



Copyright © 2024 by the authors. This article is published as an open access article under the terms and conditions of the Creative Commons Attribution 4.0 International License (CC BY 4.0). License URL: <https://creativecommons.org/licenses/by/4.0/>

Problematics of Legal Provisions of Article 31 Paragraph (2) of Government Regulation Number 61 of 2014 Concerning Reproductive Health

Problematika Ketentuan Hukum pasal 31 Ayat (2) Peraturan Pemerintah nomor 61 Tahun 2014 Tentang Kesehatan Reproduksi

Imam Arif Zamani¹

<i>Received:</i> 11-11-2024	<i>Reviewed:</i> 01-12-2024; 11-01-2025	<i>Accepted:</i> 11-01-2025	<i>Published:</i> 22-01-2025
<p>How to cite (in Chicago Manual of Style 17 Ed.): Imam Arif Zamani "Problematics of Legal Provisions of Article 31 Paragraph (2) of Government Regulation Number 61 of 2014 concerning Reproductive Health." <i>Peradaban Hukum Nusantara</i> Volume 1, No 2 (03, December, 2024): 1-15, https://doi.org/10.62193/rasq5879</p>			

Abstrak

Aborsi akibat perkosaan merupakan isu yang kompleks karena melibatkan aspek hukum, moral, dan agama. Pemerintah Indonesia, melalui Peraturan Pemerintah Nomor 61 Tahun 2014 tentang Kesehatan Reproduksi, memberikan hak kepada korban perkosaan untuk melakukan aborsi dengan batas waktu 40 hari setelah kejadian. Penelitian ini bertujuan untuk menganalisis batas waktu tersebut dalam perspektif hukum nasional dan hukum Islam serta merekomendasikan perbaikan kebijakan. Metode yang digunakan adalah pendekatan teoritis dengan analisis konseptual terhadap peraturan nasional dan pandangan fuqaha dari berbagai mazhab. Temuan penelitian menunjukkan bahwa batas waktu 40 hari dianggap terlalu singkat untuk korban perkosaan, sementara batas 120 hari dalam hukum Islam lebih relevan karena mempertimbangkan perkembangan janin dan aspek keadilan bagi korban. Selain itu, penelitian menemukan perlunya kejelasan dalam mekanisme penentuan status korban perkosaan, yang disarankan melibatkan Kepolisian dan Tim Kedokteran Forensik. Hasil dari kesimpulan secara singkat dari Penelitian ini perlu adanya rekomendasi revisi terhadap Peraturan Pemerintah Nomor 61 Tahun 2014, khususnya terkait tenggang waktu aborsi dan prosedur penentuan status korban, untuk menjamin keadilan dan kejelasan hukum.

Kata kunci: *Aborsi; Pemerkosaan; Tindak Kejahatan Seksual*

Abstract

Abortion due to rape is a complex issue involving legal, moral and religious aspects. The Indonesian government, through Government Regulation No. 61/2014 on Reproductive Health, gives rape victims the right to an abortion within 40 days of the incident. This

¹ Faculty of Law, Trunojoyo Madura University, Indonesia, Email: imamarifzamani44@gmail.com

study aims to analyze the time limit from the perspective of national law and Islamic law and recommend policy improvements. The method used is a theoretical approach with conceptual analysis of national regulations and the views of fuqaha from various madhhabs. The research findings show that the 40-day time limit is considered too short for rape victims, while the 120-day limit in Islamic law is more relevant because it considers fetal development and aspects of justice for victims. In addition, the research found the need for clarity in the mechanism of determining the status of rape victims, which is suggested to involve the Police and the Forensic Medicine Team. As a result of the brief conclusion of this research, it is necessary to recommend revisions to Government Regulation No. 61/2014, especially regarding the abortion grace period and the procedure for determining the status of victims, to ensure justice and legal clarity.

Keywords: Abortion; Rape; Sexual Offenses

Introduction

Legal and social issues related to pregnancy due to rape are one of the important issues in reproductive health law in Indonesia. Article 31 Paragraph (2) of Government Regulation No. 61/2014 provides space for rape victims to have a legal abortion with a maximum gestational age limit of 40 days. This regulation aims to provide legal protection to victims, but in reality its implementation faces major challenges, especially in proving cases and accessing health services. According to Komnas Perempuan (2019), victims of sexual violence often experience systemic barriers, such as social stigma, patriarchal culture, and lack of legal support and responsive medical institutions.² Data shows that rape victims are often reluctant to report due to social stigma and lack of trust in the legal system.³ Komnas Perempuan noted that in 2019 there were more than 10,000 cases of sexual violence in Indonesia, with most involving rape. This shows the importance of a deeper assessment of the effectiveness of the implementation of the article.

One of the significant impacts of rape is unwanted pregnancy, which often forces the victim to have an abortion. Article 31 Paragraph (2) provides a legal exception for rape victims to have an abortion, but on the condition that the gestational age is not

² komnasperempuan.go.id, "Catatan Tahunan: Korban Bersuara, Data Bicara: Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara," Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2019, <https://komnasperempuan.go.id/catatan-tahunan-detail/lembar-fakta-dan-poin-kunci-catatan-tahunan-komnas-perempuan-tahun-2019>.

³ Linda Rae Bennett, "Single Women's Experiences of Premarital Pregnancy and Induced Abortion in Lombok, Eastern Indonesia," *Reproductive Health Matters* 9, no. 17 (Januari 2001): 42, [https://doi.org/10.1016/S0968-8080\(01\)90006-0](https://doi.org/10.1016/S0968-8080(01)90006-0).

more than 40 days from the first day of the last menstrual period.⁴ This procedure aims to maintain a balance between the protection of the victim's reproductive rights and the applicable legal norms. Research by Ristintyawati and Handitya (2022) noted that the complicated evidentiary process often discourages victims from accessing their rights, even when they qualify under the law.⁵ In addition, in practice, police authority as the sole authority to authorize abortion often slows down the process and increases trauma to victims.⁶ This suggests that the system does not fully support the holistic needs of victims.

Previous research has shown that there is a significant gap between regulation and policy implementation. Bennett (2001) highlights that victims of pregnancy resulting from rape often face social stigma⁷, while a study by Ilham, M. (2023) notes that customary laws are often out of sync with national laws, thus worsening victims' access to legal and medical services.⁸ According to Yulia, Prakarsa, and Bustami (2023), harmonization between customary law and national law is a major challenge in handling cases of sexual violence in indigenous communities.⁹ On the other hand, research by Ariyad, F., & Masyhar, A. (2020) shows the need for a strategic approach in policy implementation in order to bridge the gap between legal norms and realities on the ground.¹⁰ Thus, an evaluation of the implementation mechanism of Article 31 Paragraph (2) is urgent to ensure the sustainability of the legal protection provided.

The provision of Article 31 Paragraph (2) of Government Regulation No. 61/2014 on Reproductive Health, which sets a maximum time limit of 40 days for abortions resulting

⁴ Firda Yunita Dewi, Sieldy Aprilia Utami, dan Tama Bahtiar, "Perlindungan Hukum Terhadap Perempuan Sebagai Pelaku Aborsi Akibat Perkosaan," *JURNAL RECHTENS* 11, no. 1 (30 Juni 2022): 86, <https://doi.org/10.56013/rechtens.v11i1.1275>.

⁵ Ristintyawati dan Binov Handitya, "Tindakan Aborsi terhadap Kehamilan Akibat Perkosaan dan Kaitannya dengan Hak Asasi Manusia," *Rampai Jurnal Hukum (RJH)* 1, no. 2 (23 September 2022): 39, <https://doi.org/10.35473/rjh.v1i2.2240>.

⁶ Kate Lamb, "Indonesian Police given Sole Power to Grant Abortions for Rape Victims," *Reuters*, 2 Agustus 2024, bag. Asia Pacific, <https://www.reuters.com/world/asia-pacific/indonesian-police-given-sole-power-grant-abortion-rape-victims-2024-08-02/>.

⁷ Bennett, "Single Women's Experiences of Premarital Pregnancy and Induced Abortion in Lombok, Eastern Indonesia," 40.

⁸ Muhammad Ilham, "Revitalisasi Hukum Adat Dalam Tindak Pidana Kekerasan Rumah Tangga Di Gampong Punge Jurong Kecamatan Meuraxa Banda Aceh" (other, Banda Aceh, UIN Ar-Raniry Fakultas Syariah dan Hukum, 2023), 74, <https://repository.ar-raniry.ac.id/id/eprint/25648/>.

⁹ Rena Yulia, Aliyth Prakarsa, dan Mohammad Reevany Bustami, "Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy's Indonesia," *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 806, <https://doi.org/https://doi.org/10.15294/jils.v8i2.72283>.

¹⁰ Fikri Ariyad dan Ali Masyhar, "Abortion by Rape Victim: A Dilemma in the Draft of Penal Code and Indonesian Health Law," *Journal of Law and Legal Reform* 1, no. 4 (31 Juli 2020): 633, <https://doi.org/10.15294/jllr.v1i4.39659>.

3 | Imam Arif Zamani: Problematics of Legal Provisions of Article 31 Paragraph (2) of Government Regulation ...

from rape, poses significant legal problems. This regulation is considered insufficiently adaptive to the conditions of victims who often face psychological, social, and procedural obstacles in reporting their cases. Deep trauma and community pressure mean that many victims delay accessing medical and legal services, making the 40-day period unrealistic. In addition, the lack of clarity regarding the mechanism for determining the status of rape victims, including who is authorized to provide legal decisions, further complicates the implementation of this regulation. As a result, many victims are unable to exercise their right to a legal abortion, potentially violating their human rights and worsening their psychological condition.

The urgency of this research lies in efforts to provide better legal justice for rape victims and prevent ongoing trauma due to complicated legal procedures. The ambiguity in proving rape cases, including the narrow gestational age limit, is often a major barrier for victims to obtain their rights.¹¹ In addition, social stigma against abortion victims also worsens the situation. Research by Lestari (2020) revealed that legal protection for women victims of abortion is still limited to normative aspects, without considering the psychosocial aspects of victims.¹² Therefore, an in-depth study is needed to evaluate this regulation in order to ensure justice and legal certainty for victims.

This research aims to identify the gap between regulation and implementation of Article 31 Paragraph (2) of Government Regulation No. 61/2014, explore the legal and social challenges faced by victims, and provide more responsive policy recommendations. Using a comparative approach and case analysis, this research seeks to develop strategic solutions that support the effective implementation of the regulation, in accordance with the principles of human rights and gender justice.¹³

Method

This research uses a normative juridical approach, with the type of Normative research. Theoretical research aims to explore the basic concepts and principles of law

¹¹ Putri Widi Saraswati, "Corrigendum: Saving more lives on time: Strategic policy implementation and financial inclusion for safe abortion in Indonesia during COVID-19 and beyond," *Frontiers in Global Women's Health* 4, no. 12 (31 Januari 2023): 21, <https://doi.org/10.3389/fgwh.2023.1129026>.

¹² Rinna Dwi Lestari, "Perlindungan Hukum Perempuan Pelaku Aborsi Dari Korban Perkosaan Terhadap Ancaman Tindak Pidana Aborsi," *MAGISTRA Law Review* 1, no. 01 (30 Januari 2020): 9, <https://doi.org/10.35973/malrev.v1i01.1406>.

¹³ Arrie Budhiartie, "Legalisasi Abortus Provocatus Karena Perkosaan sebagai Implementasi Hak Asasi Perempuan (Analisis Yuridis Pasal 75 UU Nomor 36 Tahun 2009 Tentang Kesehatan)," *Jurnal Penelitian Universitas Jambi: Seri Humaniora* 13, no. 2 (2011): 65, <https://www.neliti.com/publications/43397/>.

through analysis of applicable doctrines and rules. According to Marzuki (2011), normative legal research focuses on analyzing legal documents, such as legislation, court decisions, and other legal literature.¹⁴ In this study, a theoretical approach is applied to understand the legal concepts related to Article 31 Paragraph (2) of Government Regulation No. 61/2014, which includes the provisions on the timing of abortion by rape victims and the authority of the party that determines the legal status of the perpetrator.

The approach used is a conceptual approach. This approach refers to the legal doctrines that develop, including legal views that build the basis of argumentation related to the issue of abortion for rape victims. The conceptual approach provides a framework for understanding the role of legal principles in protecting the rights of victims of sexual violence, especially in cases of abortion due to rape. In addition, a strong understanding of legal doctrine allows for an in-depth analysis of the legal protections available to victims.¹⁵

The conceptual approach in this research is used to analyze the vagueness of the abortion time limit in Article 31 Paragraph (2) of Government Regulation No. 61/2014 from the perspective of legal doctrine and the principle of justice. The concept of substantive justice becomes one of the foundations for evaluating whether the 40-day provision fulfills the principle of protecting the rights of victims, especially rape victims. This approach also includes analyzing the legal doctrines that have developed related to reproductive rights and the protection of victims of sexual violence, in order to find a more adaptive and humanist legal concept. By using this approach, the research is expected to provide legal solutions that are not only in accordance with the regulations, but also relevant to the social conditions and needs of victims.

The implementation of the conceptual approach in this research is done by exploring legal definitions, legal principles, and relevant concepts related to legal protection for rape victims who want to have an abortion.

Result and Discussion

The Inaccuracy of the Rule of Law in Article 31 Paragraph 2 of Government Regulation No. 61/2014 on Reproductive Health 61/2014 on Reproductive Health

¹⁴ Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Prenada Media, 2011), 5.

¹⁵ Eri Kusnaningsih, "Perlindungan Hukum Terhadap Korban Tindak Pidana Perkosaan Dalam Perspektif Peraturan Perundang-Undangan," *UNJA Journal of Legal Studies* 1, no. 3 (2023): 395, <https://mail.online-journal.unja.ac.id/jols/article/view/27956>.

5 | Imam Arif Zamani: *Problematics of Legal Provisions of Article 31 Paragraph (2) of Government Regulation ...*

Article 31 Paragraph (2) of Government Regulation No. 61/2014 stipulates that abortion for rape victims can only be performed within a maximum of 40 days of pregnancy. This time limit has sparked debate, especially regarding its compatibility with social reality and Islamic law. Most rape victims face social pressure, stigma, and trauma that make them reluctant or late to report their cases.

The 40-day time limit is considered too short for victims to effectively access legal and medical services, considering that the investigation process takes a long time. A more realistic approach such as extending the grace period to 120 days may provide sufficient space for humane treatment for victims.¹⁶

A. Abortion in the Perspective of the Islamic Law Grace Period

In Islam, abortion is known as *isqât al-haml* or *ijhâd*, which is the abortion of the fetus in the womb. The scholars of *fiqh* (*fuqaha*) define abortion as the abortion of a fetus, whether alive or dead, before it is able to live outside the womb, even though some of its limbs have been formed.¹⁷

The Qur'an explains the process of fetal development in several verses, such as QS. Al-Mu'minun: 12-14, which describes the stages of human creation from *nuthfah* to a perfect being. However, there are no verses that explicitly mention when a fetus is considered a full human being. This information is often referred to in Islamic legal studies to support arguments about the legal timing of abortion.

Information about the blowing of the soul into the fetus is found in the hadith of the Prophet Muhammad:

"Verily you were in your mother's womb for 40 days as *nuthfah*, then became *'alaqah* during the same period, then became *mudghah* during the same period. Then Allah sent an angel and blew the spirit into his body..." (HR. Bukhari and Muslim from Abdullah bin Mas'ud).

This Hadith shows that the spirit being breathed into the fetus is one of the main bases for the scholars in determining when abortion is permissible. Scholarly opinions vary depending on the interpretation of the time of the soul's inhalation, with some narrations mentioning 40, 42, or 120 days.

¹⁶ Jovita Irawati dan Sindur Pangestu Santoso, "Perlindungan Hukum Bagi Tenaga Medis dalam Melakukan Tindakan Aborsi atas Indikasi Perkosaan [Legal Protection for Medical Personnel in Performing Abortion with Indications of Rape]," *Jurnal Hukum Visio Justisia* 2, no. 2 (13 Juni 2023): 129, <https://doi.org/10.19166/vj.v2i2.6546>.

¹⁷ Nining Nining, "Hukum Aborsi Dalam Perspektif Islam," *Jurnal Hukum Replik* 6, no. 2 (1 September 2018): 203, <https://doi.org/10.31000/jhr.v6i2.1445>.

Mazhab views on abortion:

1. Shafi'i school: Some Shafi'i scholars allow abortion before 40 days, provided there is consent from the couple and a doctor's recommendation that the abortion will not harm the mother. After 40 days, abortion is considered absolutely forbidden. Imam al-Ghazali, as explained by Azizah (2023), stated that life begins when the sperm meets the ovum, so abortion from the beginning of conception is considered haram.
2. Hanafi school: Most Hanafi scholars allow abortion before the fetus is formed, which is estimated at 120 days gestation.
3. Hambali school: Some Hambali scholars allow abortion before 40 days. However, Ibn al-Jauzi is of the opinion that abortion is absolutely forbidden, both before and after 40 days.
4. Maliki school: The majority of Maliki scholars hold that abortion is forbidden from the moment of conception. This is confirmed by Budhiartie (2023), who states that this view emphasizes full protection of the fetus from the beginning of pregnancy.¹⁸

Analysis of Article 31 Paragraph (2):

The 40-day time limit set out in Article 31 Paragraph (2) is considered inadequate, considering that many rape victims are reluctant or late in reporting the incident. The process of investigation and inquiry by the police also takes a short time.

The Islamic criminal law approach often provides greater flexibility in abortion cases, especially if there are emergency reasons such as psychological trauma or health risks to the mother. Therefore, a time limit of 120 days is considered more realistic and provides sufficient opportunity for the victim to make a decision, as well as for law enforcement officials and medical personnel to perform the necessary procedures.¹⁹

B. Authority to Determine Rape Victims in Medical

¹⁸ Budhiartie, "Legalisasi Abortus Provocatus Karena Perkosaan sebagai Implementasi Hak Asasi Perempuan (Analisis Yuridis Pasal 75 UU Nomor 36 Tahun 2009 Tentang Kesehatan)," 67.

¹⁹ Hannisya Gurusinga, "Sanksi Pelaku Aborsi dalam Tinjauan Hukum Pidana Islam dan Pasal 346 KUHP (Studi Analisis Putusan No. 569/Pid.Sus/2017/PN Tenggara)," *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* 1, no. 3 (28 September 2020): 223, <https://doi.org/10.58836/al-qanun.v1i3.7533>.

7 | Imam Arif Zamani: *Problematics of Legal Provisions of Article 31 Paragraph (2) of Government Regulation ...*

In the process of investigating rape cases, the role of forensic doctors is crucial to confirm the presence of signs of intercourse and violence on the victim. Forensic Medicine, also known as Forensic Medicine or Legal Medicine, provides the specialized knowledge required in criminal cases involving the human body, health and life. One important instrument in this context is the Visum et Repertum, a written report made by a doctor based on the results of a medical examination of the victim, which is then used as evidence in the judicial process.²⁰

Visum et Repertum has an important role in helping investigators to:

1. Determine the presence of signs of copulation.
2. Determine the presence of signs of violence.
3. Estimating the age of the victim.
4. Determine the victim's eligibility for marriage.²¹

The Visum et Repertum is a valid piece of evidence to reveal cases of sexual violence, including rape.²² The results of this report can provide guidance to legal officials in taking appropriate steps during the investigation and prosecution process.

In rape cases, forensic doctors act as experts who provide testimony based on medical examinations. This includes findings regarding the presence of intercourse and violence, as well as the approximate time of the event. However, in the conclusion of the Visum et Repertum, the doctor will not and should not include the word "rape" because the term has a juridical meaning related to "force", which is outside the realm of medical science.²³

Medical Examination Procedures: To ensure the accuracy and reliability of the Visum et Repertum, the forensic doctor must conduct a careful examination, including:

²⁰ Vini Andita, Joshua Moang Leo Alberto Dela Cruz, dan Hudi Yusuf, "The Function of Legal Science in Sexual Crimes Which Result in an Increase in Abortions According to a Forensic Medicine Point of View," *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (21 Mei 2024): 2746, <https://jicnusanantara.com/index.php/jicn/article/view/294>.

²¹ Zahrah Putri Arum Nabilah Pratami, "Peran Visum Et Repertum Dalam Proses Penyidikan Tindak Pidana Perkosaan," *Jurnal Justitia: Jurnal Ilmu Hukum Dan Humaniora* 8, no. 6 (30 November 2021): 1390, <https://doi.org/10.31604/justitia.v8i6.1388-1399>.

²² Petrus Carol Werembinan dan Widhi Cahyo Nugroho, "Keabsahan Visum Et Repertum Dan Visum Psikiatrikum Sebagai Alat Bukti Dalam Penanganan Tindak Pidana Pemerkosaan," *Journal Evidence Of Law* 3, no. 3 (3 September 2024): 288, <https://doi.org/10.59066/jel.v3i3.772>.

²³ Muhammad Afiful Jauhani dkk., "Pemeriksaan Kedokteran Forensik Pada Kasus Kekerasan Seksual Pascapemberlakuan Undang-Undang Republik Indonesia Nomor 1 Tahun 2023," *Jember Medical Journal* 2, no. 2 (8 Desember 2023): 119, <https://doi.org/10.19184/jembermedicaljournal.v2i2.462>.

- Identifying signs of copulation, such as the presence of sperm in the sexual intercourse. Live sperm can survive for 3 x 24 hours in the uterine cavity, while dead sperm can survive up to 7 x 24 hours (Tapsel University Journal, 2023).
- Look for signs of violence on the victim's body, such as nail marks, bites, or blows.
- Securing evidence, such as blood stains or spots on clothing and bed linen.
- Pay attention to the victim's psychological state, including signs of fear, anxiety, or trauma.²⁴

Relevance in Legal Proceedings:

The forensic examination also aims to match the findings with the elements of the offense in criminal law. In this context, the Visum et Repertum becomes the link between medical science and the legal process to ensure justice for victims.²⁵

C. Authority to Determine Rape Victims in Legal Provisions

Reproductive health issues in Indonesia are regulated in Law No. 36 Year 2009 on Health, specifically Article 71 to Article 77. Article 31 paragraph (2) of Government Regulation No. 61/2014 on Reproductive Health is an implementing regulation of Article 75 of Law No. 36/2009. This regulation stipulates that:

1. Everyone is prohibited from having an abortion.
2. The prohibition may be exempted based on:
 - a) Indications of medical emergencies detected early in pregnancy, either life-threatening to the mother and/or fetus, suffering from severe genetic diseases and/or congenital defects.
 - b) Pregnancy resulting from rape can cause psychological trauma to the victim.
3. Action can only be taken after counseling by a competent and authorized counselor.
4. Further provisions are regulated in a Government Regulation.

In the context of criminal law, Article 285 of the Criminal Code (KUHP) defines rape as:

²⁴ Yuni Priskila Ginting et al., "Evidence of Visum Et Repertum in the Crime of Rape," *Journal of West Science* 2, no. 09 (September 27, 2023): 786, <https://doi.org/10.58812/jpws.v2i09.623>.

²⁵ Yuni Priskila Ginting dkk., "Pembuktian Visum Et Repertum Dalam Tindak Pidana Pemerkosaan," *Jurnal Pengabdian West Science* 2, no. 09 (27 September 2023): 786, <https://doi.org/10.58812/jpws.v2i09.623>.

9 | Imam Arif Zamani: Problematics of Legal Provisions of Article 31 Paragraph (2) of Government Regulation ...

"Any person who by force or threat of force forces a woman to have sexual intercourse with him outside marriage, shall, being guilty of rape, be punished by a maximum imprisonment of twelve years."

The elements that must be met to establish the crime of rape include:

1. **Violence or threat of violence:** Article 89 of the Penal Code states that the act of rendering a person unconscious or helpless is considered violence.
2. **Coercion:** A conflict of will between the perpetrator and the victim, where the victim does not want the relationship.
3. **The victim was a woman** out of wedlock.
4. **Copulation:** The entry of the male genitalia into the female genital opening, where medical evidence such as the presence of sperm is important.

The Role of Investigators in the Determination of Rape Victims

According to Article 1 paragraph (2) of KUHAP, an investigation is a series of actions to collect evidence that can explain a criminal offense. Article 7 of KUHAP authorizes investigators to receive reports, arrest suspects, examine witnesses and experts, and bring in evidence. In rape cases, investigators are not only responsible for uncovering the facts of the incident, but also ensuring that the victim's rights are protected throughout the legal process.²⁶ In many cases, the main challenge is gathering enough evidence to meet the legal criteria, especially when the victim reports late due to trauma or social pressure.²⁷ Therefore, investigators must have an in-depth understanding of the relevant procedures and an empathetic approach towards the victim.

The Visum et Repertum is one of the most important pieces of evidence in proving the crime of rape. This document not only contains medical evidence, such as the presence of sperm or physical injuries, but also provides a description of the victim's psychological condition which can indicate trauma. For this reason, investigators must immediately coordinate with a forensic doctor so that the examination can be carried out without delay. In addition, the validity and legitimacy of the post-mortem document largely depends on the accuracy of the procedure and the quality of the medical

²⁶ Ahmad Deda Darwis, "Peranan Saksi Korban Tindak Pidana Perkosaan Pada Tingkat Penyidikan," *Journal of Law (Jurnal Ilmu Hukum)* 5, no. 2 (17 Juni 2020): 280, <http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/4696>.

²⁷ Laela Rahmah Putri, Namira Infaka Putri Pembayun, dan Citra Wahyu Qolbiah, "Dampak Kekerasan Seksual Terhadap Perempuan: Sebuah Sistematis Review," *Jurnal Psikologi* 1, no. 4 (3 Juni 2024): 17, <https://doi.org/10.47134/pjp.v1i4.2599>.

examination conducted. Investigators must also ensure that this medical evidence is combined with other evidence, such as witness statements or physical evidence, to provide a strong legal basis for the investigation. With effective coordination between investigators and medical personnel, determining the status of victims can be done fairly and ensure the legal process runs in accordance with statutory provisions.

Furthermore, the role of the investigator does not only stop at collecting evidence but also includes protecting the victim from possible threats or intimidation from the perpetrator. In some cases, the victim may face social pressure or even physical threats from the perpetrator not to proceed with the legal process. Therefore, investigators should work closely with witness and victim protection agencies to ensure the safety of the victim. With this holistic approach, investigators can ensure that victims receive balanced justice, while perpetrators can be punished in accordance with applicable laws.

Importance of Timing Adjustments

The 40-day deadline in Article 31 paragraph (2) of Government Regulation No. 61/2014 is often considered unrealistic and does not provide enough space for rape victims to process their trauma and seek legal protection. Various studies have shown that rape victims often face serious barriers, such as social stigma, family pressure, shame, and fear of retaliation from the perpetrator. All of these can prevent victims from reporting in a short period of time. The reporting process also requires adequate psychological support and medical treatment, which is often not instantly available. Therefore, more flexible deadlines are urgently needed to ensure that victims can report without being hampered by cumbersome time limits. The setting of a grace period for reporting a pregnancy resulting from rape is one of the crucial issues in Article 31 paragraph (2). The 40-day deadline is often considered too short, especially considering the obstacles to victim reporting, such as social stigma and psychological trauma. Highlighting that reporting and evidence collection in rape cases requires flexibility in time to ensure justice for victims.²⁸

A comparison of abortion grace periods based on the perspective of Islamic law, formal regulations in Article 31 Paragraph (2) of Government Regulation No. 61/2014

²⁸ Annisa Nurfadhila Nasarudin dan Muhammad Rusli Arafat, "Peranan Dan Kedudukan Visum Et Repertum Sebagai Alat Bukti Tindak Pidana Perkosaan," *Jurnal Ilmiah Wahana Pendidikan* 9, no. 14 (21 Juli 2023): 137, <https://doi.org/10.5281/zenodo.8171562>.

on Reproductive Health, and case study findings. This comparison is done to evaluate the extent to which existing regulations are able to provide adequate legal protection for rape victims who want to have an abortion. From the perspective of Islamic law, there are varying views of the abortion period, with the majority of scholars stipulating 120 days, while Indonesian regulations limit it to 40 days from the first day of the last menstrual period. Case studies show that the 40-day limit is often unrealistic, given that many victims face psychological trauma and procedural obstacles that cause delays in reporting:

Table 1: Comparison of Abortion Grace Periods

Aspects	Islamic Law	Government Regulation No. 61 Year 2014	Case Study Findings
Definition of Abortion	Aborting the fetus before it can live outside the womb	Miscarriage due to medical indication or rape	Miscarriage due to trauma or medical reasons
Grace Period	- Majority: 120 days - Shafi'i/Hambali school: 40 days	Maximum 40 days since last period	Victims often report after 40 days due to trauma and lengthy procedures
Abortion Requirements	- No harm to the mother - Husband's permission (if married) - Medical recommendation	- Pregnancy resulting from rape - Doctor's evidence, investigator, or psychologist	-Intensive counseling - Post mortem evidence and investigation results
Rule Impact	There is no firm consensus, depending on the school of thought.	Too short a time is often unrealistic for victims	Many victims lose their rights due to late reporting
Practical Relevance	The context of the madhhab gives flexibility in time	Regulations are strict, but less adaptive to the reality of victims	Legal and medical processes are often slow and out of sync

Source: Researcher's results sourced from Islamic Law, PP No. 61 Year 2024 and the findings of the Case Study

As a solution, this research supports revising the deadline to 120 days, as emphasized in various legal studies that refer to international best practices. This allows the police and medical personnel enough time to complete the investigation process without compromising the victim's rights.

The policy revision to extend the deadline to 120 days reflects a more humane and justice-based approach. This extension not only provides space for victims to recover emotionally, but also allows investigators and medical personnel to complete a thorough investigation and documentation process. Extending the time can improve the effectiveness of the legal system in handling rape cases and ensure that the evidence submitted has stronger legal validity. In addition, longer deadlines also give law enforcement officials the opportunity to better coordinate with medical personnel in the production of *Visum et Repertum*, resulting in more comprehensive evidence. With these adjustments, the legal system can be more responsive to the needs of victims, ensure their rights are protected, and create public trust in justice carried out by the state.

Conclusion

The results of this study show that highlighting the complexity of the legal provisions stipulated in Article 31 Paragraph (2) of Government Regulation No. 61/2014 on Reproductive Health, especially in providing abortion rights to rape victims. Against the backdrop of the high social stigma and trauma experienced by victims, along with the challenges of reporting and investigation, the 40-day time limit is considered unrealistic and needs to be revised. From the perspective of Islamic law and positive law, it is agreed that the handling of abortion due to rape must be done by considering the balance between victim protection and legal certainty. In addition, the role of forensic science through *Visum et Repertum* is very important in determining the existence of valid medical evidence, while the police authority in the investigation and investigation process must be carried out efficiently to fulfill the rights of victims in a timely manner. With a more responsive approach to victims' needs, revising the deadline to 120 days can provide more humane protection while ensuring justice in accordance with the applicable legal framework. This research emphasizes the importance of revising Article 31 paragraph (2) of Government Regulation No. 61/2014 to reflect more inclusive justice for rape victims. The 120-day deadline provides a greater opportunity for victims to report and obtain justice, while the coordination role between investigators and medical personnel is key to ensuring the legal process runs efficiently and humanely. This revision not only supports legal certainty, but also builds public confidence in a justice system that is more responsive to the needs of victims. With more adaptive policies, it is hoped that legal protection for victims can be implemented optimally and sustainably

Bibliography

- Andita, Vini, Joshua Moang Leo Alberto Dela Cruz, dan Hudi Yusuf. "The Function of Legal Science in Sexual Crimes Which Result in an Increase in Abortions According to a Forensic Medicine Point of View." *Jurnal Intelek Dan Cendekiawan Nusantara* 1, no. 2 (21 Mei 2024): 2743-49. <https://jicnusantara.com/index.php/jicn/article/view/294>.
- Ariyad, Fikri, dan Ali Masyhar. "Abortion by Rape Victim: A Dilemma in the Draft of Penal Code and Indonesian Health Law." *Journal of Law and Legal Reform* 1, no. 4 (31 Juli 2020): 631-40. <https://doi.org/10.15294/jllr.v1i4.39659>.
- Bennett, Linda Rae. "Single Women's Experiences of Premarital Pregnancy and Induced Abortion in Lombok, Eastern Indonesia." *Reproductive Health Matters* 9, no. 17 (Januari 2001): 37-43. [https://doi.org/10.1016/S0968-8080\(01\)90006-0](https://doi.org/10.1016/S0968-8080(01)90006-0).
- Budhiartie, Arrie. "Legalisasi Abortus Provocatus Karena Perkosaan sebagai Implementasi Hak Asasi Perempuan (Analisis Yuridis Pasal 75 UU Nomor 36 Tahun 2009 Tentang Kesehatan)." *Jurnal Penelitian Universitas Jambi: Seri Humaniora* 13, no. 2 (2011): 59-72. <https://www.neliti.com/publications/43397/>.
- Darwis, Ahmad Deda. "Peranan Saksi Korban Tindak Pidana Perkosaan Pada Tingkat Penyidikan." *Journal of Law (Jurnal Ilmu Hukum)* 5, no. 2 (17 Juni 2020): 276-94. <http://ejurnal.untag-smd.ac.id/index.php/DD/article/view/4696>.
- Dewi, Firda Yunita, Sieldy Aprilia Utami, dan Tama Bahtiar. "Perlindungan Hukum Terhadap Perempuan Sebagai Pelaku Aborsi Akibat Perkosaan." *JURNAL RECHTENS* 11, no. 1 (30 Juni 2022): 83-94. <https://doi.org/10.56013/rechtens.v11i1.1275>.
- Ginting, Yuni Priskila, Aksel Stefan Wenur, Cindy Destiani, Michelle Clarisa Candra Halim, Raden Ayu Rani Mutiara Dewi, dan Steffi Lauw. "Pembuktian Visum Et Repertum Dalam Tindak Pidana Pemerkosaan." *Jurnal Pengabdian West Science* 2, no. 09 (27 September 2023): 782-97. <https://doi.org/10.58812/jpws.v2i09.623>.
- Gurusinga, Hannisya. "Sanksi Pelaku Aborsi dalam Tinjauan Hukum Pidana Islam dan Pasal 346 KUHP (Studi Analisis Putusan No. 569/Pid.Sus/2017/PN Tenggara)." *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* 1, no. 3 (28 September 2020): 221-44. <https://doi.org/10.58836/al-qanun.v1i3.7533>.
- Ilham, Muhammad. "Revitalisasi Hukum Adat Dalam Tindak Pidana Kekerasan Rumah Tangga Di Gampong Punge Jurong Kecamatan Meuraxa Banda Aceh." Other, UIN Ar-Raniry Fakultas Syariah dan Hukum, 2023. <https://repository.ar-raniry.ac.id/id/eprint/25648/>.
- Irawati, Jovita, dan Sindur Pangestu Santoso. "Perlindungan Hukum Bagi Tenaga Medis dalam Melakukan Tindakan Aborsi atas Indikasi Perkosaan [Legal Protection for Medical Personnel in Performing Abortion with Indications of Rape]." *Jurnal Hukum Visio Justisia* 2, no. 2 (13 Juni 2023): 127. <https://doi.org/10.19166/vj.v2i2.6546>.
- Jauhani, Muhammad Afiful, Thifal Antira Puspita, Chivalery Adita Afwiliana, Qinthar Layalia Faza, dan Ineza Fadia Tinelo. "Pemeriksaan Kedokteran Forensik Pada Kasus Kekerasan Seksual Pascapemberlakuan Undang-Undang Republik Indonesia Nomor 1 Tahun 2023." *Jember Medical Journal* 2, no. 2 (8 Desember 2023): 115-31. <https://doi.org/10.19184/jembermedicaljournal.v2i2.462>.

- komnasperempuan.go.id. "Catatan Tahunan: Korban Bersuara, Data Bicara: Sahkan RUU Penghapusan Kekerasan Seksual Sebagai Wujud Komitmen Negara." Komnas Perempuan | Komisi Nasional Anti Kekerasan Terhadap Perempuan, 2019. <https://komnasperempuan.go.id/catatan-tahunan-detail/lembar-fakta-dan-poin-kunci-catatan-tahunan-komnas-perempuan-tahun-2019>.
- Kusnaningsih, Eri. "Perlindungan Hukum Terhadap Korban Tindak Pidana Perkosaan Dalam Perspektif Peraturan Perundang-Undangan." *UNJA Journal of Legal Studies* 1, no. 3 (2023): 391-418. <https://mail.online-journal.unja.ac.id/jols/article/view/27956>.
- Lamb, Kate. "Indonesian Police given Sole Power to Grant Abortions for Rape Victims." *Reuters*, 2 Agustus 2024, bag. Asia Pacific. <https://www.reuters.com/world/asia-pacific/indonesian-police-given-sole-power-grant-abortion-rape-victims-2024-08-02/>.
- Lestari, Rinna Dwi. "Perlindungan Hukum Perempuan Pelaku Aborsi Dari Korban Perkosaan Terhadap Ancaman Tindak Pidana Aborsi." *MAGISTRA Law Review* 1, no. 01 (30 Januari 2020): 1. <https://doi.org/10.35973/malrev.v1i01.1406>.
- Marzuki, Mahmud. *Penelitian Hukum*. Jakarta: Prenada Media, 2011.
- Nasarudin, Annisa Nurfadhila, dan Muhammad Rusli Arafat. "Peranan Dan Kedudukan Visum Et Repertum Sebagai Alat Bukti Tindak Pidana Perkosaan." *Jurnal Ilmiah Wahana Pendidikan* 9, no. 14 (21 Juli 2023): 131-42. <https://doi.org/10.5281/zenodo.8171562>.
- Nining, Nining. "Hukum Aborsi Dalam Perspektif Islam." *Jurnal Hukum Replik* 6, no. 2 (1 September 2018): 203. <https://doi.org/10.31000/jhr.v6i2.1445>.
- Pratami, Zahrah Putri Arum Nabilah. "Peran Visum Et Repertum Dalam Proses Penyidikan Tindak Pidana Perkosaan." *Jurnal Justitia : Jurnal Ilmu Hukum Dan Humaniora* 8, no. 6 (30 November 2021): 1388-99. <https://doi.org/10.31604/justitia.v8i6.1388-1399>.
- Putri, Athaya Novita Andryanto, dan Ahmad Sholikhin Ruslie. "Visum Et Repertum Sebagai Alat Bukti Dalam Tindak Pidana Kekerasan Dalam Rumah Tangga." *Bureaucracy Journal : Indonesia Journal of Law and Social-Political Governance* 3, no. 2 (20 Januari 2023): 1433-47. <https://doi.org/10.53363/bureau.v3i2.257>.
- Putri, Laela Rahmah, Namira Infaka Putri Pembayun, dan Citra Wahyu Qolbiah. "Dampak Kekerasan Seksual Terhadap Perempuan: Sebuah Sistematis Review." *Jurnal Psikologi* 1, no. 4 (3 Juni 2024): 17-17. <https://doi.org/10.47134/pjp.vii4.2599>.
- Ristintyawati dan Binov Handitya. "Tindakan Aborsi terhadap Kehamilan Akibat Perkosaan dan Kaitannya dengan Hak Asasi Manusia." *Rampai Jurnal Hukum (RJH)* 1, no. 2 (23 September 2022): 32-45. <https://doi.org/10.35473/rjh.vii2.2240>.
- Saraswati, Putri Widi. "Corrigendum: Saving more lives on time: Strategic policy implementation and financial inclusion for safe abortion in Indonesia during COVID-19 and beyond." *Frontiers in Global Women's Health* 4, no. 12 (31 Januari 2023): 1129026. <https://doi.org/10.3389/fgwh.2023.1129026>.
- Werembinan, Petrus Carol, dan Widhi Cahyo Nugroho. "Keabsahan Visum Et Repertum Dan Visum Psikiatrikum Sebagai Alat Bukti Dalam Penanganan Tindak Pidana

Pemeriksaan.” *Journal Evidence Of Law* 3, no. 3 (3 September 2024): 284–91. <https://doi.org/10.59066/jel.v3i3.772>.

Yulia, Rena, Aliyth Prakarsa, dan Mohammad Reevany Bustami. “Harmonizing Adat Obligations and State Law: A Case Study of Murder and Rape Cases in Baduy’s Indonesia.” *Journal of Indonesian Legal Studies* 8, no. 2 (2023): 803. <https://doi.org/https://doi.org/10.15294/jils.v8i2.72283>.