dare to take an oath then she can be accused of defaming the perpetrator and the punishment can be flogging 80 times or paying a sum of money if the perpetrator asks for payment. Moreover, if the victim becomes pregnant as a result of the rape and terminates the pregnancy with an abortion, the victim is subject to multiple punishments. Socially, victims are negatively stigmatised and legally viewed as breaking the law (KUPI 2022 External FGD).

Criminalisation is not only carried out on the victim, often the doctor who helps, the companion, the person who refers the victim, or other parties are criminalised because they are considered as parties involved. Data from the Indonesian Sexual and Reproductive Health Coalition (*Koalisi Kesehatan Seksual dan Reproduksi Indonesia, KSRI*), between February and August 2020, found 8 criminal cases related to abortion, both for rape victims and for medical indications (Adinda 2021). This shows the layered criminalisation of women victims of sexual violence that also targets the parties involved.

Local regulations in Indonesia that criminalise victims of sexual violence as well as those involved in their assistance and handling, are fundamentally against the country's Constitution. The 1945 Constitution guarantees non-discriminatory treatment for all citizens – whether they are female or male. This guarantee is realised through: Article 28D Paragraph (1), "Every person shall have the right of recognition, guarantees, protection and certainty before a just law, and of equal treatment before the law"; Article 28G Paragraph (2), "Every person shall have the right to be free from torture or inhumane and degrading treatment..."; Article 28I Paragraph (2), "Every person shall have the right to be free from discriminative treatment based upon any grounds whatsoever and shall have the right to protection from such discriminative treatment"; Paragraph 4, "The protection, advancement, upholding and fulfilment of human rights are the

responsibility of the state, especially the government”; Article 28J Paragraph (1), “Every person shall have the duty to respect the human rights of others in the orderly life of the community, nation, and state”; Article 28H Paragraph (1), “Every person shall have the right to live in physical and spiritual prosperity..., and shall have the right to obtain medical care; Paragraph (2), “Every person shall have the right to receive facilitation and special treatment to have the same opportunity and benefit in order to achieve equality and fairness”. Criminalisation of victims also contradicts the principles of the TPKS Law, Article 2, namely respect for human dignity, non-discrimination, best interests of victims, justice, expedience, and legal certainty.

### **Unsafe Abortion Contributes to Maternal Mortality Rate (MMR)**

The phenomenon of unsafe abortion in Indonesia has been high in the last 20 years. This phenomenon is due to the fact that safe abortion services are very expensive and difficult to access transparently. Previous studies on abortion have shown high rates of unsafe abortion. Globally, the average abortion rate is 39/1,000 women (Bearak et al. 2020). In the Southeast Asia region, the rate is lower at 34 abortions per 1,000 women. In Indonesia, an estimated 1.7 million abortions occurred on the island of Java. Research from the Guttmacher Institute in 2008 found 43 abortions per 1,000 women (Rini 2022). Another study found a slightly lower abortion rate in Java at 42.5 abortions per 1,000 women aged 15-49 years (Giorgio et al. 2020).

The condition of unsafe abortion is almost the same as it was 20 years ago when I wrote my thesis on the Jurisprudence of Abortion in 2003; there has been no significant change in either the number of abortion cases or the practice of unsafe abortion. In 1999, the World Health Organisation (WHO) cited a study in four Indonesian provinces - North Sumatra, Jakarta, Yogyakarta, and North Sulawesi – that shows a figure of 2.3 million abortion cases. Of these, WHO (2021) estimates that 10-50 per cent contribute to the maternal mortality rate - among which bleeding was the most dominant. Research by Budi Utomo et al. (2001) in 10 major cities and 6 districts also finds a similar figure: 2 million abortions per year.

Compared to the number of abortions 20 years ago, there has been a slight decrease from 2.3 million abortions per year in 1999 to 1.7 million per year in 2018. However, from the point of view of access to safe abortion services, there is almost no difference because

even today, access to safe abortion services is still difficult to obtain – because there is no regulation yet. Unwanted pregnancies that end in unsafe abortions contribute to Indonesia’s maternal mortality rate (MMR) of 305 per 100,000 live births (BPS 2016).

Previous studies have shown that abortion occurs at all ages and marital statuses. Data collected by the Indonesian Family Planning Association (*Persatuan Keluarga Berencana Indonesia, PKBI*) show a diverse range of ages, marital statuses, and occupations. Based on age, the youngest is 12 years old and the oldest is 57 years old. Of the age range, clients aged 12-24 years account for 21.35%, those aged 25-35 years account for 46.2%, those aged 36--57 years account for 32.45%. Medical records show that married clients make up 76.1% and unmarried clients 23.9% (PKBI 2015), although the data do not specify the number of abortions due to rape. These data show that abortion can happen to women who are single or married, whether due to rape or other factors.

Several studies have found that the way abortions were performed include 73% of women performing abortions on their own, while 21% reported being assisted by a doctor or a midwife. The remaining 6% went to traditional providers and pharmacists. Another study found that 47% of abortions were done surgically, 28% were done with drugs, and 26% used some other methods (Giorgio et al. 2020). Meanwhile, the database of Samsara - an organisation that provides counselling services for unwanted pregnancies - in the Indonesia UPR Report (2017) shows that of the 10,346 women who contacted the organisation between 2011 and 2015, 24% were married women, 44% were single women, and 32% did not state their marital status.

The lack of services for abortions for different reasons, including rape-related pregnancies, is a factor in the high abortion rate in Indonesia. SUPAS 2015 reported 305/100,000 live births (BPS 2016), and the WHO predicts that 4.7%-13.2% of the annual MMR is due to unsafe abortion and 7 million women in developing countries are hospitalised each year due to unsafe abortion (WHO 2021). Meanwhile, PKBI estimates that 11-30% of MMR is due to unsafe abortion (PKBI 2015). The PKBI (2015) reported that 4,857 pregnant women, who experienced unwanted pregnancies, accessed safe abortion services. This issue needs special attention from the government, especially the Ministry of Health and various related stakeholders. WHO data state that there are 25 million unsafe abortions and 47,000 maternal deaths every year (WHO 2021). Unsafe abortion results in bleeding, accounting for 46.7 percent. The WHO estimates that

between 10-50 per cent of bleeding from unsafe abortion contributes to maternal death (Anshor 2012, p. 46). On the other hand, if an unintended pregnancy occurs, especially if the victim of child marriage is under the age of 18, her pregnancy is at risk of medical complications. Complications during pregnancy and childbirth are the second leading cause of death for girls aged 15-19 years, and are prone to reproductive organ damage, potentially increasing infant mortality. Babies born to mothers under 20 years old are 1.5 times more likely to die before 28 days of age than those born to mothers aged 20-30 years. In addition, stunting in newborns increases.

### The Shadows of Sin

The prevailing religious view of Indonesian Muslim is that abortion is a religiously forbidden act, and if it is performed, the person concerned will bear the sin. This majority view exacerbates the psychological burden on victims and health workers who perform abortions to save rape victims. The belief that they have committed an act that is forbidden by their religion has haunted them with feelings of sin. In a study conducted by Erniati Djohan et al. (1996) on health workers, all respondents said that according to Islam, abortion is considered a sin because it is the same as murder.

Some victims of sexual violence, who terminated their pregnancies by abortion, are always haunted by a sense of post-abortion sin. On the one hand, there is an awareness of sin, but on the other hand, they do not know how to obtain forgiveness or not even convinced that God accepts his forgiveness. Some of them stated that for two weeks every night they were always restless, unable to sleep because they were haunted by feelings of guilt for killing their own foetus, and these feelings sometimes still arise. The only solution was to pray as much as they could. Likewise for other victims, they honestly admitted that what they did was against their conscience and religion, felt regretful, and felt constant fear mixed with a sense of sin. To calm themselves down, most of them went through efforts to increase worship, praying every night and always praying, hoping that God would forgive them (Anshor 2006, p. 45).

The description of a number of cases above shows that post-abortion conditions for rape victims do not immediately recover. They are haunted by feelings of constant fear and prolonged guilt. In fact, their condition can be even more complex, not only related to post-abortion health factors, but also the way they view themselves, which is influenced by various other factors. They seem to be held hostage by factors outside

themselves, both sourced from the religious values they accept, as well as the substance of the law and legal culture that has not been in favour of the interests of victims. Women victims of rape should be seen as subjects who have reproductive rights – able to make their own decisions about their sexuality and reproduction, as well as the consequences of their abortion, and therefore entitled to comprehensive recovery. They need post-abortion therapy that is multi-perspective, not only medical, but also psychological including spiritual and religious therapy that is friendly, empowering, and solutive in favour of the best interests of the victim.

### Religious (Islamic) Views on Sexual Violence and Abortion

Sexual violence in the Islamic view is an act of oppression, placing women as sexual objects that degrade women's dignity. Women as victims do not have sovereignty over their own bodies. This is contrary to the will of God, who has given human beings (women and men) the status of noble creatures (Q.S. Al-Isra' 17:70). Women who become pregnant as a result of rape should not be blamed. The culture of blaming rape victims goes against God's prohibition of harming innocent people (Qur'an, Q.S. Al-Ahzab 33:58).

Islam views sexual violence as a crime and injustice, which causes physical, psychological, and social damage to the victims. According to Badriyah Fayumi in her presentation at the Seminar and Workshop on the Elimination of Sexual Violence in the Perspective of Nahdlatul Ulama Families (PBNU Family Welfare Institute 2021), sexual violence contradicts monotheism (*tauhid*), which is the core of Islamic teachings and noble morals, which are the mission of the Prophet's message. Sexual violence is also considered contrary to *tauhid* because it shows the submission of the perpetrator of sexual violence to his sexual desires and the submission of the perpetrator to the victim. This contradicts the status of humans as servants of God (*abdullah*) with their inherent mandate as *khalifah fil ardh*. Meanwhile, according to Husein Muhammad in the KUPI *Halaqah* Report (2021), sexual violence shows the loss of the perpetrator's intellect, which is the core of his humanity, and has an impact on the loss of the victim's benefits in various aspects of life, which are *maqashid al-syari'ah*, especially protecting the soul (*hifdzu al-nafs*), protecting honour (*hifdzul al-irdh*), and protecting offspring (*hifdzu al-nasl*).

The first Indonesian Women Ulema Congress (*Kongres Ulama Perempuan Indonesia, KUPI*) in 2017 decided that sexual violence must be stopped - in a proposal

of 9 religious views, including sexual violence. Sexual violence goes against the principles of human dignity and marriage that Islam advocates. In Islam, sexual acts can only be performed between a woman and a man in a legal marriage, with no coercion, mutual consent (*ridha*), and mutual comfort (*sakinah*) between them. Islam as a religion that is *rahmatan lil 'alamin*, bringing compassion to humans and the universe, rejects all forms of sexual violence because they contradict the basic rules of *shari'ah law* that prevent the realisation of benefits and protection of human dignity.

Women victims of sexual violence, who experience pregnancy, experience multiple forms of violence, physically, psychologically, and socially. If the pregnancy is continued, it will prolong the victim's suffering from the dangers she has to go through, nine months of pregnancy and 2 years of breastfeeding. This is psychologically and socially more painful for the victim. Pregnancy for women under normal conditions is a hardship, in a state of increasing weakness (Qur'an, QS. Luqman 31: 14). After giving birth, then breastfeeding, the condition is even more difficult (Al-Qur'an, QS. Al-Ahqaf 46: 15). Moreover, for women victims of rape, experiencing pregnancy is in a state of *mudharat* with complex risks that can endanger their souls. The rules of jurisprudence state that harm must be rejected as much as possible (Muhammad 1989, p. 118).

In the context of saving women's lives from the risk of pregnancy due to rape, *fiqh (fikih)* provides constructive solutions to free victims from various risks that threaten their lives, dignity, self-respect, and create an environment that is conducive to the victim's life. Islam guarantees basic human rights, known as the 5 principles of Islamic Sharia (*Al-Kulliyat Al-Khams*), consisting of the protection of religion (*hifdzu al-din*), protection of the soul (*hifdzu al-nafs*), protection of the mind (*hifdzu al-'aql*), protection of offspring and dignity (*hifdzu al-nasl wal al-'irdl*), and protection of wealth or property (*hifdzu al-maal*) (Al-Hanafi 1980, p. 85). In realising the benefit as the purpose of the formation of Islamic law (*maqashid al-syari'ah*) by considering the conditions of suffering experienced by the victim, then termination of pregnancy is seen as less risky than continuing the pregnancy at the risk of life or death for rape victims. This is based on the *fikih* rule that states: "When two damages (*mafsadat*) are in tension, the greater *mafsadat* should be avoided with the lesser *mafsadat*" (Azzam 2005, p. 160). On the other hand, in reality, the Islamic society, especially in Indonesia, generally is still unable to accept the presence of children born outside of a legal marriage. This also results in the disruption of their lives, both the mother and the child

she gives birth to, so terminating the pregnancy to avoid more severe risks is allowed (Al-Subky 1991, p. 88).

Referring to the views of these scholars, the state as *ulil amri* in this case must be present to provide comprehensive reproductive health services to systematically protect women's souls from the risk of pregnancy due rape – from prevention, legal processes that ensure justice for victims, to victim recovery as an implementation of *Tasharruf al-Imam ala ar-Raiyyah Manuthun bi Al-Maslahah*. The leader's actions towards the people must be benefit-orientated (Al-Suyuthi et al. 1990, p. 121). In order to realise *maqashid al-syari'ah* and the benefit for rape victims as mentioned above, the government needs to have an adequate legal umbrella because it is a means of realising the objectives of *sharia* and *kemaslahatan* (benefit). An objective that cannot be realised without a means makes it obligatory to provide that means, according to the rule of *Ushul Fiqh*: If something prevents an obligation from being fulfilled without it, then it is obligatory.

Islam as a religion has a mandate to protect the soul from damage and prohibit harm. The role of protecting a woman's soul from the risk of pregnancy as a result of rape is a religious imperative, even if it means terminating the pregnancy. Most scholars agree that abortion is permissible *before* the foetus has a soul (*qabla nafkh al-ruh*). However, *after* the foetus has a soul, (*ba'da nafkh al-ruh*), or after the pregnancy is 120 days old, the scholars agree that abortion is prohibited (Anshor 2012; Fatwa of the Mufti of Egypt 1419 AH; Fatwa of the Palestinian Supreme Council Al-Ifta al-Falastiniyan 2012; Fatwa Council of Shuria Ulema 2021). This provision is for general conditions, while for special conditions in the context of the risk of pregnancy due to rape, there is no Sharia prohibition to terminate a woman's pregnancy provided that the abortion process does not exceed 120 days - for some opinions, such as from Hani Al-Jabir, Mohamed Rawwas Qal'ahji, the Council of Shuria Ulema, many modern scholars allow abortion after 120 days if there are certain dangerous medical conditions (Lajnah Fatwa Syabakah Islamiyah. 1425 AH, juz 13, pp. 9236).

The view of religion (Islam) in dealing with victims of sexual violence, domestic violence, and abortion above is a product of reinterpretation of religious texts in the form of new knowledge or references with principles to realise justice and benefit in favour of victims of sexual violence. As for the implementation, how the principles of justice and benefit are realised is the authority of the state, especially the government. In the context of victims of sexual violence getting access to justice and

comprehensive services, policy makers should make the views of these scholars a reference in formulating the legal umbrella and its derivative policies.

### **Alternative Breakthrough to Prevent Unintended Pregnancies and Access to Safe Abortion for Victims of Sexual Violence**

When referring to the views of a number of scholars above, among them assert that the state must be present to systemically provide safe abortion services to protect women's souls from the risk of pregnancy due to rape, ranging from prevention, legal processes that ensure justice for victims to the recovery of victims as the implementation of *Tasharruf al-Imam ala ar-Raiyyah Manuthun bi al-Maslahah*. The view of religion (Islam) in general can be used as a basis for formulating policies on safe abortion services, especially for victims of sexual violence. Likewise, when referring to the Constitution, women have the right to obtain health services including access to safe abortion services, especially for victims of sexual violence. There should be no hesitation for the government as the party that has the authority to fulfil the constitutional rights for women victims of sexual violence. Misogynistic reading of texts will also influence the system in public settings that have an impact on women's private lives - in this case related to their reproductive health. This is in line with Millett's criticism in her concept of sexual politics (2000).

One of the strategies to reduce MMR when referring to safe motherhood is to provide access and services to fulfil the need for contraceptives, especially emergency contraceptives to prevent unintended pregnancies, especially for victims of sexual violence. Emergency contraceptive pills given to rape victims in a period of less than 72 hours or 3 times 24 hours after rape is quite effective in preventing unwanted pregnancies. The study done by Ahmed et al. (2012) shows that a high Contraceptive Prevalence Rate (CPR) can contribute to a reduction in MMR, reducing 70% of unwanted pregnancies, reducing 25% of maternal deaths, and reducing 18% of neonatal deaths.

Regarding safe abortion services, the WHO has recommended the use of misoprostol or Manual Vacuum Aspirator (AVM) taken orally at (before) 6 weeks of pregnancy. However, the extent to which the government has responded in regulations that favour rape victims is yet to be seen. At least there has been a study from FKM UI (2018), which found that 1 in 8 women experienced complications and sought health services, 88% of which were treated by sharp curettage.

Meanwhile, according to Meiwita (KUPI *Halaqah* Report 2021), this action is more risky than taking misoprostol. To avoid pregnancy in cases of pregnancy due to rape or unintended pregnancy, according to her, there are ways to prevent pregnancy by using effective contraceptives. If it fails or if you are already pregnant, there is also a pill (misoprostol) that is not risky, easy to take and affordable. But ironically, the National Agency for Drug and Beverage Control (*Badan Pengawasan Obat dan Minuman, BPOM*), which has the authority to license and distribute drugs in Indonesia, only labels it (misoprostol) for gastric ulcers. The pills can be taken at home without hospitalisation. In contrast to sharp curettage, besides requiring treatment, it is also much more expensive.

Women victims of sexual violence as citizens have constitutional rights that must be fulfilled by the state to gain access to comprehensive health services. The presence of the TPKS Law and the Penal Code provides hope for access to justice for rape victims. Both laws guarantee the recovery of victims of sexual violence in a comprehensive and integrated manner. The TPKS Law guarantees the fulfilment of victims' rights through Article 66 Paragraph (1). Article 463 Paragraph (2) of the Penal Code explicitly provides legal certainty that abortion due to rape can be performed before the pregnancy is 14 weeks old. The implementation of the two laws requires them to be completed with 5 Government Regulations and 5 Presidential Regulations. These derivative regulations are still in the process of being drafted under the coordination of the Ministry of Women's Empowerment and Child Protection and the Ministry of Law and Human Rights. The TPKS Law and the Penal Code guarantee safe abortion services for victims of sexual violence. However, the perspectives of traditional and religious leaders are generally gender-biased and tend to blame the victim. Progressive views that favour victims, especially regarding safe abortion for victims of sexual violence, have not yet become mainstream views among traditional and religious leaders in Indonesia. Normatively, both laws have the legal force to be implemented, but as long as there are no derivative regulations, it will be difficult for victims of sexual violence to obtain access to justice and comprehensive reproductive health services.

### **Closing**

Sexual violence has a huge impact on the victims who experience it. Therefore, the response to and handling of sexual violence cases must be comprehensive, holistic, and systemically integrated. The policies contained in

the TPKS Law are not sufficient to ensure a system that favours victims of sexual violence, especially those who experience unwanted pregnancies and abortions. In Indonesia, there is still a lot of influence from religious leaders. A concerted effort is needed to sensitise the public with religious views that favour victims. The views of scholars, including *fatwas* from several Muslim countries, as found in the discussion, have discussed abortion laws that take into account the experiences of victims of sexual violence. Leaving women victims of sexual violence in risk of unwanted pregnancies violates the principles of Islamic law (*maqashid al-syari'ah*). Unfortunately, this view has not yet become a mainstream view among Indonesian scholars.

The TPKS Law is normatively binding for the parties to implement, but the legal culture in society is required to immediately adjust to the understanding and steps that are in line with the legal substance contained in the body of the TPKS Law. Therefore, the government should consider involving ulema, who have progressively expressed opinions that are friendly to victims of sexual violence. This progressive religious approach will provide space for the experiences of women, especially victims of sexual violence, to be heard. We cannot allow society to stigmatise, exclude, and even blame victims. A religious approach such as in Islam - in the context of this article - with public policies that guarantee the rights of citizens (including women) shows a change in thinking and behaviour that certainly has sensitivity to the issue of sexual violence. Comprehensive reproductive health services are not out of reach. Therefore, the principles of sexual politics raised by feminist thinkers, as well as the understanding of Islam that rejects sexual violence can be an alternative offer to change the thinking of the general public - especially in order to restore the principles of justice and equal treatment stated in the 1945 Constitution.

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## Oppression and Power Over Women's Body In The Tradition of Cultural Society: A Case Study Female Genital Mutilation In Banten

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### Abstract

This article discusses female genital mutilation which is generally based on the traditions and culture of the society, passed down from generation to generation, and strengthened through religious teachings. The practice of female circumcision is strongly related to sexual control and forms of power exerted over women. This study aims to examine the form of oppression experienced by women in cultural groups through a case study of female genital mutilation in Banten and its impact on the recognition of women's rights in indigenous peoples. In particular, this study elaborates on the theoretical framework of forms of oppression against women in the context of the politics of recognition of cultural group identity in Banten. The research paradigm used is qualitative research methods and in-depth interview. The results of data analysis using the Interpretative Phenomenological Analysis (IPA) method show that there are two forms of oppression that occur in the practice of female circumcision in Banten, namely powerlessness and violence. These forms of oppression are the impact of women's weakening in the practice of female genital mutilation which is one of the negative implications of the politics of recognition of cultural group identity in Indonesia.

Keywords: oppression, the politics of recognition, female genital mutilation

### Introduction

This research discusses the practice of female circumcision in the context of a multicultural Indonesia that recognises the diversity of local cultures. The Indonesian Constitution guarantees the rights of citizens to believe in their beliefs and to practice their traditions. This is regulated in Article 28E Paragraph (2) of the 1945 Constitution of the Republic of Indonesia. Indonesia, as a multicultural country, makes cultural diversity an asset so that in its continuity and development it needs to be recognised for its rights and identity, including local culture.

However, the recognition of cultural groups and practices as an implication of multiculturalism policies perpetuates patriarchal cultural structures and systems that oppress women. Specifically, this paper will discuss the oppression that women experience in the practice of female circumcision through a case study in Kemuning Village, Tangerang Regency, Banten. Banten is one of the provinces that is still attached to the tradition of performing female circumcision and occupies the third position as the province with the most female circumcision practices in Indonesia after Gorontalo and Bangka Belitung; the prevalence of female circumcision

in Banten even reaches more than 79% (Ministry of Health RI 2013).

In general, tradition and culture justify the practice of female circumcision. Generatively, this practice takes place and is reinforced through religious teachings. Local communities view the practice of female circumcision as a cultural heritage that must be preserved and defended. Meanwhile, from the religious aspect, the community considers female circumcision can bring religious perfection, can control sexual appetite, and straighten lust. The existing assumptions about female circumcision and its relationship with female sexuality are a form of oppression against women through the process of religious internalisation (Mustaqim 2013).

The practice of female circumcision is directly related to the politics of recognition of cultural and religious groups in people's lives, which contains spiritual beliefs and the diversity of local cultural traditions in the midst of a globalised civilisation. The pros and cons that continue to occur relating to the practice of female circumcision need to be widely studied, especially considering the high rate of female circumcision in Indonesia (Hodijah 2018). According to a UNICEF (2016) report on female circumcision that includes data from 90 national surveys

in 30 countries, more than 200 million women and children worldwide are victims of female circumcision. Half of them are affected, and Indonesia is ranked as the third country with the highest rate of female circumcision in the world after Egypt and Ethiopia. Approximately 44 million of the women subjected to the practice are under the age of 14 (Welle 2016).

In Indonesia, the rate of female circumcision is high. According to UNICEF data in 2013, Gorontalo was in the top position at 83.7 per cent, followed by Bangka Belitung at 83.2 per cent, then Banten in third position at 79.2 per cent, and South Kalimantan at 78.7 per cent. These regions have the highest percentage of female circumcision practices. UNICEF Indonesia's Spokesperson, Kinanti Pinta, said that at least 13.4 million Indonesian girls under the age of 11 may have undergone female circumcision (Wima 2019).

The practitioners of female circumcision trusted by the Indonesian community are very varied, namely nurses, midwives, doctors, traditional healers, and circumcision masters. They use traditional tools, such as knives, blade of split bamboo, bamboo, needles, glass, nails, as well as modern tools such as scissors, scalpels, and so on. The age of implementation also varies greatly, ranging from neonates, children aged 6-10 years, adolescents, and adults. Research by Mustaqim (2013) shows that female circumcision in Indonesia is performed on children aged 0-18 years, depending on the local culture. Generally, female circumcision is performed when the baby is born. In Java and Madura, 70% of female circumcision is performed at the age of less than one year and some at the age of 7-9 years, marking the period before adulthood.

According to Musdah Mulia, one of the reasons for practicing female circumcision is to maintain the continuity of cultural identity (Mulia 2014). Firstly, according to the general public, performing traditional or cultural rituals is an important initiation stage for women to enter the stage of adulthood and become an official part of a community group. Second, the practice is also perpetuated to maintain the status quo of unequal and unfair gender relations. The practice of female circumcision is done to mould compliance and emphasise women's weakness. This is done to emphasise the role of women in society. Third, this practice is also perpetuated to maintain and control women's sexuality and reproductive functions. The community believes that female circumcision can be used as a mechanism to control women's sexual desire (Mulia 2014).

The practice of female circumcision cannot be separated from the role of the people around girls who experience the practice. Based on the results of studies and field findings conducted by the National Commission on Violence and Discrimination against Women (*Komnas Perempuan*) in 2018 on the intersection of tradition and modernity related to female genitalia cutting/opening (P2GP), it shows that parents and grandparents are the most influential parties in making decisions related to the practice of female circumcision. This condition is related to the previous experiences of parents so that the practice is considered as a hereditary tradition that must be carried out in the family (Hodijah 2018).

From this context, this study aims to answer key questions, namely: How does oppression affect women in the practice of female circumcision in Banten? How does oppression impact on the recognition of women's rights in indigenous communities? Using a feminist lens, this research will focus on the concrete situation of women in Banten.

## Research Methodology

This research uses descriptive qualitative research. Denzin and Lincoln (1998) cited in Gunawan (2013) define qualitative research as a method for obtaining basic understanding with 'first-hand' experiences, real reports, and records of actual conversations. Qualitative research aims to understand how participants take meaning from their environment and how that meaning affects their own behaviour (Nudin 2016). Descriptive qualitative research methods are used to investigate, discover, describe, and explain the qualities or characteristics of social influences that can be explained, measured, or described through qualitative approaches (Saryono 2010).

Data collection was conducted by literature study and interviews. Data collection techniques from literature studies focus on data sources obtained from books, journals, and mass media both digitally and non-digitally. Some sources can be searched through libraries and the internet. Data collection and analysis were conducted in-depth so that readers can understand how oppression happens to women through female circumcision in Banten and its impact on the recognition of women's rights in indigenous communities.

The authors also conducted online interviews with parties related to the topic under study, discussing and exchanging opinions regarding the practice of female circumcision, which is still rampant in Banten. Interviews

were conducted with women had undergone female circumcision. According to Banister et al. (2011) in Nudin (2016), interviews are defined as conversations and questions and answers that are directed to achieve certain goals. Interviews in qualitative research are conducted when the researcher intends to gain knowledge about the subjective meanings that individuals understand regarding the topic under study, intending to explore related issues.

The qualitative data analysis conducted in this phenomenological research used Smith's (2009) Interpretative Phenomenological Analysis (IPA) method. This technique was chosen because the research seeks to reveal a direct experience in the case of female circumcision practices. Experience is the main key to be revealed in more detail in this research.

### **Female Circumcision: Multiculturalism and the Oppression of Women**

Medically, female circumcision has negative impacts, such as causing pain, bleeding, infections that affect fertility, tetanus, anaemia, and psychological problems. Because of these conditions, the WHO states that health workers in any situation and anywhere are prohibited from performing female circumcision. Also, according to WHO, even if performed by health workers, female circumcision is a form of torture. Various parties also consider female circumcision as a form of violence against women because it is related to the absence of informed consent, patriarchal pressure, and related to the suffering and impact caused (Mustaqim 2013).

Since the 1960s, African activists and medical staff have begun to debate female circumcision at the international level, and they have revealed the health impacts of this practice to the UN and the WHO. However, the vote was never taken seriously by enacting formal regulations. It was only in the following two decades that female circumcision began to be frequently discussed at various international conferences and was finally recognised as a possible threat to reproductive health at the Fourth Women's Conference in Beijing in 1995 (Fauziyah 2017).

Although female circumcision has been restricted internationally, at the local level the practice continues. Local traditions and cultural identities are generally the reason for the continuation of female circumcision in many parts of the world. Female circumcision is part of a political effort to recognise local cultural identity. In a democratic country, recognition of diversity and local culture is one of the demands of democratic

sustainability. This has become the centre of discussion in various studies of multiculturalism.

The term multicultural itself refers to the reality of cultural diversity, while multiculturalism refers to the normative response to that fact. Multiculturalism demands the recognition of the cultural authority of a particular group in the life of the nation. Multicultural societies emphasise the importance of providing opportunities for the development of multicultural societies that must be recognised for their rights. Diversity and recognition of cultural groups is one of the fundamental elements of democracy. Democratisation brings about the recognition and acknowledgement of diverse cultures. Multiculturalism as a concept began to be studied in the 1980s. It initially emerged as a critique of liberals, who treated every individual equally before the law regardless of differences in culture, religious beliefs, and race. Instead, multiculturalism demands the affirmation of different identities by assuming political alignments that recognise diversity. Therefore, multiculturalism is often associated with "identity politics", "politics of difference", and "politics of recognition and affirmation" (Kymlicka 2002).

Multiculturalism itself is not free from criticism. Susan Moller Okin (1999) tries to place the perspective of multiculturalism within the framework of feminist criticism. Okin argues that most cultures are filled with gender-biased practices and ideologies that reinforce men's control over women so that men are in a stronger position to determine and articulate their group's beliefs, practices, or interests (Okin 1999). Broadly speaking, Okin criticises the approach of "granting privileges to minority groups (ethnic, cultural, national) to determine themselves". Advocates of the rights of cultural minority communities tend to view cultural groups in a one-dimensional or monolithic manner. They tend to pay more attention to the differences between cultural groups rather than examining differential and discriminatory treatments within a community (Putranto 2013). Cultural minority groups are a vulnerable group when it comes to minority communities. However, women and children from cultural communities are often the most invisible and unvoiced although they are often the most vulnerable and marginalised.

Drawing on cross-cultural examples from Latin America, South Asia, and parts of West Africa, Okin identifies five cultural practices that disregard gender equality and justice or that place women under the control of men: (1) clitoridectomy (female circumcision); (2) forced marriage (including rape victims who have to

marry the perpetrators); (3) child marriage; (4) a biased divorce system that disadvantages women; and (5) polygamy (Okin 1999).

According to Okin, female circumcision is part of a “cultural heritage” aimed at regulating female sexuality. Female circumcision is believed to suppress women’s sexual desires so that they only engage in sex for marital purposes. Sexuality is not about women’s pleasure, but rather about women’s responsibility to perform the labour of social care and reproduction. If their clitoris is not cut, they will think of pursuing their own sexual pleasure and fulfilment (Okin 1999). As such, many culture-based customs indirectly aim to control women and make them, sexually and reproductively, subservient to male power. According to Okin, in patriarchal cultures, women have been positioned in the reproductive function and sexually objectified. Discriminatory practices occur not only within minority cultures but also within the context of the state. But at the very least, due to the insistence and struggle of feminism, some changes at the state policy level have taken place. State law has come to recognise the idea of gender equality. Therefore, according to Okin, taking affirmative action such as giving cultural communities the power of “self-determination” can provide a sense of justice for cultural communities but worsen the situation of gender discrimination against women. However, Okin does not explain how forms of oppression against women occur in society as well as in cultural communities.

Iris Marion Young (1990), a feminist philosopher, explains the forms of oppression. According to her, oppression is ubiquitous and can involve any individual or group. According to Young (1990), oppression refers to structural phenomena that can disable or degrade a group. Discourse in our lives usually distinguishes people according to social groups, such as women and men, age groups, racial groups, ethnicities, religious groups, and so on. These kinds of social groups are not simply collections of people because they are more fundamentally tied to the identity of the people described as their own. They are a special kind of collectivity, with particular consequences for how people understand each other and themselves (Young 1990).

Young argues that in many cultures and societies there are groups of people who are powerless, one of which is women. They are perceived as the ‘other’, who is not the same and does not even have an essential correlation with the more dominant group such as men. Women as vulnerable groups are often seen solely as objects that are always bound and attached to their immanence.

Structurally inherited perceptions attached to identity, such as the characteristics of helplessness, softness, subtlety, weakness, and etc., are always perceived in weak groups such as women (Young 1990).

According to Young (1990), there are five forms or faces of oppression, namely exploitation, marginalisation, powerlessness, cultural imperialism, and violence. Based on this framework of five faces of oppression, the researchers see that, in the context of female circumcision in Banten, the most dominant forms of oppression are marginalisation, powerlessness, and violence.

Marginalisation is the condition of a group of people who are structurally and systematically isolated or excluded from social life and unable to determine their fate, which makes them very vulnerable to losing their rights and can even lead to destruction. From a gender perspective, oppression in the form of marginalisation can limit women’s experiences in determining women’s lives (Young 1990, p. 53). Powerlessness refers to practices that make a person lack authority or power especially based on class, race, and gender to decide what they want with their lives. The powerlessness is situated or conditioned in such a way that the disempowered person can only receive and follow orders without ever having the right to exercise their power. This status of powerlessness is more accurately described in negative terms, where they lack authority, status, and also self-perception (Young 1990). Finally, violence, is the most visible form of oppression. According to Young, violence can attack a person or a group with the sole motive and purpose of damaging, humiliating, degrading, or destroying that person or group (Young 1990). Not only is this violence direct, but it also becomes an everyday knowledge shared by all members of the oppressed group that they deserve violence simply because of their identity – it feels natural and normal. Young argues that violence belongs to social practice, which is a situation that authorises and repeats such conditions.

### **Female Circumcision as an Embodiment of Oppression against Women in Banten**

Female circumcision as a hereditary tradition is still practised by some communities, including the people of Banten. Female circumcision is considered an obligation for the people of Banten both from the point of view of tradition and religion. There are distinctive characteristics of the mechanism of female circumcision practice, which can be seen from the process of implementation, the reasons for implementation, the actors who carry out, to the way to preserve the practice of female circumcision.

According to tradition, Bantenese people believe that female circumcision is the same as male circumcision, which has health benefits. The outer part of the female genitalia is considered ugly, dirty, and needs to be cleaned and purified by cutting. The process of female circumcision in Kemuning Village, Banten is usually carried out by calling a *paraji* or a traditional birth attendant to come to perform the circumcision, then the *paraji* will carry out the circumcision. One of the *parajis* who became a resource person for this study stated that circumcision is carried out until there is a wound on the female genitalia. Circumcision is performed by slightly cutting or wounding the outer part of the female genitalia until it bleeds a little because according to their beliefs it is a valid condition of female circumcision.

From the study in Kemuning Village, Banten, this research found that female circumcision is performed by the community as a fulfilment of tradition and religion. Traditionally, female circumcision is seen as a hereditary cultural practice that must be preserved. The local community believes that female circumcision is a religious obligation. Women who undergo female circumcision also believe that the practice is a tradition that is closely related to religious teachings. As stated by T:

"Firstly, it is a religious obligation; secondly, it is a tradition of belief here that has been done for generations" (T 2022, Interview 18 November 2022).

Tradition and religion are the main reasons that women must fulfil in order to be accepted as part of their community. Women, as stated by Young (1990), are placed as a group that can only accept a situation of structural injustice that places them as 'the other' from men.

As an object, a woman is considered to have value only if she behaves in accordance with the perceptions that have been established for generations and attached to her identity. Female circumcision is part of the effort to ensure this value is maintained in the community because this practice is believed to be effective in ensuring women behave according to existing norms.

The weakening through female circumcision carried out by the Bantenese community reinforces the assumption that women who are considered good are those who are quiet, have low sexual desire, rarely associate with men, and always make friends with women, while women who are considered bad are those who have high sexual desire and are aggressive towards

men. This image of women has been instilled through the practice of female circumcision from an early age (Sulahyuningasih et al. 2021).

Based on the findings of this study, one of the reasons behind female circumcision is that women are considered as naughty, dirty, and sinful entities. Therefore, female circumcision is performed to eliminate these behaviours. Uncircumcised women's bodies and sexual behaviours are considered deviant and must be corrected, so that women continue to be controlled and act according to social perspectives based on traditional and religious arguments, without giving women space to understand their sexuality. As IP said:

"Yes, it (circumcision) is to clean what is considered dirty, so that their religion is perfect; so that they are not naughty as the parents here say" (IP 2022, Interview 18 November).

In addition to *paraji*, there are community leaders and religious leaders who participate in the implementation of female circumcision in Kemuning Village, Banten. Community leaders or elders and religious leaders, namely *ustaz*, usually participate in thanksgiving (*selamatan*) activities held after the circumcision. Elders in the local area and *ustaz* usually join in giving thanks because the circumcision has been completed, as well as praying for the girls who have been circumcised to become righteous children. The participation of community and religious leaders also plays an important role in the implementation of female circumcision practices, and greatly influences the existence of female circumcision practices. The ongoing practice of female circumcision in Kemuning Village, Banten occurs because there are still actors who play a role in the continuation of this practice. These indications reinforce the idea that traditions believed by the community have their own power to "control" the community. In this case, it includes the role of actors who become the media to perpetuate existing traditions.

Parents also have a major role in the implementation of female circumcision in Kemuning Village, Banten, which is reflected in the informants' narratives that the decision to perform female circumcision is entirely taken by parents. This statement is in line with the results of Komnas Perempuan's study and field findings in 2018 on the intersection of tradition and modernity regarding the cutting/opening of female genitalia (P2GP), which reveal that parents are the most influential party in decision-making regarding the practice of female circumcision. This condition is related to the parents' own experiences

so that the practice is considered as a hereditary tradition that must be carried out in the family (Hodijah 2018).

Referring to the discussion above, researchers found oppression in the form of powerlessness in the implementation of female circumcision in Banten. According to Young (1990), powerlessness is situated in such a way that powerless people can only accept and follow orders without ever having the right to exercise their power. This condition occurs in the practice of female circumcision. Women who experience female circumcision do not have the power to decide to be circumcised or not because the decision is taken entirely by the parents. The researchers see a lack of free will; hence, women and girls do not freely and consciously consent to the circumcision practice. Instead, they are forced to undergo the female circumcision procedure. The explanation above shows that there is a weakening of women's autonomy over their own bodies so that women cannot decide for themselves what to do with their bodies. In line with this, Mary Daly in Mende (2018) described female circumcision as "unspeakable cruelty". Women are often positioned as helpless victims. They are subjugated, indoctrinated, and programmed to remain silent and accept all such treatments. The practice of female circumcision is considered an atrocity against women, which positions them as passive victims who are unable to speak out (Mende 2018).

The practice of female circumcision, which is carried out based on the decision of another party, shows oppression in the form of marginalisation of women, especially in this case girls, whose decisions are taken by parents based on religious beliefs and traditions. The practice of female circumcision is a form of deprivation of women's rights that is carried out on baby girls or girls who are still very young and unable to express their views on how their bodies should be treated. Thus, there is an element of coercion to accept the practice of circumcision in the name of tradition and religion. Moreover, parents have full control over the decision to circumcise their daughters without their consent. Girls are only used as objects without being involved in determining what will happen to them and without being informed of the consequences that will arise from the practice. In this case, there is no education for women, let alone girls, regarding the circumcision that is forced upon them.

Another face of oppression in the practice of female circumcision is violence. According to Young (1990), violence is the most visible form of oppression. Violence can attack people or groups with the sole motive

and purpose of damaging, humiliating, degrading, or destroying individuals or groups. Offences such as rape, beating, murder, and abuse against women, people of colour, or LGBTQ people are motivated by fear or hatred of those group. Sometimes the motive may be a simple desire for power, to victimise those marked as vulnerable by the social fact that they are subject to violence. Most women still experience violence, which can be physical, verbal, and psychological (Young 1990).

The researchers found oppression in the form of violence in the implementation of female circumcision in Banten, namely physical violence. Physical violence is violence that involves the body. Injuries and bleeding of the female genitalia are forms of physical violence that can have serious consequences. Various arguments are often put forward regarding the side effects of female circumcision, including bleeding, infection, severe pain, and damage to surrounding tissue. Female circumcision can even cause trauma and long-term effects such as depression, anxiety, or feelings of imperfection (Mustaqim 2013).

In the study in Banten, it was identified that the immediate effect of circumcision was limited to the pain of the circumcision. The common reaction of girls is to cry out in pain. The authors have not found other more serious effects, but it is possible that such information is taboo to talk about. Since the practice is generally performed by *paraji* on baby girls, it is difficult to know the long-term effects on these baby girls in their adult lives.

#### The Role of the State and the Politics of Recognition of Cultural Groups

Indonesian society has cultural diversity, which can be referred to as a multicultural society. Multicultural societies in Indonesia are normatively given space for cultural expression, obtain the rights of cultural communities, and receive guarantees of cultural promotion from the state. Referring to this, democracy in Indonesia not only guarantees individual freedoms, but the socio-cultural and historical context also forms inclusive cultural groups whose traditional rights are guaranteed. Awareness of the richness of culture in Indonesia's multicultural society encourages the birth of policies to preserve, protect, and develop culture in Indonesia.

The state has full power in the recognition of cultural groups listed in the 1945 Constitution of the Republic of Indonesia Article 18B Paragraph 2, which states that the State recognises and respects traditional communities along with their traditional customary rights as long as

these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia, and shall be regulated by law. Article 28I Paragraph 3 of the 1945 Constitution states that the cultural identities and rights of traditional communities shall be respected in accordance with the development of times and civilisations.

Indonesia as a state has constitutionally regulated the rights of cultural communities and individuals. These rights include the freedom to maintain, preserve, and develop their cultural values. There is also the right to respect for traditional cultural communities. Cultural groups have the right to have their authority recognised in customary law. One culture that is recognised by the state is the tradition of female circumcision, which is widely practised in various regions in Indonesia.

The Indonesian Government has gone through a long process of policy changes regarding attitudes towards the practice of female circumcision in Indonesia. Regulations and policies at the national level related to female circumcision were issued by the Ministry of Health, which in the process experienced a long dynamic with various debates on eliminating or preserving the practice as part of culture and tradition.

Polemics regarding female circumcision have long occurred in Indonesia. In 2006, the practice of female circumcision was banned by the government through the Circular Letter of the Director General of Health Development of the Ministry of Health of the Republic of Indonesia Number HK 00.07.1.31047a concerning the prohibition of medicalisation of female circumcision for health workers. Based on the circular, female circumcision was declared not beneficial to health, and could even be harmful and painful for women. However, the ban did not last long after various protests and rejections. The Ministry of Health then issued Minister of Health Regulation (*Permenkes*) No. 1636/2010, which explains that female circumcision can only be performed by certain health workers and there must be a request and consent of the circumcised, her parents, and/or her guardians.

The *Permenkes* drew many protests from both activists and civil society because it was considered to legitimise the practice of female circumcision by giving health workers the authority to do so. *Permenkes* 1636/2010 on female circumcision was later revoked by the Minister of Health Regulation (*Permenkes*) Number 6/2014. The *Permenkes* revokes the previous *Permenkes* issued in 2010 and also explains that female circumcision is not a medical procedure because its implementation has not

been proven to be beneficial to health, in fact, according to the WHO, female circumcision causes various health complications and even death. However, the *Permenkes* states that based on the cultural aspects and beliefs of the Indonesian people to date, there is still a demand for female circumcision, the implementation of which must pay attention to the health and safety of women and not perform female genital mutilation. *Permenkes* No. 6/2014 is considered ambiguous because it states that it prohibits, but still gives space to the community to practice female circumcision as long as it is based on religion and tradition.

Referring to the explanation above, it can be seen that the state, especially the government, both at the national and regional levels, has not been able to proportionally make regulations or policies related to female circumcision. Existing regulations are unable to provide legal protection for women, instead perpetuating and legitimising this practice that harms women. The government is also considered not firm in determining policies. On the one hand, the government states that this practice is prohibited in medical procedures, but in practice it seems to turn a blind eye and refuse to take responsibility for practice that continues to be carried out on the basis of tradition and religion (non-medical).

The state's lack of firmness on the practice of female circumcision has created ambiguity in some elements of society. The current regulation, *Permenkes* No. 6/2014, can be seen as one of the government's indecisiveness in addressing the practice. The issue of female circumcision certainly needs to be followed up by the state considering that Indonesia is one of the countries implementing the Sustainable Development Goals (SDGs). The indicators that must be achieved are related to target number 5, which is to achieve gender equality and empower all women and girls by eliminating all forms of harmful practices, one of which is the practice of female circumcision.

Indonesia as a multicultural country makes cultural diversity an asset so that in its continuity and development it needs to be recognised for its rights and identity, including local culture. This situation was strongly criticised by Susan Moller Okin in her essay entitled "Is Multiculturalism Bad for Women?" (Okin 1999). Okin argues that most cultures are filled with practices and ideologies about gender. Culture in turn supports and facilitates men's control over women in various ways and in various spheres of life. This is why Okin rejects multiculturalism. Arguments of cultural recognition

often justify and defend practices of dehumanisation and violence against women in the name of cultural essentialism-cultural purity. For Okin, such culture does not need to continue. It is the duty of the state to intervene and stop cultural practices that are harmful and incompatible with human rights. The state should explicitly make and enforce policies that intervene in such cultural practices. In the Indonesian context, the state's position is ambiguous towards gender discriminatory cultural practices. Policies related to female circumcision are permissive to cultural and religious practices. The omission and indecisiveness of the state on the issue of female circumcision is actually a form of violation of women's constitutional rights as citizens.

The researchers see that female circumcision in Banten is believed by the community as a tradition that must be preserved as one of the implications of implementing multiculturalism policies in a country. Referring to what Okin said, this implication can give privileges to cultural groups to determine themselves even though it can create new dangers, namely the perpetuation of patriarchal cultural structures and systems that oppress women in such culture. Okin calls this a dilemma, as well as a conflict between feminism and multiculturalism: women would be the most vulnerable to discrimination from the demand to accommodate some traditions. Furthermore, Okin argues that the practice tends to be one that gives cultural groups the right to continue or maintain a social order that has an impact on placing women in a weak position in society.

Komnas Perempuan has also argued that female circumcision is included in the 15 forms of sexual violence as a sexually nuanced traditional practice that harms or discriminates against women. Female circumcision is one example of a community custom that is supported by religious and/or cultural reasons, which is sexualised and can cause physical, psychological, or sexual harm to women. This custom can also be used to control women's sexuality in a perspective that degrades women. This condition is also conveyed by the Ministry of Women's Empowerment and Child Protection of the Republic of Indonesia, which stated that P2GP or female circumcision is a dangerous practice exclusively aimed at women and girls, which can cause health problems and trigger depression and trauma. P2GP violates women's basic rights to health, integrity of the body, and the right to be free from discrimination and cruel or degrading treatment. From a women's human rights perspective, female circumcision is a violation of women's human right to be free from torture.

Society believes that women have excessive desire and are aggressive towards men, that women are naughty, dirty, and sinful. Female circumcision is performed to eliminate these behaviours. This condition shows that the body and sexual behaviour of uncircumcised women are considered deviant and must be corrected, so that women continue to be controlled and act according to social perspectives based on traditional and religious arguments, without giving women space to understand their sexuality. This condition is considered by Okin as a gender-biased practice that gives cultural groups the right to continue or maintain the social order they want, which can have an impact on placing women in a weak position in society. There are still many culturally-based customs that indirectly aim to control women and make them, sexually and reproductively, submissive and obedient to men's wishes, particularly since culture or tradition is closely related to women's control (Okin 1999). Female circumcision has indirectly been used as a strategy to oppress the freedom of women's bodies.

## Conclusion

This study shows that the construction of female circumcision is a reality that is formed and accepted by the community regarding traditions that are passed down from generation to generation so that it is mandatory to do. The existence of female circumcision becomes a form or hypothesis that applies in society. Female circumcision occurs in Banten society for generations and is still carried out by the community according to various aspects of tradition, religion, social, and culture. Traditionally, female circumcision is seen as a hereditary cultural heritage that must be preserved and the community also believes that female circumcision is an obligation in religious teachings. The implementation of female circumcision in Kemuning Village, Banten is carried out until the wounding. Circumcision is performed on new-born babies up to girls who are three years old. Female circumcision is performed by traditional birth attendants or what the local community calls *paraji*. In addition to *paraji*, the results of this study also show that there are community leaders and religious leaders who participate in the implementation of female circumcision in Kemuning Village, Banten.

This practice shows three forms of oppression against women, namely powerlessness, marginalisation, and violence. Powerlessness happens to women who experience circumcision so that women do not have the power to decide whether they will be circumcised or not. The decision is taken entirely by the parents or

immediate family, which shows the disempowerment of women over the autonomy of their own bodies. Women cannot decide for themselves what to do with their bodies. Marginalisation occurs when women, especially girls, are marginalised in the process of determining what will happen to them and its impact. Violence, especially physical violence, occurs in female circumcision because it is carried out to the point of wounding the female genitals. Circumcision is performed by slightly cutting or wounding the outer part of the female genitalia until it bleeds a little based on beliefs related to the legal requirements of female circumcision.

Female circumcision in Kemuning Village, Banten is one of the implications of the politics of recognising the identity of cultural groups in the state. In line with what Susan Moller Okin said, this implication can give privileges to cultural groups to determine themselves even though it risks creating new dangers, namely the perpetuation of patriarchal cultural structures and systems that oppress women in the culture. Women are the most vulnerable to powerlessness due to demands to accommodate some religious traditions.

The high rate of female circumcision in Indonesia is strongly influenced by the role of the state, which participates in perpetuating the practice. Indonesia as a multicultural country recognises cultural groups as stated in the 1945 Constitution of the Republic of Indonesia that the State recognises and respects traditional communities along with their traditional customary rights as long as these remain in existence and are in accordance with the societal development and the principles of the Unitary State of the Republic of Indonesia. However, in many places the granting of these rights can actually weaken the position of women in local communities. Many gender inequitable practices such as female circumcision are then legalised by tradition. The state also participates in giving autonomy to each cultural group to continue its social order. If the social order of a cultural group is based on patriarchy, the status of women in society will be very weak.

In terms of regulations and policies, the Indonesian Government itself does not yet have adequate regulations regarding the practice of female circumcision. The current regulation is the Minister of Health Regulation (*Permenkes*) Number 6 Year 2014. The *Permenkes* is considered ambiguous because it states that it prohibits, but still gives space to the community to practice female circumcision as long as it is based on religion and tradition. The absence of rules or policies that proportionally discuss female circumcision illustrates that the state

has not been able to firmly protect women's sexual and reproductive rights.

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## Women's Right to Sexual and Reproductive Health: A Comparative Study of Abortion Legal Frameworks in Nepal and Indonesia

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### Abstract

The fulfilment of women's sexual and reproductive health and rights remains challenging, especially concerning one of its most controversial issues, namely abortion. While the maternal deaths caused by unsafe abortion continue to be a concern, many countries retain repressive laws by banning abortion which has often been influenced by moral and religious reasons. This article aims to examine the abortion legal framework as part of sexual and reproductive health and rights through the lens of feminism by dissecting the degree of recognition of bodily integrity, personhood, equality, and diversity of women. Through a comparative approach between Indonesia and Nepal, this paper argues that Nepal's abortion regulation has a stronger recognition of women's bodily integrity, personhood, equality, and diversity in its abortion legal framework compared to Indonesia. Therefore, Nepal's experience in regulating abortion can serve as an inspiration for Indonesia in ensuring women's sexual and reproductive health and rights.

Keywords: sexual and reproductive rights, abortion law, women, Nepal, Indonesia

### Introduction

The realisation of women's rights to sexual and reproductive health remains a challenge. One of the most controversial issues is abortion. Many countries are still reluctant to recognise women's right to abortion, let alone to provide such services. As a result of limited services for safe abortion, women with unwanted pregnancies have no choice but to risk their lives by performing unsafe abortion. In 2010-2014 for example, approximately 45% of women worldwide had unsafe abortions (WHO 2020), often resulting in death and injury to both the mothers and the babies. According to the WHO (2020), maternal deaths caused by unsafe abortion during this period were between 4.7%-13.2%.

Geographical context is closely related to the maternal mortality rate (MMR) caused by unsafe abortion. The WHO (2020) estimates that in developed countries, the maternal mortality rate is about 30 women for every 100,000 unsafe abortions. In contrast, in developing countries, there are an estimated 220 maternal deaths for every 100,000 unsafe abortions, with an even more tragic estimate of 520 deaths for every 100,000 unsafe abortions in the Sub-Saharan Africa region (WHO 2020). The higher number of maternal deaths in developing countries compared to developed countries is due to

several factors: (1) laws prohibiting abortion; (2) poor services; (3) high cost of services; (4) stigma against women who have abortions; and (5) objections from health care providers.

With respect to the first factor, laws prohibiting abortion are often influenced by moral and religious reasons. There are two groups debating the moral status of abortion: the pro-life and pro-choice perspectives. The pro-life perspective holds that the foetus is a life form and therefore, abortion should be seen as a crime against human life. Those who support this perspective will situate their position around moral claims about the sacredness of life (Smith 2005). In contrast, the pro-choice perspective argues that the foetus is not yet a life form and therefore public policy should be geared towards protecting a woman's interest in controlling her own body (Smith 2005). In short, pro-life advocates prioritise the interests of the foetus, while pro-choice advocates argue for the interests of women (Smith 2005).

To date, the debate between the two perspectives has yet to reach a common ground. In Indonesia, for example, the discourse on abortion is still dominantly seen from a moral and religious perspective and that women's interests are marginalised (Resmini 2010; Fuad 2014; Kantriani & Arini 2020; Utara 2020). However,

there are also works that favour women, such as the Institute for Criminal Justice Reform (ICJR) (Rahmawati & Budiman 2023), which looks at abortion from a criminal law perspective, and then Dhewy (2017), who uses critical discourse analysis of abortion provisions in the Health Law and Government Regulations on Reproductive Health. Based on this, this paper aims to enrich the literature on abortion in Indonesia by discussing abortion as part of sexual and reproductive health through the lens of feminism with a comparative approach, a method that is still rarely used in discussing abortion in Indonesia except in the work of Handayani and Gomperts (2017).

### Research Methodology

This paper uses a qualitative method with a comparative approach. In this case, a comparative study was conducted by looking at the laws in Nepal. This country was chosen for at least two reasons. Firstly, Nepal, like Indonesia, is a developing country and therefore faces similar challenges such as financial limitations in social services, including health care. However, the country's regulations of abortion through the 2018 Safe Motherhood and Reproductive Health Act has had a positive impact on the realisation of women's rights to sexual and reproductive health (Samandari et al. 2012). Therefore, Nepal can provide best practices in recognising women's bodily integrity, women as subjects, and equality and diversity to ensure women's rights to reproductive health, especially safe and affordable abortion.

### Feminism and Abortion

The abortion debate is often framed by two dominant views, pro-life and pro-choice, which come from different philosophical frameworks. There are three philosophical approaches that have different moral implications for abortion: contractarianism, intrinsic value-based perspective, and interest-based approach. Contractarianism was put forward by social contract philosophers, such as Hobbes, Rousseau, and Locke, who saw the individual as rational agents who best understand what their interests are and how best to fulfil those interests (Cudd 2021). According to this view, the state is considered the product of a social contract between these rational agents to form an institution that functions to maintain law and order. From this contractual relationship, rights and responsibilities emerge.

In the context of abortion, this perspective sees that the foetus has no rights because it is not a rational agent who is a party to the social contract. Hence, abortion

cannot be considered a crime against the foetus' right to life. This contractarian view is not free from criticism by feminists. One of them is Pateman, who criticises how rational agents are conceptualised by contractarianism advocates, who tend to refer to male humans. Meanwhile, women are considered not rational agents who have the capacity to contract socially. Women are considered to only be parties to a sexual contract that positions them as property over which men can exercise control (Pateman 1988; Diprose 1994). Consequently, when seeking an abortion, a woman must obtain the consent of the man who has control over her body.

The second is an intrinsic value-based approach whose argument is based on the sacredness of life. Following the teaching of Immanuel Kant, Papadaki (2012 p. 153) says that, "if a person engages in sexual intercourse, which is seen as an activity of procreation, that person should also be prepared to accept the consequences of that activity. This includes having a child and being responsible for ensuring that the child has a decent life". Specifically on abortion, Dennis (2008 pp. 130-131) argues that abortion goes against the nature of women, who tend to be seen essentially as compassionate and sympathetic agents. Based on this view, the state should ban abortion and requires its citizens to recognise and respect the intrinsic value or sacredness of human life, including the foetus (Rakowski 1994). Through this approach, the woman and the foetus are both seen as having intrinsic value that cannot be negated by each other, whereas intrinsic value can only be possessed by an autonomous entity. Thus, the foetus cannot be said to have intrinsic value because the foetus is not an autonomous entity but is still dependent on the body of the woman who carries it. Therefore, intrinsic value in the context of abortion should only belong to the woman.

The third approach is interest-based, introduced by Utilitarians. Following Jeremy Bentham, Joel Feinberg sees that "only beings with interests can have moral status" (Steinbock 2011, p. xiv). The interest to pursue pleasure and avoid pain is the source of an entity's well-being and the basis of its moral and legal standing (Steinbock 2011). According to this interest-based (utilitarian) perspective, entities that cannot have interests cannot have rights (Steinbock 2011):

Since foetuses do not have interests, they do not have moral standing. Although they do not have moral standing, foetuses still have moral values that constrain how they should be treated. Their moral worth can arise from the interests of others, who are responsible for ensuring their welfare (Steinbock 2011 p. 50).

Consequently, when there is a conflict between the moral standing of a pregnant woman and the moral worth of her unborn child, the interest-based view tends to decide based on utilitarian standards to serve the greatest good. In a patriarchal society with a dominant view that places women as subordinate to men, the utilitarian standards in the context of abortion have the potential to affirm the dominant view rather than protect women's interests.

These three views provide the ethical basis for the pro-life and pro-choice debate on abortion. Kristin Luker, in her book, "Abortion and the Politics of Motherhood", argues that the debate between pro-life and pro-choice is actually not based on a completely contradictory view of the foetus. Rather, the debate is based on conflicting meanings of sexuality, motherhood, and gender (Luker 1985). Pregnancy is not a gender-neutral condition but is explicitly a condition associated with the female body, as is the need for abortion, which is experienced only by women (Eisenstein 1989). The debate between pro-life and pro-choice groups often lose sight of the position of women and focus more on the moral status of the unborn child (Sherwin 1991).

Moreover, according to Sprague and Greer (1998), the dichotomous nature of the debate between pro-life and pro-choice advocates leads to the search for one universal solution. As a result, it can deny the agency of the individual woman involved in the pregnancy, especially if it happens to a woman from an economically disadvantaged background. In this case, the debate about rights occurs without reference to the context in which those rights must be fulfilled, obscuring the structural factors that influence women's choice to become pregnant or to have an abortion, including lack of resources, employment discrimination, and sexual violence. In short, public discourse on reproductive rights has suffered from decontextualisation, individualisation, and class bias (Sprague & Greer 1998). Therefore, following Corrêa and Petchesky's (1994) view, the author emphasises the importance of viewing abortion from a feminist perspective as a right to sexual and reproductive health that involves four issues: integrity of the body, personhood (women as subjects), equality, and respect for diversity.

### Legal Framework Governing Abortion in Nepal

Nepal is a developing country in South Asia, with a population of approximately 28 million people (CIA 2021). Women make up more than half of Nepal's population, with 80% of them living in rural areas (Shrestha 2010).

Like many developing countries, access to sexual and reproductive health services for women remains a challenge. More than 70% of pregnant women have unsafe deliveries and only 23.4% of them deliver with the help of trained midwives (Shrestha 2010, pp. 133-152). As a result, this increases maternal risks, including uterine prolapse, which affects 10% of women aged 15 to 49 years (Shrestha 2010, p. 152). Therefore, abortion becomes an option for women to avoid physical, mental, and even economic problems.

In terms of abortion law, Nepal has decriminalised abortion since 2002. The decriminalisation is one of the most notable achievements of human rights advocates since the country's transition to democracy in 1990 (Center for Reproductive Rights 2021). In addition, reproductive rights for women have also been recognised as fundamental rights in the Interim Constitution (The Interim Constitution of Nepal 2063 (2007)). Despite the legal framework guaranteeing women's rights to abortion, the exercise of these rights remains a challenge, especially for rural women who are financially excluded as safe abortion is costly. Often, such services are not available in their area, and up to 27% of maternal deaths are due to unsafe abortion (ARROW 2008). Financial circumstances and lack of access to safe abortion services are the causes of rural women undergoing unsafe abortions.

Further development of the legal framework relating to abortion has resulted from the case of Lakshmi Dhikta v Nepal (2007). Lakshmi Dhikta was a woman from a poor family in the western region of Nepal and she already had five children when she became pregnant for the sixth time. She and her husband Udhav realised that having another child in the family would be financially challenging and would have a significant impact on Lakshmi's health. Hence, they sought an abortion at a government hospital. The hospital asked them to pay a fee of Rs 1,130 to do so, but Lakshmi and Udhav did not have enough money to pay the cost.

The case of Lakshmi Dhikta v. Nepal was filed with the Supreme Court of Nepal on 22 February 2007 as a public interest litigation filed by the Forum for Women, Law and Development (FWLD), pro-public and a group of human rights lawyers. The Centre for Reproductive Rights provided support in developing the case, drafting the petition, and then submitting a memo to the Supreme Court of Nepal. On 20 May 2009, the Supreme Court ordered the government to take the following steps to ensure women's access to safe and affordable abortion services, namely: (1) enact a comprehensive abortion law;

(2) expand and decentralise abortion services to ensure broad access to safe and legal abortion; (3) establish a government fund to cover abortion costs for poor women; and, (4) establish awareness programmes to educate the public about the misperceptions of abortion in society.

Finally, to implement the judgement, the 2018 Safe Motherhood and Reproductive Health Rights Act was enacted. Specifically, safe abortion is regulated in Article 15 of the Act. It states that in order to access safe abortion, several conditions must be met. Article 15 provides two timeframes for when safe abortion can be performed, namely: (1) up to 12 weeks of pregnancy, where abortion can be performed with the consent of the pregnant woman only; and (2) up to 28 weeks of pregnancy, where abortion can be performed with the consent of the pregnant woman with the following additional conditions:

- a) When a licensed medical officer informs that the pregnancy may endanger the life, physical, or mental health of the pregnant woman;
- b) In cases of pregnancy resulting from rape or incest;
- c) If the pregnant woman is infected with a virus that damages the immune system (HIV) or suffers from a similar incurable disease.
- d) If, in the opinion of the health care provider involved in the treatment, there is foetal impairment such that the foetus is unlikely to survive or is unlikely to survive after birth or is born with a specific condition due to genetic abnormalities or other reasons.

Based on this provision, at least two things can be learned. Firstly, the philosophical underpinnings of Article 15 of the Act attempt to find a common ground between the pro-life and pro-choice debates. The Act is not dictated by contractarianism, which justifies abortion on the basis that the foetus does not have any rights (pro-choice view), or by the intrinsic value perspective, which holds that the foetus is a living being with a purpose in life and that its human potential should be respected by others, including its parents (pro-life view). Nepal's abortion law considers both the interests of the woman as a subject with the moral standing to make her own choices and the moral value of the unborn child. As such, the law places time limits on when a safe abortion can be performed, taking into account the consequences for both the woman and the unborn child. Therefore, the philosophical stance taken by this law is a substantial

moral value that is more likely to be influenced by utilitarianism. Secondly, from a human rights perspective, this law should be seen as Nepal's attempt to fulfil its human rights obligations as mandated by international human rights instruments. In the context of the right to sexual and reproductive health, there are several relevant rights including the right to life, the right to health, the right to be free from cruel, inhuman, and degrading treatment, the right to equality and non-discrimination, and the right to plan a family.

### Legal Framework Governing Abortion in Indonesia

According to data from the Ministry of Health, there were 6,856 maternal deaths in Indonesia in 2021. This figure increased from the previous year, which was 4,197 in 2019 (KEMENPPPA 2022). In other words, the maternal mortality rate (MMR) in Indonesia is still in the range of 305 per 100,000 live births. This number is still high as Indonesia's target in accordance with the principles of sustainable development is to reduce to 183 MMR per 100,000 live births (Rokom 2023). The Indonesian Family Planning Association (*Persatuan Keluarga Berencana Indonesia, PKBI*) consistently reports on their consultation data that every day there are 20 women who experience unwanted pregnancies, 75 per cent of whom are married and do not want to have more children due to economic and health reasons (Carolina 2019). However, maternal mortality data do not explicitly mention abortion in Indonesia. While it is difficult to find comprehensive data on abortion in Indonesia in general, a study conducted by the Centre for Health Studies, University of Indonesia reveals that in 2000 alone, there were an estimated 2 million cases of abortion in Indonesia (Guttmacher Institute 2008). Another study conducted by the Guttmacher Institute reports that in 2018, there were 1.7 million cases of abortion in six provinces on the island of Java (Guttmacher Institute 2020).

In the context of Indonesian law, there are at least three instruments that regulate abortion: the old Penal Code (which remains valid to date), the Health Law, and the new Penal Code that will enter into force in January 2026 (Table 1). According to Article 346 of the old Penal Code, abortion, defined as "to abort or to kill the womb", is a crime and a woman who intentionally aborts her pregnancy or solicits another person to do so, shall be punished by a maximum imprisonment of four years. The crime of abortion in the old Penal Code was absolute as no exceptions were made to the circumstances under which abortion was permissible. In this context, the Penal Code is positioned as a general law (*lex generalis*) so that a

more specific law (*lex specialis*) concerning abortion, Law No. 36/2009 on Health, can be enforced. As a *lex specialis*, Article 75(1) of the Health Law states that abortion is generally illegal, but there are exceptions in Article 75(2) of the Law in some circumstances - in the case of medical

emergencies, the pregnancy may threaten the life and health of the mother and in the case of rape, which is allowed up to six weeks pregnancy. Therefore, abortion is legal under these two circumstances.

**Table 1. Abortion Regulations in Indonesia**

Penal Code (Old)	Law Number 36 Year 2009 on Health	Law Number 1 Year 2023 on Penal Code (New)
<p><b>Article 346</b></p> <p>Any woman who with deliberate intent causes or lets another cause the drifting off or the death of the fruit of her womb, shall be punished by a maximum imprisonment of four years.</p>	<p><b>Article 75</b></p> <p>(1) People are prohibited to carry out abortion.</p> <p>(2) Prohibition as intended in paragraph (1) may be exceptional based on:</p> <p>(a) indication of medical emergency detected as of the early age of pregnancy, either those threatening the life of the mother and/or fetus, those suffering from serious genetical disease and/or inviable deformity, or those unfixable so that troubling the infant to live outside the womb; or</p> <p>(b) pregnancy due to rape that may cause psychological trauma to the victim;</p> <p>(3) Measures as intended in paragraph (2) may only be carried out following counseling prior to measures and ended with counseling post measures by competent and authorized counselor.</p> <p>(4) Further provision concerning indication of medical emergency and rape, as intended in paragraph (2) and paragraph (3) provided for in a Government Regulation.</p>	<p><b>Article 463</b></p> <p>(1) Any woman who has an abortion shall be punished by a maximum imprisonment of four years.</p> <p>(2) The provision as referred to in paragraph (1) shall not apply in the event that the woman is a victim of a crime of rape or other crimes of sexual violence resulting in pregnancy whose gestational age does not exceed 14 (fourteen) weeks or has an indication of medical emergency.</p>
<p><b>Article 347</b></p> <p>(1) Any person who with deliberate intent causes the drifting off or the death of the fruit of the womb of a woman without her consent shall be punished with a maximum imprisonment of twelve years.</p> <p>(2) If the fact results in the death of the woman, he shall be punished by a maximum imprisonment of fifteen years.</p>	<p><b>Article 76</b></p> <p>Abortion as intended in Article 75 may only be carried out:</p> <p>(a) before the pregnancy reaches 6 (six) weeks from the first day of the last period, except in medical emergency situation;</p> <p>(b) by health personnel who have expertise and authority and have certificate stipulated by the minister;</p> <p>(c) with the consent of the pregnant mother concerned;</p> <p>(d) with the consent of the husband, except rape victim; and</p> <p>(e) in health service provider which satisfies the requirements stipulated by the Minister.</p>	<p><b>Article 464</b></p> <p>(1) Any person who performs abortion on a woman:</p> <p>(a) with the consent of the woman, shall be punished by a maximum imprisonment of 5 (five) years; or</p> <p>(b) without the consent of the woman, shall be punished by a maximum imprisonment of 12 (twelve) years.</p> <p>(2) If the act as referred to in paragraph (1) letter a results in the death of the woman, the person shall be punished by a maximum imprisonment of 8 (eight) years.</p> <p>(3) If the act as referred to in paragraph (1) letter b results in the death of the woman, the person shall be punished by a maximum imprisonment of 15 (fifteen) years.</p>

Penal Code (Old)	Law Number 36 Year 2009 on Health	Law Number 1 Year 2023 on Penal Code (New)
<p><b>Article 348</b></p> <p>(1) Any person who with deliberate intent causes the drifting off or the death of the fruit of the womb of a woman with her consent, shall be punished by a maximum imprisonment of five years and six months.</p> <p>(2) If the fact results in the death of the woman, he shall be punished by a maximum imprisonment of seven years.</p>	<p><b>Article 77</b></p> <p>The Government shall be obliged to protect and prevent woman from abortion practice as intended in Article 75 paragraph (2) and paragraph (3) which is of non-quality, unsafe, and irresponsible and against religious norms and the provisions of statutory regulations.</p>	<p><b>Article 465</b></p> <p>(1) Doctors, midwives, paramedics, or pharmacists who commit criminal offences as referred to in Article 464, the punishment may be increased by one third (1/3).</p> <p>(2) Doctors, midwives, paramedics, or pharmacists who commit criminal offences as referred to in paragraph (1) may be sentenced to additional punishment in the form of deprivation of rights as referred to in Article 86 letters a and f.</p> <p>(3) Doctors, midwives, paramedics, or pharmacists who perform abortion due to an indication of medical emergency or on a victim of crime of rape or other crimes of sexual violence resulting in pregnancy as referred to in Article 463 paragraph (2), shall not be punished.</p>
<p><b>Article 349</b></p> <p>If a physician, midwife or pharmacist is an accomplice to the crime in article 846, or is guilty of or is an accomplice to one of the crimes described in articles 847 and 848, the sentences laid down in said articles may be enhanced with one third, and he may be deprived of the exercise of the profession in which he commits the crime.</p>	<p><b>Article 194</b></p> <p>Anybody who is intentionally conduct abortion which are not conform to the provision as referred to in Article 75 shall be convicted with imprisonment at the longest 10 (ten) years and fine at the most Rp. 1,000,000,000.00 (one billion Rupiah).</p>	

Source: Penal Code; Law No. 36 Year 2009 on Health; Law No. 1 Year 2023 (New Penal Code)

Historically, the process of passing the Health Law has been a long one. The Bill was first initiated in 1999 when abortion emerged as a right to reproductive health, shortly after the ratification of the International Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment by President B.J. Habibie. This condition gave hope to women's rights activists to push for the Health Bill to become law to replace Health Law No. 23/1992. The Bill, which provided a new perspective in viewing abortion more as a reproductive health issue to save the mother's life rather than a crime issue, faced opposition. Opponents from religious groups described the Bill as an agenda that brought Western values to legalise abortion, which is contrary to religious values. After much debate, the Bill was approved on 14 September 2009 and passed on 13 October 2009.

Although the new Health Law was finally enacted, there is still some vagueness towards abortion in Indonesia. Article 76 outlines "the conditions under which abortion is permissible" and indicates that "abortion may be performed up to six weeks after the first day of the last menstrual period except in medical emergencies and shall be with the consent of the woman and her husband, except in cases of rape". This article is problematic for two reasons. Firstly, the time allowed for abortion for rape victims is very short, which is before six weeks pregnancy. This ignores the fact that rape victims find it difficult to open up and share their experiences because of the stigma attached to them in society. They also need more time to move beyond their trauma. Data from *Lentera Sintas Indonesia* in 2016 also showed that 93% of rape survivors did not report that they were raped (Asmarani 2016), let alone to say that they were pregnant as a result of the rape. Rape that causes pregnancy in the victim,

according to a report from the Global Justice Centre entitled "The Right to an Abortion for Girls and Women Raped in Armed Conflict" in 2011, can cause grief, anger, fear, anxiety, shame, and suffering (Global Justice Centre 2011). Therefore, the law should not restrict rape victims from having abortions to avoid unsafe abortions that can cause serious problems for the mother's health and in extreme cases, death. Secondly, because the emergency conditions require the consent of the woman as well as the permission of the husband. This shows that women are still not considered as full and independent moral and legal subjects because they still need authorisation from their husbands.

In addition, Article 77 states that: "The Government shall be obliged to protect and prevent woman from abortion practice as intended in Article 75 paragraph (2) and paragraph (3) which is of non-quality, unsafe, and irresponsible and against religious norms and the provisions of statutory regulations. However, it is unclear what form of protection the state provides as a manifestation of its obligations other than through repressive protection through criminalisation of those who perform abortions outside the context of Article 76 (pregnant as a result of rape and pregnant with medical indications). In fact, the prevention of access to unsafe abortion should be done by providing adequate abortion services for women in need. In addition, the phrase "contrary to religious norms" is problematic because it maintains the conservative view that abortion is a matter of morality with religion being the determinant.

In January 2023, the government enacted Law No. 1 of 2023 concerning Penal Code or the New Penal Code that will enter into force three years after its promulgation (January 2026). Abortion in the New Penal Code is regulated in Articles 463, 464, and 465, which paradigmatically maintains the view that abortion is inherently a crime. However, the New Penal Code is actually more progressive than the old one because, following the Health Law, it provides exceptions in cases of rape or other forms of sexual violence, and medical indications. In addition, it extends the period for abortion from six weeks in the Health Law to 14 weeks. The New Penal Code also repeals Article 194 of the Health Law, which provides for criminal penalties for people performing abortions, so consequently, when it becomes effective, abortion provisions will refer to the New Penal Code.

## Women's Position in the Context of Abortion in Nepal and Indonesia

To compare the abortion laws in Nepal and Indonesia, the author used Corrêa and Petchesky's analytical framework of four ethical foundations in the context of women's sexual and reproductive health rights, namely: (1) integrity of the body; (2) personhood (women as subjects); (3) equality; and (4) diversity. Here, the author will assess the degree to which these four ethical foundations are recognised in the abortion laws of both countries.

First, integrity of the body refers to the integrity of the meaning of the female body as a whole, not as a separate function or part (Corrêa & Petchesky 1994). As Julia Kristeva reiterates in Handayani, "in patriarchal cultures, the meaning of women is reduced to the function of motherhood, or in other words, women have been reduced to the function of reproduction" (Handayani 2013). In the context of abortion regulations in Nepal and Indonesia, the degree to which women's bodily integrity is recognised beyond reproductive function. This can be seen from what grounds can be used to legally obtain an abortion.

In Nepal, the decision to have an abortion must fully consider the consequences of labour and childbirth on the physical and psychological well-being of the woman and the condition of the foetus after birth. Indonesia's abortion law provides two strict grounds for legal abortion, both of which appear problematic. Law No. 36/2009 on Health, specifically Article 75(1), states that abortion can be legally performed on medical or physical grounds when there is a medical emergency related to the condition of the mother and/or baby, such as risks to the mother's health or foetal abnormalities; and on psychological grounds when the pregnancy is the result of rape, which can cause a traumatic condition for the victim. A woman whose pregnancy is physically healthy and not the result of rape cannot request an abortion on the basis of potential psychological harm, let alone on the basis of economic conditions. In addition, pregnancy resulting from incest is also a valid reason for requesting an abortion in Nepal, but it is not regulated in Indonesia. Thus, a comparison of Nepal and Indonesia in terms of recognising women's bodily integrity in the context of abortion shows that Nepal's legal framework is stronger than Indonesia's with women's psychological aspects also considered.

The second ethical foundation is that of personhood, which refers to the extent to which women are seen as

autonomous legal subjects. Here, listening to women's experiences is key to respecting their moral and legal rights, particularly the right to self-determination. Women are the primary agents and decision-makers in matters of reproduction and sexuality because they are the subjects, not just the objects, and the purpose, not just the means, of population and family planning policies (Corrêa & Petchesky 1994). Feminism looks at abortion by putting women's interests and experiences at the centre of attention. In the context of abortion, it is the pregnant woman who is the subject of primary concern. Abortion must be performed with the consent of the pregnant woman. Therefore, coerced abortion can be considered a violation of the right to be free from cruel, inhuman, and degrading treatment.

Recognition of women's personhood can be seen in the extent to which abortion services can be provided at the request of women as subjects, who have autonomy over their bodies. When looking at the abortion law in Indonesia, it is clear that the procedure to obtain a legal abortion in Indonesia is also very complicated. The process requires counselling with a competent and authorised counsellor and must be performed by skilled and certified health staff at an accredited health care provider in accordance with standards set by the Ministry of Health. In addition, another important requirement is that women seeking an abortion must obtain permission from their husbands, except in cases of rape. Such permission shows that pregnant women in Indonesia still have a weak subject position because they cannot make decisions based on their personal choices. As stated by de Beauvoir and reiterated by Arivia, men in patriarchal societies are defined as absolute subjects, while women are incidental and non-essential subjects, or in other words, women are those who are excluded (de Beauvoir 2011, p. 39; Arivia 2013, p. 30). In Nepal, women seeking abortion services do not need the permission or consent from their husbands regardless of the reason for the abortion. Thus, the degree of recognition of women's personhood in Nepal in the context of abortion appears stronger than in Indonesia.

The third foundation is equality. In this regard, abortion should be seen as part of women's reproductive health care (Van Wagner & Lee 1989). Health care providers need to recognise that abortion is a reasoned choice so that services that will be provided respect the women's choice and safeguard their physical, psychological, and emotional well-being (Sherwin 1991). In patriarchal societies, male babies are considered more valuable than female babies. Thus, abortions are more likely to

be performed if the foetus is female. The Government of Nepal prohibits abortions performed based on the sex of the foetus. This is to prevent couples from choosing the sex of the baby they want, as female foetuses are more likely to be aborted. Without this prohibition, the dignity of being born a woman in a patriarchal society would continue to be degraded and ignored. Therefore, this prohibition should be seen as an attempt to address this issue and respect Article 1 of the UDHR, which recognises equal rights and human dignity. It is also Nepal's attempt to implement Article 1 of CEDAW, which places an obligation on the state to take necessary measures to eliminate discrimination against women, including discrimination against the foetus that will one day become a woman.

The fourth foundation is diversity. Women have a special right to determine the number and spacing of births, or the right to plan a family based on their social, economic, and cultural conditions and backgrounds. As stated in Article 16(1) of CEDAW, abortion should be seen as an exercise of women's rights to reproductive health and family planning and states should provide related services to fulfil these rights. In addition, in the context of abortion regulations, the time limit for abortion is an important framework for accommodating women's diverse backgrounds. In Indonesia, abortion can only be performed before six weeks of pregnancy calculated from the first day of the last menstrual period except for cases of medical emergencies. Meanwhile, in Law No. 1/2023 (New Penal Code), Article 463 Paragraph 2 provides an exception for women who are victims of rape and sexual violence to have an abortion before 14 weeks of pregnancy or have an indication of medical emergency. In addition, the regulations of abortion in Indonesia assume that women are in the same position in accessing sexual and reproductive health services, obscuring the fact that there are also inequalities in vulnerability based on geography (urban/rural), class (upper middle/lower middle class), disability (non-disabled/disabled) and caste. As a result, regulations that turn a blind eye to the diversity of women's backgrounds tend not to provide consideration for abortion based on these inequalities, such as abortion for economic reasons.

Nepal has a different view of the time limit. In Nepal, for gestational age up to 12 weeks, abortion is allowed for any reason, be it psychological, medical, or financial. This provision does not exist in Indonesian legislation. Meanwhile, for gestational age up to 28 weeks, a pregnant woman can request an abortion based on medical reasons or psychological reasons as stated in Article 15

of the 2018 Safe Motherhood and Reproductive Health Act. Therefore, the time limit in Nepal is longer and more flexible than in Indonesia, and Nepal's law is also more comprehensive in providing reasons for abortion.

Although Nepal's abortion law appears to be more advanced and have had a positive impact on the realisation of women's sexual and reproductive health rights in the country, further challenges remain. One of the challenges is the access to reproductive health services, including abortion facilities, which tend to concentrate in urban areas. As a result, rural women still face difficulties in accessing them (Samandari et al. 2012). Private health providers are still allowed to charge fees for services that rural women may not be able to afford. For example, a patient has to pay around US\$20 for an abortion (Ju Wu et al. 2017), which is relatively high as 68% of Nepalese live on less than US\$2 per day (CREHPA 2006). With the lack of public health care providers in rural areas, a woman with an unwanted pregnancy has limited options, and undergoing unsafe abortion tends to be the most affordable option. Therefore, there is a need to ensure reproductive health facilities are equally available and established in every region so that women's reproductive rights can be enjoyed by all Nepali women regardless of class, ethnicity, religion, or geography.

## Closing

The realisation of women's sexual and reproductive health rights remains a challenge, especially when it comes to the most controversial issue of all: abortion. Although women's deaths caused by unsafe abortions continue to be a concern, the prohibition of abortion in various countries is still upheld for moral and religious reasons. Through a comparative approach by comparing the Indonesian and Nepalese regulations, the author uses a feminist perspective as an analytical framework in looking at the issue of abortion, which consists of integrity over the body, personhood, equality, and diversity of women. From this ethical framework, the author argues that Nepal appears to recognise women's bodily integrity, personhood, equality, and diversity more strongly in its abortion law. This is demonstrated by the fact that the exceptions to abortion are more comprehensive, including consideration of the woman's economic, social, and psychological conditions, a longer timeframe, and no need for the husband's permission or consent. Thus, abortion is seen as a woman's right to sexual and reproductive health. Woman is a subject who makes her own choices. Indonesia's regulation is weaker, as women are only allowed to request abortion on two

grounds: medical indication and pregnancy resulting from rape or other forms of sexual violence. In the case of medically-indicated abortion, services can only be provided if permission is obtained from the husband. In addition, Indonesia's abortion law ignores the different positions of women that affect access to services, as economic and psychological conditions cannot be used as grounds for abortion. Therefore, advances in Nepal's legal framework for abortion should inspire Indonesia to regulate abortion in favour of women.

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## The Knowledge and Skill to Articulate Sexual and Reproductive Health and Rights among Indigenous Young Women in Papua

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### Abstract

This article discusses the extent to which the SRHR narrative is reproduced in the Papuan context. In the process, data collection was carried out by combining document studies, self-reflexive, and interviews. The involvement of one of the researchers who is also an Indigenous Papuan (Orang Asli Papua – OAP) allows for self-reflection regarding the context and issues of SRHR in Papua. While in the interview process, women's bodily experience is placed as a center for understanding the dynamics of reproductive health problems in the broader context of Papua. Specific issues such as unwanted pregnancies (Kehamilan Tidak Diinginkan – KTD) are key topics during the interview process. The results of the study show that SRHR issues among young people in Papua cover specific issues such as unwanted pregnancy, HIV/AIDS, and violence against women. However, in the exploration of specific topics such as KTD, it was found that there is a gap in knowledge and skills in understanding and translating the substance of SRHR due to conflicting economic issues, traditions, and changes in meaning around sexuality due to the influence of modernization. Therefore, the intersectionality framework, both theoretically and methodologically, has the potential to be developed for further studies to obtain a comprehensive mapping of the dynamics of SRHR challenges and the need for innovative approaches in Papua.

Keywords: SRHR, young women, gender, sexuality, Papua

### Introduction

Specifically, the discussions and analyses developed in this study seek to understand at least three things. Firstly, the empirical situation regarding the dominant issues surrounding SRHR in Papua that are (still) a challenge and require continuous intervention. Secondly, preliminary data on how the map of socio-cultural problems reproduced through various forms of interaction and norm systems affect the way Papuans understand and interpret SRHR. Thirdly, how various policies/regulations work in interpreting and overcoming SRHR problems.

The urgency of exploring the issue of SRHR in Papua cannot be separated from the context after the Special Autonomy Law (*Otonomi Khusus, Otsus*) Number 21 of 2001 was enacted. The Special Autonomy Law is a special policy to improve services and accelerate development for Papuans. It can be said that the existence of the Special Autonomy Law is a new chapter that can serve as a background for (re)examining progress of development in Papua. Normatively, the Special Autonomy policy, which was followed by a number of regional expansions, contains the values of modernity - related to the acceleration of equitable development

measured through public activity-based standards, abstract systems such as education and public services, and income rationality in the wage system (Giddens 1990). In Papua, modernity, which had also gone hand in hand with the New Order concept of development, stimulated a situation that made it seem as if the local wisdom of the community was not as important as the role of the individual. This situation can be seen from the dichotomous perspective that contrasts the symbol of tradition associated with primitiveness with the openness of individuals to the influence of technology, migration, and formal education, which is considered as progress (Slama & Munro 2015). On the issue of SRHR, for example, the achievement of modernity is measured by how many women participate in family planning programmes, which is contrary to clan traditions.

However, in the post-Reformasi era, there is an idea to affirm local cultural wisdom as an indicator of development achievements. In the most recent situation in Papua, the idea of *Otsus* emerged. However, there is scepticism about the extent to which *Otsus* truly presents Indigenous Papuans as subjects to define the formulation

of the fulfilment of their human rights when the human development index is still the lowest on a national scale (Sugandi 2008). A question also arises of how to overcome the strict cultural systems and traditions that pose challenges to post-expansion institutional arrangements (Ambang 2007; Silo & Ismail 2022). Similarly, on the issue of gender mainstreaming: there is a need to ascertain what forms of advocacy on gender issues can be done and their impacts (Macintyre 2011; Susiana 2015; Lamprell & Braithwaite 2017). Specifically, in relation to reproductive health, challenges arise, such as in the strategy to reduce the Maternal Mortality Rate (MMR), Infant Mortality Rate (IMR), and Toddler Mortality Rate (TMR), which overlap with issues of unwanted pregnancy, child (female) marriage, stunting, as well as the paradox of tradition in interpreting the role and function of women's sexuality itself (Widayatun et al. 2019).

Statistically, the Public Health Development Index (*Indeks Pembangunan Kesehatan Masyarakat, IPKM*) in Papua is still the lowest, at 0.4888 (MOH 2021; Sumule et al. 2022). Likewise, the Adolescent Reproductive Health Index (*Indeks Kesehatan Reproduksi Remaja, IKRRI*) in Papua is also among the three lowest in Indonesia. Regarding the issue of sexuality, a number of previous studies have highlighted the link between the high prevalence of HIV/AIDS and limited access to comprehensive knowledge on reproductive health (Butt 2015). Through the problematisation of HIV/AIDS, several studies have also found the tendency of a sexually active culture that forms an endless circle of problems. In the youth group, most of sexually active young women are reported to be unmarried and experience unwanted pregnancies (Diarsvitri et al. 2010; Butt & Munro 2007). These unintended pregnancies are then suspected to be a factor that encourages young women to practice unsafe abortion and potentially contributes to the MMR.

From a medical perspective, young pregnant women are vulnerable to malnutrition, which can then increase the risk of stunting in the children who are born (Nirmalasari 2020). These studies show that the dynamics of women's sexuality experiences, especially young women in Papua, are quite unique. On the one hand, it can be understood when unintended pregnancy becomes a problem, especially for young Papuan women, who are generally students (BPS 2022). However, sexual activity that is assumed to be high-risk implies a big question about how the experience of sexuality is interpreted by young women living in different social worlds and what the implications are. Therefore, in addition to government's archives and documents, the self-reflection of indigenous

Papuans, represented by one of the researchers, and the exploration of young Papuan women's experiences of their sexuality, such as unintended pregnancies, can be a starting point for understanding SRHR issues in the larger context of Papua.

## Research Methodology

The study developed in this article is based on a literature study, self-reflexive, and qualitative data interpretation. The literature study refers to government's archives and documents that contain aggregate information related to SRHR issues in Papua. Meanwhile, qualitative data was collected through interviews with five Indigenous Papuan women aged between 20-22 years. Three of the women were from Mappi, while the other two were from Merauke. They were students and unmarried. A narrative approach was used to place the informants' experiences as the basis of knowledge construction (Czarniawska 2004). This approach also refers to the feminist methodological tradition that places hidden transcripts of marginalised groups such as women as the basis of epistemology (Harding 1991; Haraway 1988; Hartsock 2019).

Exploration of Indigenous Papuan women's experiences related to unintended pregnancy was conducted because pregnancy is one of the authentic female bodily experiences (Dhewy 2015). Here, pregnancy is not merely interpreted as a natural, domestic, and marginalised biological event. Pregnancy is a series of socially meaningful events, where the power to navigate it is women's (bodies) (Tyler 2000; Young 2005). Therefore, methodologically, this study also borrows the concept of bodily phenomenology, which assumes that the subject's meaning of her bodily experience is shaped and influenced by her relationships with others and the particular social world situation she lives in (Merleau-Ponty 1981; Csordas 1994). Thus, the experiences of women's sexuality related to unintended pregnancy that have been "silenced" due to taboo cultural assumptions are interpreted as the main data that guide this study to better understand crucial issues related to SRHR.

Technically, the interviews were conducted in March 2023 using Indonesian and involving one researcher, who is an Indigenous Papuan. The presence of a Papuan researcher in the interview process allowed for self-reflexive behaviour to anticipate possible knowledge gaps between the researchers and informants. Conversations in the interview process were recorded and then transcribed. Furthermore, the coding stage was

carried out to categorise the findings in accordance with the fundamental questions of the study. Data analysis was done by interpreting the mapping results of informant narrative that were written verbatim. In the process of presenting and analysing this data, the development of self-reflexive method was also conducted to build contextualised interpretations.

### **Young Papuan Women and the SRHR Discourse**

This section discusses SRHR issues in general in Papua. Referring to Komnas Perempuan's framework, SRHR includes four components, namely sexual health, sexual rights, reproductive health, and reproductive rights. From a feminist perspective, issues related to SRHR are crucial because experiences of sexuality and reproduction tend to be considered part of women's natural lives as opposed to men's lives that are embedded in cultural practices (Freedman 2001). In the context of young people in Indonesia, SRHR becomes even more problematic because sexuality is considered the same as sexual activity, which seems to be only a representation of marital values - which are heteronormative, based on heterosexual perspectives - and reproductive functions (Parker 2009). This is especially true for young women, who have multiple challenges to express and articulate SRHR. In terms of norms, unmarried women are vulnerable to being labelled negatively when talking about their bodies and sexuality. This social control then affects access to information and services on SRHR for young and unmarried women (Bennett 2015).

One of the most dominant SRHR issues among young women is unintended pregnancy. This is the case in Papua. National data show that 40% of pregnancies are unwanted (BKKBN 2020). However, it is difficult to obtain accurate documentation related to unintended pregnancy specifically among young unmarried women. However, data from SDKI (2017) show that on average, first sexual intercourse occurs in the age between 15-19 years old and 7% of this age group has pregnancy experience. Meanwhile in Papua, the female fertility rate is quite high at 3.3 per cent, higher than the national average. The age of first childbirth is also quite young, around 20-21 years old (Nasida & Pramana 2019). As an issue, unintended pregnancy refers to pregnancy experienced by young women who are still in school.

In Papua, the participation of women in the 7-24 years age group in the education sector is higher than that of men at more than 60 per cent (BPS 2021). This trend in female school participation reflects a shift in gender norms in society. When referring to clan traditions such

as those in Papua, women's gender roles tend to be associated with domestic, reproductive, and parenting tasks. However, an education system that requires women to have public activities has the potential to make traditional gender roles just a spectrum. This can be seen from the fact that women can leave the house and have activities that have nothing to do with domestic routines. This is shown by the low fertility rate among women with higher education level (Nasida & Pramana 2019; SDKI 2017).

In practice, in addition to going to school, women can build friendships that also have a new influence on the way they define themselves. Here, forms of intimate relationships have also shifted, such as dating relationships. Basically, dating relationships are very different from marital relationships that are constructed in the Papuan tradition. In marriage, in general, pregnancy is interpreted as part of an effort to maintain tradition, especially related to the clan system; hence, the high fertility rate of women reflects the number of children or the close spacing of births. However, in building dating relationships, there is no image of clan reproduction. Therefore, pregnancy that occurs during the dating period among young people is more of a risk. The risk here means that the pregnancy implies various problems with other issues, such as "free sex", contraceptive, abortion, and infectious diseases. In the end, these discourses are also learned and internalised by Papuan women in general. For example, many young married mothers define their pregnancies as unintended pregnancies. On average, they do not want the pregnancies because they already have more than 2 or 3 children. The economic responsibility is heavy because their husbands do not have a permanent job (e.g., port workers). The factors that triggered the perception of an unintended pregnancy were mapped: pregnancy as a result of rape, lack of adequate knowledge of modern contraceptive, too many children, health reasons, foetal defects, young age or not ready for marriage. Other reasons include irresponsible partners, each individual is still bound by a work contract, husbands do not want to use condoms, old age, and the number of children is already quite large.

Discussions on unintended pregnancies are also intertwined with other sexuality issues such as HIV/AIDS. Papua province has the highest number of HIV infections per capita in Indonesia. Papua is ranked 3rd out of 10 provinces with the highest HIV cases. The SIHA Executive Report (2022) on the development of HIV/AIDS and *PIMS* for the third quarter of 2022 shows that during January to September, there were 2,717 new cases of people living

with HIV/AIDS (PLWHA). The Merauke District Health Office (2022) reported that there were 2,704 cumulative HIV cases. The number of HIV cases in young people in Merauke Regency in 2022 aged 20-24 years was 539 cases and aged 25-49 years was 1,632 cases. Young people are vulnerable to sexually transmitted infections (STIs), the spread of HIV through sexual contact, and the use of needles.

On the other hand, the handling and management of HIV/AIDS continues to be intensified in various ways, such as socialisation to schools and campuses or to the community. There is access to testing, counselling, and treatment for HIV for those who do get tested. Infection rates are sometimes estimated at 2 to 3 per cent in the general population in Papua province. However, for Indigenous Papuans who are HIV positive, recent estimates suggest a rate of around 7 per cent. In addition, reports of HIV level remain low due to inadequate reporting mechanisms, as well as shame. Although migrants make up a larger percentage of the population, more Indigenous Papuans are affected by HIV than migrants.

The Ministry of Health's HIV/AIDS Information System (SIHA) report (2017) on the HIV/AIDS Control Programme and PIMS shows that HIV prevalence among Indigenous Papuans is almost twice as high as among migrants. This is not only true in mountainous areas, but also in coastal areas. The situation is further complicated by other issues, such as limited access to ARV treatment, support, and medication. Various efforts since the early 2000s across Indonesia to make ARV treatment and testing more available have not been optimised. Services are still hampered by corruption, lack of mentoring, and inadequate training. Medicines to treat HIV, which should be free, are in fact available in certain places where people with HIV/AIDS are asked to pay a certain amount of money. Medicines are not always available. ARV drugs have been available on a regular basis in the main coastal districts since 2007, and have been available on a regular basis in the mountainous districts since 2008. Despite the availability of drugs, utilisation remains low (reflection of Indigenous Papuan researcher).

Another group that is highly vulnerable to HIV/AIDS in Papua is housewives, particularly Indigenous Papuan women. Housewives can be a vulnerable group to contracting HIV/AIDS. Generally, they are infected with HIV/AIDS from their husbands, who have sexual relations with multiple partners. In addition, the vulnerability of HIV and AIDS transmission in women is caused by the lack of information about reproductive rights and sexual rights

for women. The lack of knowledge and awareness of HIV/AIDS among housewives further facilitates transmission.

Gender inequality and injustice also lead to unequal relations between husbands and wives so that women cannot refuse or cannot ask their husbands to use contraceptives when forcing unsafe sexual relations. Women also cannot refuse sexual intercourse even if they know their husbands have relationships with other women outside the marriage. In certain conditions, the infection of housewives with HIV/AIDS is a potential sexual violence against women, especially in households that have the opportunity to be exposed to sexually transmitted infections, including HIV/AIDS. There are at least two fundamental reasons that make women who experience sexual violence vulnerable to HIV/AIDS. First, socio-cultural factors. It is difficult for women to refuse sexual relations with their partners because women do not have the skills to suggest the use of contraceptives in sexual relations. The taboo factor of talking about sexual activity, reproductive health, and other information makes it difficult for women to discuss the issue of sexual activity with their partners. Furthermore, it is difficult for women to take quick actions to access treatment for sexual diseases that they already suffer. The second reason is economic factors. Women are generally very economically dependent on men. This causes women to have no bargaining power to refuse sexual relations with their partners.

### **Exploring the Meanings and Implications of SRHR Issues among Indigenous Young Papuan Women**

This section presents data based on interviews conducted with young Papuan women regarding their perceptions and experiences of SRHR. The topic of domestic violence was used as the main trigger because empirically, the issue is quite close to the informants' daily lives. The following are the dominant narratives that emerge when indigenous Papuan women specifically discuss domestic violence. The data presented in this section are informant testimonies, which are then interpreted and analysed sequentially.

#### *Young Women as Sexual Beings as well as Sexual Objects*

The narratives often conveyed by young Papuan women are that they often encounter cases of unintended pregnancy. All informants stated that in their schools, there were always students who experienced pregnancy and were still allowed to attend school. Even though it was perceived as a problem, the presence of pregnant students at school triggered the assumption

that unintended pregnancies among young women were common. As the following informant said:

“It is common (to see pregnant students at school). It is most dominant in high schools. There are some in junior high schools but not too many. There are also cases in elementary schools, but not as many as in high schools. Some of my friends who are pregnant are still told to go to school; the teachers were aware, but they allowed them go and take the exams until they finish” (MG 2023, Interview 4 March).

The same is true among peers. There were informants who witnessed attempts by some students to modify the way they wore their uniforms so that their pregnancy could be hidden. However, the traces of pregnancy from the growing belly were visible. This phenomenon is also not interpreted as an uncommon event:

“At that time, there was one schoolmate. When we participated in UKOM at SMA 1, she was already pregnant, already 5 months old. So, her belly was already visible; she was in the third year of a health vocational school. There were two people, not one. When we finished school, they had already given birth and had husbands, but they continued to go to school because the school exams were approaching. (They) managed to hide (their pregnancies) because their stomachs were still small. One of the pregnancies was only one month old. The 4-month-old’s belly was not visible, but she always said she was fat. We knew because when she graduated, her stomach was already big, so we found out when she graduated. They always wore thick hoodie jackets or (wore) them upside down, with their hands in their pockets. They wore big skirts and uniforms, so it was not very visible” (MB 2023, Interview 4 March).

When asked about the relationship between unintended pregnancy and sexual behaviour that may involve violence, there were quite diverse answers. Although it is undeniable that the trend of violence against women is also high, all informants explained that young people’s dating relationships are consensual. This is characterised, for example, by the rarity of reports of alleged violence experienced by women in their dating relationships. In cases of unintended pregnancy, parental anger is not necessarily a sign that there is coercion in the dating relationship. As stated by one of the informants:

“I have never heard of this case (unintended pregnancy) being reported to the police. But the boyfriend was beaten by his family, but it ended in peace. In the end, they went backstreet and started dating again” (MG 2023, Interview 4 March).

However, in discussing the forms and dynamics of dating relationships related to age gap, there is

information that indicates various forms of inequality. For example, two informants stated that the boyfriends of high school girls who experienced unintended pregnancies in Merauke usually dated *angkot* drivers, who were much older. They said that the high school women did not seem to feel forced even though their male partners were much older:

“There were also drivers who were beaten up for impregnating or taking the (teenage girl) away for up to 3 days. But it was not reported to the police because it was consensual, and we had no evidence that it was coercion” (PM 2023, Interview 5 March).

Meanwhile, when asked to what extent the young women understood risky sexual behaviour and consent-based relationships, all informants agreed that their knowledge was very limited. There are different narratives between dating relationships and sexual behaviour while dating. In the context of sexual behaviour, there were also stories of sexual relationships initiated through threats of violence from men, for example:

“Threats are the most important factor in Mappi. Sometimes he came to school or sometimes he could go as far as, uhm, cutting them to death. Sometimes threatened with a machete. My sister was once killed. She wanted to break up because she did not want to have sexual intercourse; she was beaten in front of the school too” (PM 2023, Interview 6 March).

There were also instances that reflected a process of persuasion that normalised the narrative shift from rejection to acceptance, for example:

“Usually, he said he will take responsibility (if sexual intercourse resulting in pregnancy). (Women) were seduced. They fell for their words. I will take responsibility” (GK 2023, Interview 6 March).

Meanwhile, in relation to knowledge about anticipating risky behaviours, they were familiar with contraceptive terms and methods. However, they did not have enough skills to articulate the need to avoid unintended pregnancy through the use of contraceptives.

“I never learned about contraceptive in junior high school. Neither in high school. Not sure about now. But for those of us who graduated in 2016, it did not exist, but now it seems it does. After the HIV rate is high in high school students, it has been socialised to high school students. In 2016, there was (socialisation) about the use of contraceptives, early marriage, prevention, and all that. It was limited to explaining contraceptives, not explaining how to make the men want to use them and what to do if they do not want to use them. It was limited” (GK 2023, Interview 6 March).

In some educational institutions, contraceptive socialisation is provided, but it does not discuss the underlying issue of how to discuss the need for contraceptive with a partner who may be more dominant. Often, contraceptive socialisation overlaps with sexual abstinence-based education:

“On campus, PKKMB introduces safety sex too, but not how to communicate it. Usually it is like “hold on, wait until you get marriage first”, so do not have pre-marital sex. Healthy dating should not lead to sex, you will get pregnant outside of marriage, shame” (SK 2023, Interview 4 March).

The narratives that emerged around the experiences of dating conveyed by the informants confirm previous studies that trends in the sexual behaviour of pre-marital youth in Indonesia are a form of their existence as sexual beings (Holzner & Oetomo 2004). However, sexuality is generally seen through the lens of moral panic and is thus interpreted as a perversion (Parker 2008) that requires certain discipline. Furthermore, gender norms also work to forbid all forms of narrative related to women’s sexuality so that even though both have the same potential as sexual beings, women’s articulative spaces are more limited.

In the context of Papua, sexuality and the continuity of the clan is a stability that must be maintained; hence, pregnancy and birth are signs and moments that determine the ability of a family to comply with tradition. However, because patriarchal ideology is part of the formation of the norm system, the burden of reproduction seems to be the responsibility of women. Moreover, women’s bodies are only meaningful as biological objects, which initially are only for reproductive purposes and then widen to all dimensions related to sexuality and intimacy-based relationships. In dating relationships, as stated by the informants, women’s willingness to undergo dating relationships is often considered the same as consent to become sexual objects for their male partners. This assumption is also normalised through the control or discipline exercised by men, such as giving threats if women do not want to have sexual intercourse. Likewise, when an unintended pregnancy occurs, the community does not see it as a risk that can jeopardise women’s reproductive health because pregnancy is a symbol of the continuation of the clan system. It can be said that the role of women and their sexuality is actually recognised but at the same time ignored (Gina & Arivia 2016). However, in the context of Papua, the paradox between knowledge about SRHR and the culture that shapes the aspiration about pregnancy is a fundamental challenge, so that on the one hand, women recognise

their need to be in dating relationships. They do not have a cultural system that gives them the opportunity and space to voice their rejection of risky relationships. As the informants also said, women tend to find it difficult to communicate the need to use contraceptives despite this knowledge.

### *Intimacy, Affection, and Economic Issues*

Exploration of Indigenous Papuan women’s perceptions of the issue of unwanted pregnancy is also related to their knowledge of the motives of most young women in dating. There is a strong link between economic motives and the willingness of women to have relationships with older or even married men. In the cases in Merauke, the informants said that most women dated *angkot* drivers to reduce transport costs. As one informant put it:

“They are dating so that the *angkot* ride is free. They are picked up because (their house) is far away. Most are much older and could be someone’s husband” (SK 2023, Interview 7 March).

The phenomenon of sex workers and their vulnerabilities is also common knowledge. As one informant pointed out, in the context of Papua, many sex workers come from the lower middle class. They are on average paid cheaply and do not have the power to negotiate their needs regarding contraceptives, so in addition to being trapped in the poverty circle, the risk of HIV/AIDS is also part of the daily lives of these sex workers.

“(I have) experience living in a complex in Merauke, which has a localisation called “floating hotels”. It is always crowded there - people whose activities are around the harbour, especially young people, who work unloading ship cargos, maybe if they have money they go there. This phenomenon confirms why HIV/AIDS has the highest rate of young married couples and young women. (They) have no knowledge about contraceptive. There is even neighbour’s friend, whose children are still in high school. He said it was cheap (sex worker services) there. I heard that the women are in their 30s and older, so that is why the rates are cheap” (MG 2023, Interview 4 March).

Economic issues are also part of the experience that is quite influential on the sexuality of young Papuan women. Family economic difficulties “force” girls in Papua to work with their parents. Instead of playing with their peers, their childhood is spent with activities such as going to work in the forest or agricultural areas. Public activities such as going to school become an alternative space for those who are distant from economic activities

that are considered not in line with their aspirations as young people. For example:

"Maybe it is, *uhm*, because we have a childhood that is different from children in general. A childhood in which maybe (we) still want to play and others. We have been taught to do such work since childhood. We cannot be free, we cannot (because) there is work (that) we have to finish. If we do not finish it ... we cannot go out. Usually, once we are away from our parents (such as school), it feels like we want to be free" (MB 2023, Interview 7 March).

The issue of poverty, which makes the kinship system the support of daily economic activities, causes a rejection in the children's group. They consider the parenting system to be too harsh, which justifies the girls' need to substitute their affection for friendships and dating outside the home. For example:

"Lack of support from the family. For example, she (the girl) wants to go to this school, but the parents do not support it, so the girl is discouraged. Then she turns to relationships. She looks for support, which can be in the form of economics, it can also be affection like from parents"" (MG 2023, Interview 10 March).

The situation of poverty is also illustrated through the disconnect between children's and parents' perspectives on educational attainment and the necessary support facilities. For example, cases of school children receiving scholarships or economic assistance for school. As stated by the informants, some parents consider various types of assistance, such as school scholarships, as a solution that frees them from economic responsibility for their children. This view differs from the reality experienced by the children because the educational assistance provided does not mean that they can fulfil their daily needs completely. This discrepancy creates conflict between parents and children and many children, especially girls, try to utilise their dating relationships to channel economic resources that are not available to them from their parents. For example:

"Some of them get scholarships, such as Bidik Misi. The parents think that all their needs have been covered by the campus, while the campus only provides tuition fees and stipends per three months. It is like the parents are completely hands off because (their children) have received the scholarship. Sometimes that makes them stressed too because there are other needs, such as photocopying and others. Because they do not go to their parents, they end up going to their boyfriends. Transactional economics again. Our parents have an elementary to junior high school background. Many of their jobs are also farmers and fishermen. So (they) cannot understand the world of children who go to university" (SK 2023, Interview 4 March).

The narrative of poverty, which is one of the triggers of the circle of powerlessness in women's groups, is also reflected in their difficulty in being able to perform vertical mobility through education. It is not easy for women to attend higher education because of the high costs involved. The informants explained that there is no university in their area, so if they want to go to higher education, they have to live in the "city", which of course is not cheap.

"It's difficult sister, to go to college is difficult. Because most of our parents are farmers, so support for children's education is limited, let alone to send them to university. There is also no university in Mappi, so you have to go to Merauke. There are parents who cannot let go of their children because of the cost. Parents sometimes prefer their children to go straight to work so they can earn money" (GK 2023, Interview 6 March).

The informants' experiences show that poverty, child labour, and sexuality are still a triangle of interrelated issues in Papua. A study conducted by the ILO (2011) states that the factors that cause girls to be trapped in the sex industry ring are parents' separation and family economic limitations. Studies conducted in other parts of Indonesia also show that the sex industry that ensnares minors is a result of a combination of different factors, such as poverty, inequality, consumerism, gender discrimination, violence against women, and the low status of girls (Wicaksono 2020).

In the Papuan context, poverty initially led parents to ask their children to help them in the forest or on farms. However, this practice then becomes a justification that everyone can work even from childhood. Therefore, there will often be tensions between parents and children. As informants pointed out, there is a disconnect when economic dynamics operate in two different realms. For children, the economic challenges faced by students, especially women, are very different from the dynamics of fulfilling daily needs at the family level. Under certain conditions, girls are conditioned to find their own solutions to fulfil their aspirations, which seem different from what their parents understand. On the other hand, as mentioned above, the role of women's sexuality has also been reduced to only be seen as a means of reproduction and then a sexual object. Consequently, for girls who enter the labour sector at an early age, sex transactions can be considered an option. The problem is that in these transactions, the position of women is increasingly marginalised. Power relations are getting stronger and suppressing women's authority over their own bodies. On the ground of economic interests, women are increasingly unable to

negotiate whether sex transactions, whether under the pretext of dating relationships or pure prostitution, can be conducted without risks, such as unintended pregnancy, contracting HIV/AIDS, and others.

### *The Shifting Norm System around Women" Bodies and Sexuality*

The bodies and sexuality of Indigenous Papuan women are still entangled in norms and stigma. Community perception of norms that are intertwined with culture indirectly regulate various behaviours surrounding their bodies and sexuality. There is a close relationship between the norms prevailing in society and sexuality behaviour. There are other issues related to the narratives of sexuality that are reproduced in the family sphere. The objectification of women's sexuality seems to have an impact on the extent of the transfer of reproductive health knowledge from parents to their children. On the one hand, family can be a space to regulate and organise the satisfaction of sexual desires (Hunt 1984). However, family spaces that allow for the expression of sexuality are quite limited. As told by one informant, dating is prohibited.

"Normally, when we enter puberty, we are already familiar with that kind of thing (dating) and it is normal. But the parents do not seem to understand. Anyway, they do not let us go; they are afraid that if we date, there will be things like that (unintended pregnancy, STIs, etc.). We cannot do that, we cannot do this. So, we go out secretly in my experience" (GK 2023, Interview 4 March).

The limitations of space and relationship that allow for conversations about sexuality have widened to the public sphere, such as schools. Issues around sexuality seem taboo to talk about even though the practice of "free sex" is quite massive. The informants stated that they were embarrassed to talk about topics around sexuality.

"Embarrassed. Especially if it is discussed. There is (a discussion of) female genitalia and then male genitalia, so they are embarrassed. For them it is not important. Actually, maybe it is not wrong, but it feels too funny to say. If we were given socialisation and then shown the tools (genitals), friends would all laugh. But at my school at that time, most of the people who laughed during the socialisation were boys" (MG 2023, Interview 6 March).

The funny and unimportant narrative arises because they do not have enough knowledge about sexuality. The turmoil of puberty and sexual desire that they feel coupled with a lack of knowledge, makes them curious and want to try things out without knowing the risks.

"Maybe it is more about curiosity. Trials and errors. Other than that, it is like wanting to learn, wanting to try new things, and maybe wanting to find yourself" (SK 2023, Interview 4 March).

The seemingly taboo topic and the education that is limited to the outer layer are also related to the feeling of discomfort in thinking about or discussing contraceptives. One informant gave the following information:

"I was embarrassed to buy (condoms) at the pharmacy because I was still in high school. Because if you buy it, people think you must be married. The problem is that we have a lot of friends. If it is a boy who buys, the person at the pharmacy must know that they want to have (sexual) intercourse. Yes, it is like we are still shy about it. It is a taboo, so just have sex without a condom" (PM 2023, Interview 10 March).

This problem is compounded by the negative labelling of teenage girls who engage in sexual relations without marriage. On the one hand, sexual intercourse without contraceptives poses a risk of unintended pregnancies and STIs. The informants stated that these women were labelled as "flirty" and "brutal". Here is the narrative:

"They know that there is a risk, but maybe it is just because they are flirty. (Unintended pregnancy) is actually not unusual, but still gets a bad stigma. Labelled as the "brutal" one (MB 2023, Interview 6 March).

Negative labelling is not necessarily born from moral discourse. The diction about unintended pregnancy emerged from women who experienced the risk of pregnancy when they were in dating relationships at a young age. This is shown by the experience of abortion. For example:

"They are used to do that, they used to take drugs carelessly. Young pineapples, they used to tell their friends to step on their stomachs. Yes, they still got pregnant. (They take) any drugs. They will mix them up actually. They also did not tell us that they wanted to abort the pregnancy. In the end, they found their own drugs and experimented" (MG 2023, Interview 4 March).

However, when asked about the situation after a failed abortion, the informants explained that the children born from the miscarriage would be cared for by the parents of the young women. It can be said that there is a gap between the generally constructed meaning of pregnancy in Papuan society and what is perceived by women who are exposed to modern values such as education.

As explained earlier, pregnancy is a sign of fertility and the preservation of civilisation. Thus, in the family sphere, conversations about sexuality seem to be taboo. It is actually considered a natural issue that is not important to discuss openly because of its clear function as a reproductive medium. However, the issue becomes different when pregnancy occurs in the body of a woman who not only reproduces the domestic role but also the public role of modern society, namely as a student. In this context, pregnancy is not only related to the meaning of reproduction. But pregnancy can be a threatening event because the whole set of reproductive activities cannot be done simultaneously when these young women have to study, go to school, and hang out with their peers. Modern institutions such as schools also have initiatives to provide knowledge about reproductive health. However, because gender issues and women's experience of sexuality are situational (Moi 1999; Tyler 2000), the approach to reproductive health education cannot be generalised from one to another. In the context of Papua, the knowledge gap between what is reproduced in the cultural realm and what is to be voiced in the spaces of modernisation needs to be unravelled first. Sexuality education, which is assumed to discuss sexual desire so that adolescents are able to build subjectivity and responsibility as sexual beings (Fine & McClelland 2006), is counterproductive to efforts to alleviate marginalised groups such as Indigenous Papuan women from the snares of injustice.

## Closing

Departing from the reading of documents and empirical narratives delivered by young Papuan women, a number of challenges that must be faced in fulfilling SRHR in the Papua region were found. How patriarchy has created hierarchical relations on issues surrounding sexuality is not the only issue that is always associated with women and natural law. The way patriarchy works in the Papuan context is quite complex because of its intersection with the legacy of traditions that have existed for a long time and the Special Autonomy agenda that is packaged in a modernisation discourse that relatively reproduces the principle of universality. Basically, the visible situation that occurs in Papua is the high rate of unintended pregnancy, which is in line with active sexual behaviour among young people. However, the problem is that the term unintended pregnancy arises because there is a perception that pregnancy does not always mean reproductive achievement alone. Unintended pregnancy means risks, threats, and problems that must

be avoided. Because pregnancy is an inherent event in women's bodies, unintended pregnancy becomes an issue that makes women vulnerable as victims. Because pregnancy is an event that is inherent in the female body, KTD means issues that make women vulnerable as victims. Structurally, it can be interpreted that patriarchal power, which constructs culture through the discourse of power and knowledge, shapes sexual discourse (Foucault 1983) so that it can control women's sexuality. From the perspective of feminism, young women who have unintended pregnancy experience multiple losses because they lose their bodily autonomy and sexuality.

Contextually, however, clan-based kinship traditions essentially place sexuality, women's bodies, and reproduction as a single defining variable. It is embedded in a patriarchal ideology that interprets the entire experience of female sexuality in the paradigm of femininity. This perspective creates varied forms of hierarchy in line with the various domains that women occupy. In the economic sphere, women's sexuality is used to establish transactional relationships, both overtly and overlapping with the term dating relationships.

Likewise, in the realm of education, comprehensive narratives and socialisation seem difficult to convey. At first glance, this could be described as a cultural taboo phenomenon. However, unlike other regions, taboos in the Papuan context do not work through disciplinary mechanisms such as shame or embarrassment because stories of active sexual activity among young people or the presence of pregnant students in Papuan schools are easily available. In the tradition of Papuan society, sexuality is interpreted as the same as sex, which is natural because it was originally for the sake of clan reproduction. This is where there is a gap between the knowledge internalised through tradition and the skills to explain sexuality issues in terms of risks constructed by the logic of modern society. In other words, there is a discontinuity in the structure of modernity/development in Papua itself. In the lives of young women, the input of knowledge about SRHR, which previously only relied on socialisation/learning at the family/community/customary level, has shifted to modern educational institutions (schools). However, in its implementation, there are no mechanisms and facilities that are sufficient to answer the complexity of the problems of young women themselves.

Finally, this study notes the opportunity to further explore SRHR problems using an intersectionality approach. Mapping specific issues that contribute to sexuality problems that are considered risky needs to be

done. In feminist studies, the intersectionality approach is used to unravel the layers of oppression experienced by marginalised groups such as women because gender issues never stand alone. Gender issues always intersect with other aspects, such as social class, customary systems, and certain cultural norms to form structures that are oppressive to women (Crenshaw 1991).

This is also the case at the praxis level. There needs to be a specific intervention that adapts to the aspects of intersection that occur in Papua so that some materials and methods of sexuality education may be different from other regions. Some aspects that need to be managed include poverty issues, intergenerational knowledge gaps, and the clash of tradition with present values in interpreting women's sexuality.

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## Feminism and Reproductive Justice: Shaping Abortion Discourse Based on the Experience of SRHR Activism

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### Abstract

In Indonesia, abortion is categorized as an illegal and criminal act. Even though abortion due to medical indications and rape are exempt from criminal status, access to legal abortion is still almost impossible. Therefore, discussion about legal abortion and safe abortion cannot be done separately, for the criminalization of abortion is one of the factors behind unsafe abortions. Through focused discussions with 20 women activists representing civil society organizations who advocate for gender justice and SRHR in Indonesia, this research aims to document and reflect critically on the situation of reproductive injustice in the issue of abortion in Indonesia using a feminist lens. Building this research within the framework of reproductive justice thinking based on feminist praxis, we selected women activists as our informants. SRHR activists are the closest to and the most involved subjects in the feminist praxis of promoting reproductive justice, particularly on the issue of abortion.

Keyword: reproductive justice, intersectionality, safe abortion, legal abortion, feminist activism

### Background

The right to legal and safe abortion is a human right protected by international, regional, and national human rights treaties in many countries around the world. Some countries that protect the right to safe abortion include Canada (up to 24 weeks and 6 days), Germany (first trimester), and Cuba (up to 10 weeks and free through the public health system). In Indonesia, abortion is a criminal offence. Indonesia's policy on abortion is Law No. 36/2009 on Health. This policy states that abortion can be performed in two circumstances, namely in cases of pregnancy with indications of medical emergency or in cases of rape. Regarding abortion due to rape, Article 75(2)(b) states that "every person is prohibited from performing abortion except for pregnancies resulting from rape which may cause psychological trauma to the victim".

The criminalisation of abortion in Indonesia has taken away the fulfilment of sexual reproductive rights and human rights for women who wish to terminate their pregnancies. The right to determine pregnancy is fundamental for women because it relates to their capacity to participate fully and wholly in society. Reproductive autonomy means ensuring that women

can freely, voluntarily, and well-informed about their reproductive health and well-being (Moore et al. 2010). The importance of guaranteeing safe abortion is part of the realisation of women's human rights. Based on the fulfilment of women's human rights and their sexual and reproductive health and rights (SRHR), a number of international human rights frameworks articulate and guarantee the right to safe abortion. These include the principles of the UDHR (1946), CEDAW (1984), the Vienna Conference (1993), ICPD (1994), the Beijing Conference (1995), and the WHO's mandate.

When referring to the WHO, the guarantee of SRHR means that everyone must have the right to determine freely and responsibly without discrimination, coercion, and violence- the number and timing of their children. Guaranteed fulfilment of SRHR should also ensure access to legal and safe abortion and comprehensive abortion healthcare (Beddoe 2022).

Thus, barriers to accessing safe abortion are contributed to by restrictive laws such as the Penal Code that criminalises abortion, poor health services, stigma and denial of abortion health services, misinformation, and third-party authorities and procedures that impede

or delay the abortion process. These barriers are a violation of women's SRHR guarantees.

The criminalisation of abortion has a strong impact on unsafe abortion. Unintended pregnancies are not only the result of medical indications and rape, but also contraceptive failure, economic hardship, birth spacing, and other reasons. Fear of criminalisation forces many women to avoid formal health facilities and seek abortions with unscrupulous parties, posing high health risks and even death (VOA 2022; Handayani & Gomperts 2017).

In Indonesia, among women aged 15-49 years old, 37 million women avoid pregnancy and 7 million of them had their needs unmet. According to Bearak et al. (2023), in 2015-2019, the abortion rate increased by 32% in Indonesia. The percentage of unintended pregnancies that led to abortion increased from 38% to 63%. Bearak also points out that during this period there were nearly 8 million pregnancies, of which 2,820,000 were unintended pregnancies and 1,770,000 ended in abortion. That means globally and nationally, unsafe abortion is a major contributor to maternal mortality. According to UNFPA (2022), about 13 per cent of maternal deaths worldwide are caused by unsafe abortion - between 68,000 and 78,000 deaths each year.

According to Feminist Legal Theory, the law is informed by men, based on male norms and power, and ignores women's experiences (Irianto 2020). Under such masculine laws, abortion is not seen as a necessity for women. Masculine laws that criminalise abortion in many countries, including Indonesia, fail to accommodate women's experiences and needs. Various SRHR struggles, especially for safe abortion, always depart from the principles of feminism that speak of women's autonomy and free choice. The criminalisation of abortion violates the right to freedom from violence, the right to privacy, the right to family, the right to health, and the right to life (WHO). Laws that criminalise abortion have been shown to deprive women of their right to life. In the context of unintended pregnancies in adolescence, many of them are cut off from access to education, economy, physical and mental health, and often die due to unsafe abortion (FGD 2023; UNFPA 2022; Gina 2017). Adolescent unintended pregnancies are often examined through the lens of morality and teenage choice, without realising that the majority of teenage unintended pregnancies are caused by the lack of access to sexual and reproductive education.

Using a reproductive justice lens that builds on intersectional feminist ideas, this study examines various forms of reproductive injustice, particularly on the issue of abortion. Loretta Ross (2017), an Afro-American feminist, states that reproductive justice believes that restrictive policies towards abortion have harmed reproductive justice for women in general.

Criminalisation of abortion is not the only obstacle to women's reproductive justice, but it is a critical issue because it has a major impact on the proliferation of unsafe abortion practices. Through a feminist lens, the intertwining of abortion with discrimination, social class, geography, age, economy, and the masculinity of state policy can be made explicit. Based on a feminist approach, this research narrates and reflects on the concrete experiences of SRHR advocacies that have been carried out by women activists and builds a critique from there. This research shows four things, namely: 1) The criminalisation of abortion and the violation of women's human rights; 2) Patriarchal cultural bias that justifies the denial of women's right to access safe abortion from various institutions; 3) Feminist praxis from activists as resistance to reproductive injustice; 4) Reproductive Justice goes beyond the insistence of rights-based justice.

## Methodology

This study is a qualitative research that criticises the lack of access to legal and safe abortion as part of women's sexual and reproductive health rights in Indonesia. The study gathered data and information through focus group discussions involving 20 participants. All representatives of civil society organisations (CSOs) involved in the data collection were purposively selected so that they would not provide a universal picture of the abortion issue but rather a specific picture based on the area of advocacy, the group being advocated for, and the type of advocacy (Boang Manalu & Aprilia 2022).

In her article on feminist research based on open-ended interviews, Ann Oakley (1981) shares a feminist interviewing method that she developed from her experience in the field. She built relationships with the interviewees by establishing closeness, for example by responding to personal questions from the interviewees. According to her, the role of the interviewer in this approach is as a data collection tool for those whose lives are being researched. In line with this idea, this research also places the interviewees as the owners of knowledge about abortion in Indonesia.

All resource persons are representatives of various CSOs that operate and/or work across sectors, but with a focus on gender justice advocacy. All respondents are women activists, who have advocated for SRHR issues for women. In addition to FGDs, this research also collected data through Google Forms. The FGD process was conducted in March 2023. The reason for choosing women activists as resource persons is because this research adheres to a reproductive justice framework which is based on an intersectionality lens with feminist praxis as its basis. SRHR activists are the change agents most involved in the social transformation process because they are involved and move with the communities they assist. Referring to this framework, various types of social justice, including reproductive justice, are only possible if we strive for rights-based justice while being sensitive to the concrete contexts and situations in different communities (Ross 2017; Gomez et al. 2020). As with other intersectional approaches, grassroots activism is a force and a site of knowledge that needs to be articulated and considered in promoting change at the level of praxis and policy.

This research articulates and reflects on the issue of abortion in Indonesia within the framework of reproductive justice, based on the work experiences of women activists. For reasons of code of ethics and the safety of the advocacy work of the women activists involved in this research, the quotations of the interviewees' experiences will be written in the form of initials.

Through focus group discussions, this research uses the experiences of 20 resource persons who are SRHR activists as a knowledge base. Therefore, the findings of this research are not intended to provide a complete and general picture of the situation of abortion in Indonesia. Rather, this research provides a specific picture of the work and experiences of SRHR's advocacy related to unintended pregnancy and abortion in a number of communities. Based on an intersectional lens, gender, age, geography, disability, and economy are highlighted.

### **The Concept of Reproductive Justice: Intersectional Feminist Praxis**

In this section, the authors will explain the idea of reproductive justice as a foundation in pushing for the decriminalisation of abortion in Indonesia. In the context of reproductive justice, abortion is one of the main issues because advocacy against abortion involves multiple layers of oppression. Reproductive justice is an effort to uphold reproductive rights alongside social justice (Ross

2017, p. 218). Reproductive justice is intertwined with human rights, namely the right to have children by choice; the right not to have children through contraception, abortion, and abstinence; and finally the right to raise children in an environment that is safe, healthy, and free from violence perpetrated by individuals or the state.

Reproductive justice recognises that reproductive oppression occurs at local, state, regional and global levels. To achieve reproductive justice, reproductive health issues related to health services, reproductive rights focusing on policy issues, and reproductive justice focusing on movements and social justice need to be practised simultaneously (Ross & Sister Song 2006). Whereas reproductive rights struggles tend to focus on pressing for the fulfilment of women's individual rights, reproductive justice moves towards inclusive conversations that encompass the lives of women, families, and communities.

The reproductive justice framework also underlines the responsibility of the state in ensuring women's human rights. Reproductive justice relates to civil, political, economic, social, environmental, developmental, and sexual rights. The reproductive justice framework is universal, that it applies to all human beings based on rights. The intersectionality lens then complements it to understand that in the midst of these equal rights, there are different experiences, situations, conditions, and needs based on individual and group identities. In short, it can be said that the lens of intersectionality is the means and the fulfilment of human rights is the purpose (Ross 2017, p. 293).

Reproductive justice understands that decisions regarding childbearing and parenting are often made under conditions of systemic inequality that are unfavourable to women. Furthermore, as Foucault (1979) argues, bodies are subjected to discipline in order to produce compliant bodies. In the context of abortion, women's bodies are controlled, normalised, and regulated using laws that criminalise abortion. Women's bodies are subjected to surveillance in order to conform to a community's accepted morality, beliefs, and episteme. While global policies and conferences have urged respect for the authority and freedom of women's bodies, many countries, including Indonesia, continue to criminalise abortion in order to uphold morality and cultural values and beliefs even though it is evident that it has dehumanised and even ended women's lives. In addition to examining issues of gender inequality, the intersectionality lens in the reproductive justice framework also examines the intersections of

age, geography, economy, disability, sexual orientation, local political situation, marital status, and country. All of these will affect whether one can access health services and legal guarantees for sexual and reproductive needs (Baddoe 2021; Gomez 2020; Ross 2017; Luna & Luker 2013).

According to Ross, reproductive justice has criteria to show the dynamics of oppression against vulnerable groups, including:

1. The issue of abortion must be seen in interconnected relationships with other social situations, not just health issues;
2. The need to link the local and global contexts to find a common ground and basis for advocacy that draws on a human rights framework;
3. Look at the relationship between the choices and actions of individuals and their communities;
4. Push for state responsibility;
5. Commit to individual and community transformation efforts that lead to a shift in power;
6. Understand that political power, participation of affected people, and policy change are needed to achieve reproductive justice;
7. Intersectionality influences theory, strategy, as well as social praxis; and
8. Reproductive justice must apply to everyone.

The idea of reproductive justice was born as a reflection and response to the inadequacy of SRHR struggles that have focused on one lens only. If we look at the history of the reproductive justice movement in America, for example, the early movement focused on access to contraceptive without pushing for the legalisation of abortion. The second wave focused on a pro-choice framework that urged the de-criminalisation of abortion. In later developments, pro-choice-based struggles were also deemed inadequate because they did not detect the multiple vulnerabilities of women in cases of contraception and forced sterilisation in vulnerable groups, such as people with HIV, disabilities, immigrants, and others (Ross 2017, p. 302). In short, with a reproductive justice framework we can fight for human rights-based reproductive justice by providing space and recognition for different experiences of inequality to be present and responded to by society, the state, and the world.

The authors believe that the reproductive justice framework is important to be used in SRHR advocacy in Indonesia. With this framework, advocacy for women's

sexual and reproductive rights can be more inclusive, holistic, and comprehensive. When looking at a number of research and literature related to abortion in Indonesia, studies have tended to focus on one approach, such as the legal or health approach. In contrast to this approach, this research framework allows for a critical look at how each of these aspects - community, culture, health services, and policy - operates in an interlocking system that produces reproductive inequality for women in Indonesia, particularly on the issue of abortion.

### **The Criminalisation of Abortion for Women: Reflections on the Advocacy Experience of SRHR Activists**

Article 75(1) of Law No. 36/2009 on Health states that "every person is prohibited from performing abortion". Although the criminalisation of abortion is exempted under two conditions, medical indications and rape, the idea of prohibiting or criminalising abortion is the main message set out in the policy. The state determines how a woman's body is organised and treated, not for the sake of her interests as a citizen or to ensure her humanity (Burry et al. 2022), but for the sake of moral, cultural, and religious enforcement - particularly in response to pregnancy outside marriage. The criminalisation of abortion is a form of punishment for women's sexuality, without considering how criminalising abortion leads to the destruction of women's lives and even death. Criminalisation is meant to discipline, deter, and stop recurrence.

The abortion law has been tightened even for victims of rape and medical indications. Previously, under the old Penal Code, abortion in these two circumstances was only permitted up to 6 weeks gestation whereas pregnancies were often undetectable and/or the process of proving rape took longer than that. This law, as experienced by all the SRHR activists in this study, proved to nullify all legal abortion rights even for rape victims (FGD 2023, 7 March).

Ironically, the laws regulating abortion in Indonesia, including the Health Law, Penal Code, and Government Regulation on reproductive health (*PP Kespro*), fail to accommodate the need for abortion outside the categories they regulate. Based on trends observed by PKBI over the past 10 years, the majority of women seeking information about safe abortion are married (VOA 2022; Gina 2019). 87% of women who seek safe abortion are married. According to Sarsanto in Gina (2019), married women can access safe abortion when they experience an unintended pregnancy due to abortion failure, children being too close in age, having

enough children, and economic reasons. However, the case is different if the unmarried woman experiences an unintended pregnancy, especially if she is a teenager and comes from a remote area. Even if the unintended pregnancy is due to rape (including in cases of relationship violence), deception, and other reasons that are unfavourable to women, safe abortion services tend to be very difficult to access. In the intersection of gender identity, age, and location, adolescent women who experience unintended pregnancy face the problems of dropping out of school due to expulsion, being married off to the perpetrator, or if they access abortion, they are vulnerable to criminalisation (Hudaya in Gina 2017). This shows that restricting access to abortion is not simply a matter of restricting the body but is linked to a range of other interlocking oppressions. Criminalisation of abortion simultaneously nullifies a woman's right to bodily autonomy, right to family, right to privacy, right to health, and right to life.

"The victim is still in junior high school. In the village, children's voices are not considered in the decision-making; parents are still the main decision-makers. So, in the name of norms, morals, religion, and so on, the pregnancy continued. There was also one case where the victim wanted to have an abortion, at that time the pregnancy was still in the early stages and not yet six weeks, but in reality, it was difficult (to do) because she (the girl) had difficulty discussing with the health centre and such. In the end, cases of unintended pregnancy in rural areas lead to continued pregnancy and childbirth... Unplanned pregnancies and the absence of abortions lead to school dropouts... Policy-wise, there is no prohibition for pregnant children to stay in school, but social sanctions from the neighbourhood, peers, and teachers are often experienced.... There was one case where she (a girl with an unintended pregnancy) continued to go to school, but at school the teacher teased her. There is no regulation that prohibits it, but the impact is great as it can lead to a female student proven to be pregnant dropping out of school" (Activist A 2023, FGD 7 March).

Criminalisation of abortion is not the only challenge to the fulfilment of women's sexual and reproductive health rights in Indonesia, but it has major implications for unsafe abortion. Abortion in Indonesia is characterised by 1) unsafe and illegal abortion, 2) safe and illegal abortion, and 3) safe and legal abortion. According to the WHO (2019) and UNHCR (2020), in countries that criminalise abortion, the death rate from unsafe abortion is high. Countries with restrictive abortion policies have higher unsafe abortion rates than countries with less restrictive abortion policies.

The criminalisation of abortion is closely linked to women's deprivation of access to health care. Women

from poorer economies will seek abortions outside the health system, even if they are unsafe (Gomez et al. 2020, p. 5). They will look online for abortion drugs or abortion practices that lack competence and safety. The goal is to make abortion affordable, avoid stigma and community alienation, and most importantly, avoid the criminalisation of abortion.

"We recently assisted an abortion case, which was performed by an adult woman. The case was unintended pregnancy due to sexual exploitation by her boyfriend. Due to lack of information about safe abortion, the victim almost lost her life; she took drugs on her own based on Twitter searches. The drugs were not safe and were not prescribed by a health worker. The victim had an abortion without medical supervision. She took the drugs without her relatives or family knowing. When she was brought to the hospital, she was already bleeding heavily. Her neighbours thought she had a stomach-ache, so they took her to the nearest hospital. It was only at the hospital that it was discovered that she was bleeding due to taking unsafe abortion drugs. Finally, the hospital reported the unsafe abortion to the police" (Activist B 2023, FGD 7 March).

The disadvantages of the woman above are multiple. Not only did she almost die from an unsafe abortion, but she was also criminalised and exposed to hospital debts that she could not afford. Reproductive health services should be guaranteed in the health system. Unfortunately, this goal is far from being achieved as decriminalisation of abortion in Indonesia has not yet been achieved. At the same time, irresponsible illicit businesses have grown, such as incompetent medical and non-medical personnel providing abortion services, the circulation of counterfeit abortion drugs, and unclear abortion prices and tariffs.

The lens of intersectionality in SRHR justice is not intended to show who is more vulnerable in terms of SRHR fulfilment, but to expand our capacity to examine issues in relation to women's plural situations (Crenshaw 1989; Ross 2017; Gomez 2022). With this lens, we can understand more clearly that under restrictive abortion laws there are still opportunities to access safe abortion. Although Indonesian law prohibits abortion, there is privilege for those who experience unintended pregnancy in marriage, have money, are highly educated, have access to good information, and live in big cities with better health services. Although they are also vulnerable to criminalisation, access to safe abortion is more likely. But not for those in more vulnerable circumstances.

"Safe abortion is very difficult to access because of the victim's lack of understanding, medical services are very far away, especially if they live in isolated and remote areas. Some rape victims who are pregnant here could not

access reproductive health services for pregnancy checks. *Puskesmas* is far away and must be reached by walking approximately 15 km” (Activist C, 2023 FGD 7 March).

Based on the findings of this research, abortion exceptions are merely written into policy without any real implementation. This is evidenced by the experiences of a number of SRHR activists, who witnessed and assisted

rape victims who were still unable to access legal and safe abortion services. This is even more the case when the lens is directed at the rural-urban divide. The chances of safe and legal abortion being available in situations of rape and medical indications are small, and the situation is even worse for cases of unintended pregnancy outside of these two situations.

**Table 1. The Criminalisation of Abortion and the Situation of Women with Unintended Pregnancy**

Field Findings
1. Children who experience an unintended pregnancy are forced to continue the pregnancy and are made to drop out of school.
2. Women with disabilities experience multiple vulnerabilities when faced with unintended pregnancy and abortion restrictions.
3. Criminalisation of abortion encourages women with unintended pregnancies to access unsafe abortion.
4. The situation of health services in the community, especially in remote areas, is not in line with what is mandated by the health policy governing abortion.
5. Legal abortion is almost impossible to access, but safe abortion is accessible to privileged women.

Source: Processed by the author based on FGD data 2023

The criminalisation of abortion has had a major impact on unsafe abortion. Outside of situations of rape and medical indications, legal abortion is impossible. However, safe abortion is accessible in Indonesia, although those who can access it are women who are at least more privileged than the most vulnerable ones. Another important issue is that safe abortion is not necessarily safe from criminalisation.

**Value Bias Undermines the Authority of Women’s Bodies and Choices**

Safe and legal abortion is a human right. The UNHCR (2020) points out the problems that occur when states do not ensure access to abortion for women, including inhumane treatment and torture during the abortion process. In Indonesia, although there are exceptions in two circumstances, all FGD participants (2023) found in their work that legal and safe abortion cannot be provided to women in need, even if they are victims of rape.

“Last year’s case before Ramadan - an 11-year-old girl impregnated by her teacher. This was reported to the police, the perpetrator was arrested, and it was then discovered that the victim was pregnant, so she sought services. The *UPPA* has tried to find services for safe abortion. It was Ramadan and even until Eid the victim did not receive any services. Services were unavailable and they did not know where to go, so the pregnancy continued. Another case in the same year – a disabled teenage victim was raped and became pregnant. The case was reported to the police and

investigated. The doctor’s examination showed that the pregnancy was healthy, so she could not get access to safe abortion. This was not handled well. Not to mention those from districts and far away” (Activist D 2023, FGD 7 March).

This shows how the state is failing to fulfil women’s constitutional rights as stipulated in Article 77 of the Health Law on the state’s responsibility to protect women from poor quality, unsafe, and irresponsible abortion. In fact, institutions and medical personnel often refuse to provide safe abortion services based on their personal values.

The reproductive justice framework suggests that individual choices and community choices are in a situation of mutual influence (Ross 2017, p. 301). Where individuals are vulnerable and marginalised, community choices often have more power than that of individual. The abortion policy is far from satisfactory, but at the very least, it should legally and formally provide safe and legal abortion opportunities for rape victims. It is unfortunate that these policies are often subordinated to institutional and personal biases.

“In one case we assisted, even though she was raped and the gestational age was still eligible for abortion, but because the examination said the pregnancy was healthy, the service (abortion) was not provided. It also depends on the values held by the health worker. It may be because of fear or values, but the recommendation is to continue the pregnancy because the womb is said to be healthy” (Activist H 2023, FGD 7 March).

In reality, even though rape victims are not criminalised and have the right to safe abortion, institutional practices and personal actions often prevent women from accessing their abortion rights.

“In the field, P2TP2A officers are often found to be passive and even avoid to provide safe abortion with the argument that “children” must be protected from the age of 0 or in the womb. Whereas the victim herself was a 12-year-old child, who only had her period 3 times. What we were told was that the personal view of the officer was supportive, but there was no guarantee from the institution. The institution does not want to participate (in abortion). Another institution is the police. In cases of unintended pregnancy due to rape or other forms of sexual violence, the police often intervene with the victim and her family encouraging them to continue with the pregnancy and threaten to criminalise anyone who helps the victim. In our experience, abortion is still not allowed even if the pregnancy is only 4 weeks old, as the law states that it cannot exceed 6 weeks. Another biased view we experienced was a statement from a doctor at the hospital stating that if the rape victim we assisted wanted to continue the pregnancy, the baby would grow up to be a healthy child” (Activist K 2023, FGD 7 March).

The feminist framework suggests that women should be guaranteed authority and choice over their bodies (Goldman 1890; Thomson 1971; Jaggar 1994; McKinnon 1994). However, cultural values are often suspicious and assume that women’s choices are invalid, unaccountable, and morally weak, so decisions are often made by other individuals or communities who are considered to have more capacity and authority. In this case, this is done without further examining the adverse effects on the woman of having to continue with an unwanted pregnancy. Based on knowledge from the field, the decision of the parties involved overrides or even negates the issues of justice and redress on the basis of personal values based on morality and religion. Activist

J (2023) also expressed her concern when anti-abortion parties even brought the human rights and children’s rights approach (from the womb) to justify the forced pregnancy for women who experienced unintended pregnancy.

In fact, if we refer to the human rights discourse, rights are given to humans who have been born. Another problem with the anti-abortion argument above is that the human rights of the foetus are more important than the human rights of the woman who carries it. The reference to the foetus as a child or a human being gives the discussion of abortion as murder a convincing basis. In their critique, Thomson (1971) & Ross (2017) state that in patriarchal societies, the foetus even has privilege compared to women. Forcing a rape victim to continue her pregnancy ignores her suffering, safety, right to care and recovery, and right to life. Health workers hastily cut off rape victims’ access to legal and safe abortion without checking the facts on the ground that forced continuation threatens the safety and wellbeing of the victim.

“Psychologically, it must be very hard for victims of rape with unwanted pregnancies, and it must affect their mental health. Even if the victims have to perform an abortion according to the rules, is the abortion safe?” (Activist Z 2023, FGD 7 March).

In cases of unplanned pregnancy, women may experience pregnancy complications, such as anaemia, and be at risk of various diseases that affect their physical and mental health (Jalali et al., 2019). However, the reality on the ground shows that the medical indications in question only target the physical safety of the foetus, without considering the safety and well-being of the woman carrying it.

**Table 2: Challenges to fulfilling women’s authority & choice to have abortion in an unintended pregnancy situation**

Field Findings
1. The personal views of parties involved, such as the UPPTD, police, and medical staff who are anti-abortion, are used as an excuse to force the continuation of the pregnancy.
2. The victim is proven to be raped and eligible for abortion, but the unavailability of health services in remote areas means that the pregnancy must continue.
3. Health workers’ (personal) views are supportive, but there is no institutional guarantee against criminalisation so they do not want to risk providing services.
4. The personal views of social workers, health workers, and the police in making decisions are not based on the best consideration for the victim but for the pregnancy.
5. The notion that the unborn child must be protected is one of the reasons why abortion services are not provided to rape victims, even though the victim is also a child.

Source: Processed by the author based on FGD data 2023

The biased perspectives and decisions of the community, both the family and the relevant agencies, are a form of violation of women’s human rights. In the activism work carried out by the research participants, although legally and formally the right to abortion for rape victims is guaranteed by the state, the understanding of officials and institutions that does not refer to the law but to values and opinions makes them act according to values and not based on the role of the state. Referrals and safe abortion services mandated by human rights, international conventions, and even the law are difficult for these agencies to provide (Winter et al. 2016). The idea of reproductive justice, according to Ross (2017), is related to the interconnectedness of individual and community choices, as well as the state’s commitment to guaranteeing the constitutional rights of violated female citizens.

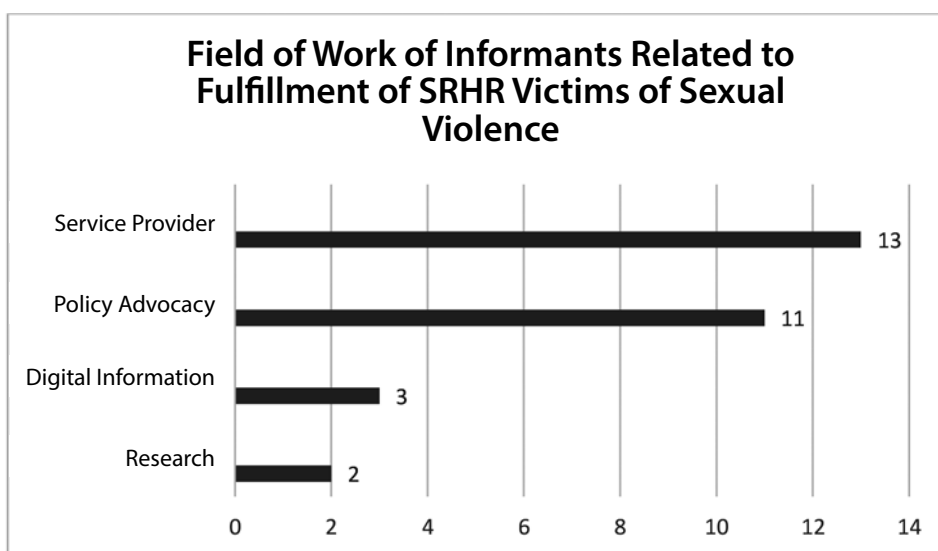
In terms of reproductive justice, the situation above shows that oppression of women’s sexuality and reproduction does not only occur at the legal level. The right to abortion in cases of rape shows that policy alone is clearly not enough. Transformative efforts are needed that touch on changes in the practices of individual and institutional stakeholders, as well as at the community level. Relevant institutions need to be socialised and trained to develop an understanding of reproductive justice. Parties, such as *UPPTD*, police, and medical

officers need to understand women’s legal rights as well as respect for the authority of women’s bodies and choices.

**Feminist Praxis: Activism Work to Bring Reproductive Justice to the Vulnerable**

Like other social justice work, reproductive justice is grounded in feminism, which believes that feminist theory or knowledge should lead to social transformation for the better. In the context of feminism, unequal social situations are examined using a feminist lens. Feminist praxis is a reflection on the world using a gender lens and changing it (Hooks 1990; Boang Manalu 2022). The women’s SRHR activism involved in this research is agency. Their knowledge and work bridge global gender justice ideals, bringing them into national, as well as local, contexts.

The following chart shows how feminist activists work to build reproductive justice in favour of legal and safe abortion. As mentioned earlier, abortion is not the only issue, it is arguably the last frontier of the issue. Therefore, activists have strategies ranging from responding to and changing stigma in the community through socialisation, becoming a bridge of information, advocating for policies at the national level, as well as reflecting and synergising the global reproductive justice agenda at the local level.



**Figure 1: SRHR activism work**

Source: FGD 7 March 2023

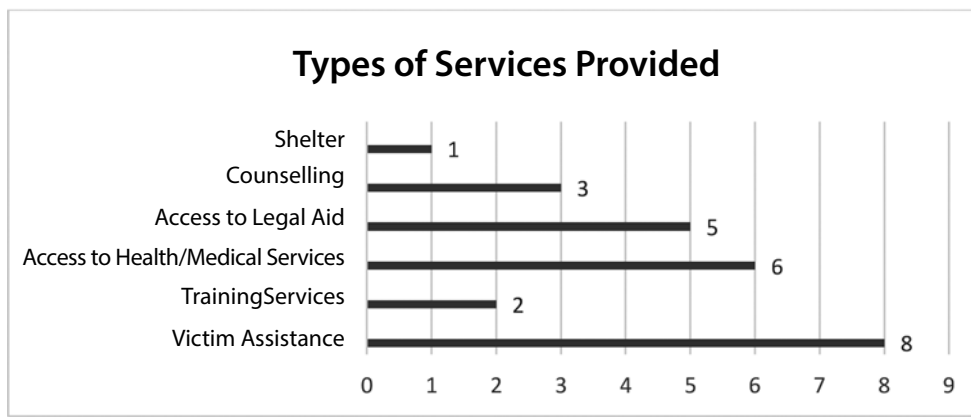


Figure 2. Types of services

Source: FGD 7 March 2023

Feminist praxis for reproductive justice is demonstrated through their capacity to strategise, to negotiate, and to be resilient amidst situations that marginalise women and produce reproductive injustice. Their work is important because it can read the specificity of the context and different situations of each community. The rights-based advocacy framework of SRHR is an important guide for the reproductive justice movement, but it is alone is not enough. A rights-based justice framework sees that everyone shares the same humanity without further recognising the very plural concrete situations and conditions based on the intersection of different identities. Grassroots activists are the ones who then intersect, participate directly, and know the obstacles and how to respond to them through solidarity actions.

“We collaborated with the village midwives in responding to the unintended pregnancies of victims of violence in dating. The village midwives are part of the community that we have been involved in community discussions and in advocating for the elimination of violence against women. Usually, they are included in the Community Based Services (*Layanan Berbasis Komunitas, LBK*) for handling violence against women. The midwives have always been our target to be included in the LBK. Apart from midwives, we also involved the village head, *dusun* head, and *PKK*. Why do we use this strategy? Because our situation is very far from access (to health services); we are far from the *UPTD*, so it is important that the local community can overcome it through their capacity and resources” (Activist M 2023, FGD 7 March).

What M’s activist experience highlights is that despite legal and health service limitations, activists are still making efforts to provide safe abortions. This kind of “underground” movement has become one form of feminist practice in fighting for SRHR in the midst of

restrictive legal situations. For example, the illegal but safe abortion services provided by the Jane Collective in the United States before the decision of the *Roe vs. Wade* trial (Kaplan, 2019). Similarly, feminist activists in Latin American countries such as Argentina, Chile, and Ecuador have developed safe abortion advocacy practices, as reviewed by Bercu et al. (2022).

All activists involved in the FGDs stated that the negative stigma attached to abortion contributes to barriers. Especially at the village level, just mentioning the word abortion is a challenge (FGD 2023). However, through consistent socialisation and engagement, activists have built a shift in awareness and practice at the community level. There are health workers at the village level who are open and responsive to the fulfilment of the SRHR of women victims of sexual violence, for example through the provision of emergency contraception.

Another important work of SRHR activism is to use the lens of intersectionality to recognise barriers for vulnerable groups. Not just because of gender, but age and physical conditions, for example, require special responses to achieve reproductive justice.

“For example, our organisation has entered into an MoU with the Indonesian National Police regarding “Accessibility of police services for persons with disabilities”, and then there is a cooperation agreement with *Bareskrim Polri* regarding “Accessibility of legal services and provision of proper accommodation for persons with disabilities”. Since these two agreements have been in place, the police usually send referrals to our organisation to assist in disability cases, from reporting, investigation, BAP, to the judicial process” (Activist T 2023, FGD 7 March).

This praxis was built because activists know very well that there are many women with disabilities who

experience sexual violence that leads to unintended pregnancies, but their rights and needs are not properly accommodated. Various agencies that work around SRHR issues without a gender and disability perspective often ignore the SRHR needs of victims such as legal and safe abortion. Even third parties often make decisions without considering the victim's concerns or voice.

Knowledge based on participation in the field carried out by activists is then used as a basis for including the voices of vulnerable groups to be fought for at the policy level. A number of issues are taken into consideration to push for policies or their implementation to fulfil women's reproductive justice. Making experiences in the field as the basis for demands for policy change is a real part of reproductive justice work, which includes the voices and interests of those most affected by various practices of reproductive oppression and the perpetuation of systemic inequality (Paphitis 2018; Gomez et al. 2020), such as abortion advocacy experience for adolescents, people with disabilities, rural women, and other communities. Feminist activists have built knowledge with the assisted people and communities, producing scientific records (whether it is research, field notes, and various reports) through participatory work. The real issues of reproductive injustice are articulated and used as the basis for advocacy to push for reproductive justice at the national level.

Looking at the New Penal Code, for example, the collaborative work of activists recognised that the abortion provision, which is limited to 6 weeks gestation, was inadequate and has now been changed to 14 weeks. This is an important achievement for change at the policy level, although of course there are still many shortcomings and loopholes in the law regarding abortion.

Based on collaborative work, the TPKS Law is present and provides an opportunity to bring women closer to accessing the fulfilment of SRHR. All SRHR activists through their work experience see that the need for legal and safe abortion regulated in the current policy is very narrow and ignores the fact that there are many victims of sexual violence who need comprehensive abortion services. The existence of this law is both an achievement and a good opportunity for gender justice fighters, especially SRHR issues, to fulfil the rights of victims of sexual violence, including comprehensive abortion. This right is regulated in the fulfilment of victims' rights. Chapter V of Article 66 of the TPKS Law states that (1) Victims are entitled to handling, protection, and recovery since the occurrence of sexual violence crime. In more detail, Article 67 Paragraph (1) of the TPKS Law states that

the rights of sexual violence victims include: (e). the right to health services including medical examination, action, and treatment; (f). the right to services and facilities in accordance with the special needs of victims.

Although activists still cannot see the effectiveness of this Law, they show optimism and are involved in the socialisation work related to the existence of a legal basis that guarantees the fulfilment of safe abortion for sexual violence victims.

"Opportunities yes, we remain optimistic, but actually at the same time also as friends said, there is no direct appointment and this is the challenge. What we know is that the Ministry of Health already has a guideline but does not want to socialise it. So, there is still a long struggle" (Activist X 2023, FGD 7 March).

Based on focus group discussions with SRHR activists, it is known that the state already has a number of policies related to abortion and the fulfilment of women's SRHR. However, the problems faced since more than 20 years ago remain the same, namely policies that are not followed up with socialisation to related agencies, such as the police, medical institutions; technical guidelines; appointment of parties who perform abortions; evaluation, and so on. The lack of clarity in implementation has led to confusion among medical institutions, counsellors, and institutions close to the issue. In the experience of activism, the absence of derivative regulations has a direct impact on the lack of or reluctance of medical staff to provide this service, either due to fear of being penalised and/or because there are no rules that clearly outline obligations, opening up opportunities for staff to avoid providing safe abortion services. Policies that allow legal and safe abortion for rape victims are not enough. Based on the advocacy experience of activists, the lack of designation of those who can perform abortions and the absence of technical implementation guidelines make the policy ineffective and unimplementable.

Another part of SRHR's activism work is involvement in advocacy at the national, regional and global levels by providing input on safe abortion services in the universal periodic review (UPR) report. SRHR activists conduct dialogue with various stakeholders to push for the protection and recovery of victims of sexual violence and the fulfilment of their social rights. Feminist praxis here is interpreted as contextualising the idea of reproductive justice and various struggles based on the fulfilment of SRHR in the national and local contexts.

In the feminist praxis carried out by SRHR activists, as Ross (2017) said, feminist activism practices solidarity

at the grassroots, building strength with communities and other social work networks. They collectively also become watchdogs and pressure the state to carry out its responsibilities ranging from improving policies that accommodate women's reproductive justice to engaging in efforts to transform individuals, communities, and policies. Their work also directly and indirectly ensures the participation of affected groups through reports, research, articulation of experiences, and various forms of socialisation.

Feminist activism in this case has a very important impact because they are involved in different communities and situations, strategising and networking to push for reproductive justice that refers to the ideals of global reproductive justice. In fact, their work has many challenges, such as the criminalisation of SRHR socialisation and education, which is often accused of promoting abortion.

### Closing

Based on reflections on the advocacy experiences of women's SRHR activists using a reproductive justice approach, this study identified a number of challenges to the provision of safe abortion, namely:

First, the criminalisation of abortion is a major challenge to the provision of women's SRHR. Restrictive laws against abortion do not prevent or suppress abortion, but instead contribute to the widespread practice of unsafe abortion.

Secondly, in Indonesia, in addition to the criminalisation of abortion, health facilities are far from adequate in rural areas. Even if women victims of rape receive information or referrals for abortion, health facilities are very far from their place. Lack of access and economic limitations prevent women from accessing safe abortion. The reproductive justice framework shows the link between formal legal access and health facilities to women's sexual and reproductive oppression.

Third, the policies and actions of individuals and health institutions often fall short of what is mandated due to the influence of individual or institutional bias when it comes to providing access to safe abortion. This is exacerbated by the lack of technical guidance and evaluation of policy implementation in the field, leading individuals and institutions closely involved with abortion service delivery to evade and shift responsibility.

Finally, the work of reproductive justice activists is not easy, and they are often threatened with criminalisation.

However, this work continues and is resilient through networking and solidarity work. Providing access to safe abortion based on networks is a feminist praxis in fulfilling SRHR in the context of restrictive legal situations. It is the work of feminist activists that ensures the involvement and voice of the experiences of the most vulnerable and affected groups from SRHR-related policies and programmes that are blind to different situations and needs. It is also activism that bridges the idea of rights-based reproductive justice with policy advocacy at the national level and contextualises it at the community level.

This research reflects that the main problem that has implications for other causes is the criminalisation of abortion. The criminalisation of abortion is closely linked to the exclusion of women from health services and the accessibility of unsafe abortion services. Criminalisation of abortion has also contributed to the refusal to provide safe abortion services even to rape victims. The abortion policies stipulated in the Penal Code; Law No. 36 of 2009 on Health; Government Regulation No. 61 of 2014 on Reproductive Health are inadequate as legal regulations to produce reproductive justice for women. The lack of socialisation, derivative regulations, and appointment of authorities ultimately eliminates the possibility of legal and safe abortion even for the two categories that the laws regulate. Furthermore, based on the intersectionality lens, women who experience unintended pregnancy outside of the above conditions are in a more vulnerable condition, such as those faced by adolescents, people with disabilities, rural areas, poor economies, and so on.

Based on the framework of reproductive justice, the fulfilment of reproductive rights must be guaranteed by the state by eliminating discriminatory policies, including restrictive policies and criminalising abortion because they are contrary to the fulfilment of human rights. Secondly, policy goes hand in hand with how health services are provided. Although policies regulate and mandate safe abortion (which is limited to rape victims and medical indications), the reality is that this right is not accessible due to the lack of abortion information, health facilities, and the high cost of safe abortion. Ultimately, even if a woman who has experienced an unplanned pregnancy due to rape is legally eligible for an abortion, she still fails to access a legal and safe abortion. Safe abortion can be accessed even if it is not legal, but only for those who are privileged in terms of marital status, economy, geographical location, age, and physical non-disability. This is where it is important to ensure that the lens of intersectionality is recognised

by social, medical, police, and policy makers in order to respond appropriately to the problem. This means that in addition to the legal aspect, the socio-cultural aspect as another challenge to access reproductive justice must also be unravelled. One example is the negative stigma of abortion that SRHR activists recognise and respond to. Reproductive justice understands that even if there are laws that support or at least enable legal and safe abortion, when the perceptions and practices of families, communities, and institutions are not transformed, these opportunities cannot be accessed. As a good example, SRHR activists have engaged and built the involvement of local midwives, village heads, and built MoUs with the police to ensure better practices for vulnerable groups.

In Indonesia, the process of decriminalising abortion is necessary to bring women closer to reproductive justice. This can be done by first following up on existing regulations related to abortion in cases of medical indications and rape. The government must carry out its responsibility to make derivative regulations, institutional designations, and procedures so that all parties understand their role in providing access to abortion. This cannot be done without involving CSOs who have been fighting for this. Based on the findings in the field, it is also understood that training for police and health workers is essential so that they do not fail in their roles. Advocacy to decriminalise safe abortion across the board also needs to continue so that services are not limited to these cases.

Reproductive justice is the full fulfilment of the physical, mental, spiritual, political, economic and welfare rights of women and girls based on the fulfilment and guarantee of women's human rights. Abortion as a response to unintended pregnancy in reproductive justice is actually the last resort. Reproductive justice also means opening and providing access to easy and correct information related to SRHR in the form of education and socialisation, including open and inclusive services and access to contraceptive, and comprehensive abortion services. Reproductive injustice for women occurs due to various interlocking structures of inequality in society. Thus, transformation of rights-based and legal enforcement is needed, not only at the agency level but also at the community level. The concept of reproductive justice is not intended to replace advocacy frameworks based on the insistence on the provision of health services and legal advocacy, but rather amplify both in the lens of intersectionality.

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