

## **Legal Protection For Abortion For People With Mental Disorders Who Are Pregnant With Children Resulting From Rape**

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### **Abstract**

This study focuses on the legal protection surrounding abortion for individuals with mental disorders who are pregnant as a result of rape. Abortions performed by vulnerable groups, such as people with mental disorders (ODGJ), are critical issues within the realms of law and reproductive health. Abortion is strictly regulated with specific conditions and exceptions, especially in cases involving victims of rape and life-threatening medical conditions. ODGJ represents a vulnerable group with limitations in making independent and legally valid medical decisions. This research utilizes a normative juridical method with legislative and conceptual approaches. The study's findings indicate that abortion is permitted under certain conditions that meet medical and legal requirements, particularly in cases of pregnancy resulting from rape or life-threatening conditions for the mother. The Reproductive Health Law (Law Number 17 of 2023) grants women the right to choose abortion under specific circumstances, considering both physical and mental safety. Forms of protection for ODGJ undergoing abortion include access to comprehensive reproductive health services, legal assistance, and the guarantee of medical decisions supported by family or guardian consent. This protection also encompasses policies ensuring that the abortion process respects the rights and limitations of individuals with mental disorders and provides safe access to competent medical facilities.

Keywords: legal protection, abortion, individuals with mental disorders.

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### **Introduction**

The second principle of Pancasila, "Just and Civilized Humanity," emphasizes legal protection for every citizen of Indonesia without discrimination. This principle mandates that the law must be enforced fairly, upholding human dignity and protecting the fundamental rights of each individual. In this context, it underscores that legal protection functions as an effort to ensure that everyone receives equal treatment before the law, regardless of background, social status, or beliefs.[1] Therefore, the second principle serves as a moral and

ethical foundation in creating a just legal system by fulfilling the basic rights of every citizen. As a result, the application of this principle demands not only equal legal treatment but also justice, providing extra protection for every layer of society.

The application of "just and civilized humanity" is also related to the attention given to vulnerable groups, such as people with disabilities, including individuals with mental disorders, henceforth referred to as ODGJ (Orang Dengan Gangguan Jiwa), and women.[2] This principle calls for fair and dignified treatment of every individual, especially regarding access to healthcare, legal, and social services. Vulnerable groups, often marginalized and overlooked, require special attention, which, in policy implementation, must ensure they receive adequate legal protection, including in cases of abortion involving ODGJ who are pregnant with children resulting from rape.[3] In this context, legal provisions should align with the spirit of Pancasila, particularly in treating all citizens fairly, irrespective of physical, mental, or gender conditions.

Vulnerable groups, such as women and ODGJ, often face discrimination and stigma that worsen their access to fundamental rights. The implementation of legal protection for them, particularly in sensitive situations like pregnancy resulting from rape, must be carried out with full humanity based on the principles of social justice and respect for human dignity.[4] This includes providing safe and legal options related to abortion, in accordance with their physical and mental health conditions. Therefore, the application of the second principle demands legal treatment that is not only equal but also just, with additional protection for groups vulnerable to discrimination and injustice. Thus, the law must play an active role in ensuring that the fundamental rights of vulnerable groups are protected and guaranteed, so they can live their lives with dignity and justice, equal to other citizens.[5]

In relation to the legal protection for vulnerable groups, special attention must be given to abortion performed by individuals with mental disorders (ODGJ). As a vulnerable group, ODGJ often do not have the full capacity to make informed medical decisions, including decisions regarding abortion. The law must ensure that ODGJ receive special protection, both in terms of access to accurate medical information and protection from actions that could harm them. Legal protection in this regard must ensure that the decision to undergo an abortion for ODGJ is made with careful consideration of health, legal, and ethical factors, and involve adequate medical and legal assistance. Thus, the state, through its legal instruments, must ensure that the rights of ODGJ remain protected, especially in complex situations like abortion, so they do not become victims of injustice or abuse.

Abortion, as a phenomenon, is deeply embedded in Indonesian society. It can be said to be a "hidden" phenomenon because abortion practices often do not come to the surface and are even concealed by those who perform the abortion or by society. This concealment is influenced, among other things, by the formal laws and prevailing political, social, cultural, and religious values in society. In the case of many Kehamilan Tidak Dikehendaki (KTD) or Unwanted Pregnancies, particularly those involving rape victims, the consequences are dire. Besides experiencing long-term trauma, the victims may be unable to continue their education or socialize with their environment. Furthermore, if the child is born, society may not be

prepared to accept them, and the child may face stigmatization as a "bastard" who cannot associate with other children in their community, facing other negative treatment. On the other hand, if the pregnancy is terminated (abortion), there is no safe place for the procedure, and it is considered a criminal act under the law, violating religious, moral, and social norms.

This study focuses on the legal protection of abortion for women with mental disorders who are pregnant with children resulting from rape. This condition requires serious attention because it involves two vulnerable groups simultaneously – women and individuals with mental disorders – whose rights are often overlooked within Indonesia's legal and social systems. Given the challenges in protecting these vulnerable groups, it is important to explore how Indonesian law, particularly after being updated by Undang-Undang Nomor 17 Tahun 2023 tentang Perlindungan Kesehatan Reproduksi (Law No. 17 of 2023 on the Protection of Reproductive Health), provides an adequate legal framework. This study will examine the relevant legal aspects and the social and ethical implications of abortion decisions in this context, aiming to provide a deeper understanding of the existing legal protections and the challenges still faced in practice.

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## **Methodology**

This research is normative legal research. This research is a process to find a truth of coherence or legal rules, legal principles, and doctrines to answer the legal issues faced (know-how), namely related to the legal protection of abortion for people with mental disorders who are pregnant with children resulting from rape by using a statute approach and a conceptual approach.

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## **Results and Discussion**

### **1. Right to Abortion for Women**

Pregnancy resulting from rape can cause mental and psychological trauma that threatens the health and well-being of a woman. In such situations, women have the right to decide whether to continue or terminate their pregnancy. This right should be supported by clear and firm state policies in positive law to protect the exercise of this human right, without the threat of criminal charges or other sanctions that prevent women from accessing this right. In the context of Indonesian law, abortion is strictly regulated, considering the moral, ethical, and medical implications involved. This can be seen in the legal policy that limits a woman's right to perform an abortion except in certain conditions, as specifically regulated in Law No. 17 of 2023 on Reproductive Health Protection[6]. This provision reflects the state's effort to provide legal protection for women victims of sexual violence who need safe and legal reproductive health choices, including People with Mental Disorders (ODGJ) as a vulnerable group, ensuring they have access to safe and legal reproductive health options in situations of sexual violence that threaten both their physical and mental health[7].

Referring to Article 75 of Law No. 17 of 2023 on Reproductive Health Protection, it regulates the prohibition of abortion, with significant exceptions in cases of medical

emergencies and pregnancies resulting from rape that may cause psychological trauma[8]. This serves as the legal foundation for women, including People with Mental Disorders (ODGJ) who are victims of rape, to access safe and legal abortion rights. Specifically, for ODGJ, their vulnerable mental condition requires additional legal protection to ensure they can access abortion services without facing stigma or rejection. The state is obligated to ensure that their reproductive rights are respected by providing specialized health facilities that support such services, thereby protecting their physical and mental health[9].

Furthermore, Article 76 sets out the conditions for legal abortion, namely the woman's consent and a maximum pregnancy duration of 40 days, except in medical emergencies. This condition emphasizes the importance of women's consent and the protection of the health of the victims, taking into account the psychological trauma caused by rape. However, for ODGJ, obtaining consent may require additional evaluation by a psychiatrist to ensure that the decision is in their best interest. Thus, the state can ensure that ODGJ receives safe care according to medical standards while providing appropriate legal protection for women in vulnerable mental health conditions[10]. In the context of abortion rights for women, including ODGJ who experience pregnancy due to rape, the regulations in Articles 77, 78, and 79 of Law No. 17 of 2023 on Reproductive Health Protection pay close attention to holistic aspects and comprehensive legal protection. These articles not only focus on the medical procedures for abortion but also consider the psychological well-being and the right to be protected from illegal or unethical abortion practices.

Article 77, with its emphasis on counseling before and after abortion, highlights the importance of emotional and psychological support for women undergoing this procedure, particularly for ODGJ. Competent counselors play a crucial role in providing information in a comprehensible manner and supporting the patient's psychological needs. This helps ensure informed consent, especially when ODGJ face complex psychological pressure. After the procedure, counseling also provides a space for patients to process their experiences and reduce the risk of long-term trauma[11]. Article 78 provides strict legal certainty against violations in the implementation of abortion. Criminal sanctions of up to 10 years in prison and fines of up to 1 billion rupiah for perpetrators who do not comply with abortion provisions offer significant protection, particularly for vulnerable groups such as ODGJ. This provision ensures that ODGJ are not exploited by irresponsible parties and are not subjected to illegal abortions that pose risks. Health professionals are also threatened with the revocation of their practice licenses, demonstrating the seriousness in ensuring ethical medical standards[13]. Article 79 complements this protection by requiring strict reporting and oversight by the government. Oversight of facilities performing abortions and reporting by healthcare professionals ensure that abortions performed on women, particularly ODGJ, meet medical and legal standards[14]. This creates a more accountable system and minimizes the risk of abuse or unethical practices. Overall, these regulations show that the state not only recognizes the right of women to perform abortion under certain circumstances but also ensures that this right is exercised safely and humanely. This comprehensive approach is highly relevant in protecting the mental and physical health of ODGJ, guaranteeing access to safe reproductive health services, and ensuring high medical and legal standards[15].

## **2. Competence of People with Mental Disorders (ODGJ) in Making Abortion Decisions**

People with Mental Disorders (ODGJ) are defined as individuals experiencing significant mental health issues that can affect their ability to think, behave, and interact with

others. The mental conditions they face often create dilemmas when making complex medical decisions, such as abortion. For ODGJ, making decisions related to abortion becomes complicated because their ability to provide informed and conscious consent is often questioned, especially if their mental condition limits their understanding of the risks and benefits of the procedure.[16] In the legal context, the competence of ODGJ to decide on abortion depends on careful medical and legal assessments. Law Number 17 of 2023 on Reproductive Health Protection states that, in some cases, ODGJ requires assistance from a guardian or legal representative. This is intended to protect ODGJ from possible actions that could harm their physical and mental well-being, while still maintaining their reproductive rights. From a medical perspective, the competence of ODGJ to make an abortion decision should be based on their mental condition. ODGJ who still have sufficient cognitive capacity to understand the consequences of abortion have the right to provide independent consent. However, if their mental condition is deemed to hinder their ability to make rational decisions, the involvement of family, medical professionals, psychologists, and legal experts is necessary to ensure that the decision made is truly in their best interest.[17]

The competence of ODGJ to make decisions in the context of abortion is closely related to access to inclusive healthcare services. In Indonesia, access to reproductive healthcare services for ODGJ, especially concerning abortion, remains highly limited. In many areas, especially in rural regions, healthcare facilities capable of addressing mental health conditions are scarce, and trained medical staff to handle patients with mental conditions are also insufficient.[18] When medical professionals lack the necessary knowledge or sensitivity, they often face challenges in providing safe, legal, and responsive abortion services that address the mental condition of ODGJ. To overcome this, specialized training for medical staff is required, so they can provide not only legal services but also safe and empathetic care. This will ensure that the reproductive rights of ODGJ are protected in accordance with the law, and medical staff can better understand the appropriate approach when dealing with mentally ill patients.

Medical decision-making, particularly abortion, for ODGJ also often involves family members. According to Law Number 17 of 2023 on Reproductive Health Protection, there is a difference in treatment between ODGJ who have family support and those who do not. In situations where ODGJ have family support, they are likely to receive better access to reproductive health information. Families play an important role in providing emotional support and helping ODGJ make the best decisions for their physical and mental health. In certain cases, family members may also act as legal guardians if the ODGJ is deemed unable to provide valid consent. However, for ODGJ who lack family support, they are often in a more vulnerable position. Not only do they struggle to access reproductive healthcare services, but they also face stronger social stigma. This stigma can block their access to the necessary services, even though they have the right to them. In such cases, the role of the government and related institutions becomes crucial, especially in providing legal protection and assistance for ODGJ without family support.[19]

The involvement of a legal guardian or family in decision-making concerning abortion for ODGJ is emphasized in Article 32 of Law Number 17 of 2023 on Reproductive Health Protection. This article states that in cases of pregnancies resulting from rape, abortion can be performed after obtaining consent from a guardian or family member, especially if the woman

involved cannot give consent on her own. This provision reflects legal protection for women's rights and demonstrates the law's deep concern for the vulnerable mental conditions. The involvement of a legal guardian or family is not merely a formality but an essential step to ensure that the decision made reflects the best interests of the ODGJ. This law shows an understanding of the importance of considering the mental condition of women in vulnerable situations. By requiring consent from a guardian or family member, the law seeks to protect the rights of ODGJ and prevent them from making potentially harmful decisions. It also ensures that the decision considers both the physical and mental conditions of the ODGJ in a holistic manner.

Beyond legal protection, justice in healthcare services for ODGJ is a profound issue. Many ODGJ in remote areas or those with less supportive social conditions face difficulty accessing adequate reproductive healthcare services. These barriers are often exacerbated by social stigma, discrimination, and limited healthcare infrastructure, which prevents many ODGJ from receiving proper protection and healthcare services.[21] Article 20 of Law Number 8 of 2016 on Persons with Disabilities also supports the protection of the rights of ODGJ in making medical decisions. This article stipulates that medical decisions must involve a legal guardian or family, especially for ODGJ who are unable to provide independent consent. This provision not only provides a legal basis but also ensures that medical decisions reflect the best interests of ODGJ. The guardian or family involved in the decision-making can help ODGJ assess whether they truly understand the situation they are facing.[20]

The involvement of a legal guardian or family also serves as a mechanism to prevent abuse. In some cases, ODGJ may be coerced into making decisions that do not align with their wishes. With strong legal support, the guardian or family can act as monitors to ensure that the decisions made genuinely reflect the ODGJ's desires and best interests. By involving the family, the government and legal system can offer broader support to ODGJ in the context of reproductive health, including their right to safe and legal abortion. Furthermore, with proper oversight, decisions related to abortion not only reflect the physical and mental condition of the ODGJ but also ensure that the process complies with human rights principles and comprehensive health standards. Protecting the rights of ODGJ is not only important in the context of abortion but also in their right to receive inclusive reproductive healthcare services. These rights include access to clear information, adequate counseling, and strong legal support. The government is expected to continue strengthening public policies that support ODGJ, so they can enjoy the same rights as others, with consideration for their mental conditions and specific needs.

### **3. Legal Protection for Persons with Mental Disabilities (ODGJ) in Performing Abortion Due to Pregnancy Resulting from Rape**

Abortion is often a sensitive topic, particularly in the context of unwanted pregnancies, such as those resulting from rape. In Indonesia, Law Number 17 of 2023 concerning Reproductive Health Protection provides space for women to undergo abortion under certain conditions, including pregnancies resulting from rape. Article 12 of Law Number 17 of 2023 states that abortion is permitted before the fetus reaches 40 days of gestation, reflecting the importance of women's reproductive rights to control their bodies. This regulation also offers

additional protection for women facing severe psychological impacts due to unwanted pregnancies.

Furthermore, this law guarantees protection for Persons with Mental Disabilities (ODGJ) through Article 32, which stipulates that consent for an abortion must be given by a guardian or family member if the woman is unable to provide consent herself. Additionally, Article 33 requires medical professionals to conduct health risk assessments and provide psychological support for ODGJ who wish to undergo an abortion. [21] Thus, this law not only protects women's reproductive health rights but also considers their mental condition, ensuring that all decisions related to abortion are made with careful consideration and according to medical standards.

In parallel, Law Number 1 of 2023 concerning the New Criminal Code (KUHP) introduces significant changes to abortion regulations, especially regarding cases of rape. Article 470 establishes that anyone who intentionally performs an abortion may face imprisonment of up to 5 years, but provides exceptions if the pregnancy is a result of rape or if there are indications of a medical emergency threatening the life of the mother or fetus. In cases of pregnancy resulting from rape, abortion is permitted if the gestational age does not exceed 12 weeks, reflecting legal acknowledgment of the psychological trauma experienced by victims. [22] Moreover, Article 471 of the KUHP regulates consent for abortion, ensuring additional protection for Persons with Mental Disabilities (ODGJ) who are pregnant due to rape by involving legal guardians in decision-making. This article also mandates that abortions be performed by qualified medical professionals in recognized healthcare facilities to guarantee patient safety and security.

Article 472 emphasizes the time limit for lawful abortion, which is up to 12 weeks, with exceptions for medical emergencies. This ensures that abortions are performed in facilities that meet standards and under medical supervision, aiming to prevent illegal abortion practices. This provision imposes criminal penalties on violators, demonstrating the government's commitment to safeguarding women's health and safety. Overall, the new KUHP reflects stronger legal protection for women, particularly for victims of rape and ODGJ. With clear regulations, it is hoped that necessary abortions for medical reasons or due to violence can be carried out legally and safely, recognizing reproductive rights as an integral part of human rights. The involvement of legal guardians in this process acknowledges the complexities faced by ODGJ, ensuring that medical decisions take their mental condition into account.

Regulations relevant to the rights of ODGJ concerning abortion decisions can be found in Law Number 8 of 2016 concerning Persons with Disabilities. Article 19 affirms that persons with disabilities, including ODGJ, have the right to receive adequate and non-discriminatory health services, including reproductive health services. This is crucial, particularly for ODGJ who become pregnant due to sexual violence, ensuring they have access to safe abortion services in accordance with legal standards. This article also highlights the need for accessibility in health services and easily understandable health information, enabling ODGJ

to make informed decisions, even when they require assistance in understanding this information. [23]

Additionally, Article 19 guarantees that ODGJ not only have the right to undergo abortion but also to receive protection and psychological support. Given their vulnerable mental condition, careful treatment in medical decision-making and the execution of abortion procedures is essential. This regulation aligns with Law Number 17 of 2023 and the new KUHP, which together create a comprehensive legal framework to protect the rights of ODGJ in situations of pregnancy resulting from rape. Thus, ODGJ are entitled to full access to safe and legal reproductive health services, as well as the support needed throughout this process. Referring to Regulation of the Minister of Health Number 3 of 2016 concerning Reproductive Health Services, procedures for abortion involving ODGJ are also regulated. Article 5 states that:

1. ODGJ who are pregnant due to rape must receive a comprehensive medical assessment by a specialist doctor.
2. The individual in question must also receive assistance from a psychologist or psychiatrist to ensure that their mental condition is considered in the medical decision-making process.
3. Abortions may only be performed in accredited healthcare facilities that have adequate facilities and infrastructure to ensure patient safety.

This article emphasizes the importance of a multidisciplinary approach in handling abortion cases involving ODGJ, where their physical and mental health must be prioritized. Comprehensive medical assessments ensure that abortion decisions are based on objective health considerations, while support from mental health professionals provides space for ODGJ to address emotional trauma they may experience due to rape and unwanted pregnancy. With these provisions, the regulation not only prioritizes medical aspects but also acknowledges and responds to the psychological needs of ODGJ, which are often overlooked in medical procedures. Furthermore, the requirement that abortions be performed in accredited healthcare facilities with adequate facilities and infrastructure ensures patient safety and security, reducing risks that may arise from improper medical practices. Thus, this regulation provides a comprehensive legal framework that protects the rights of ODGJ to receive safe and quality reproductive health services, while also ensuring that the decision-making process is conducted ethically and sensitively to their conditions.

Despite the laws providing legal protection, access to safe and legal abortion services in Indonesia remains limited, particularly in remote areas. Many healthcare facilities lack the capacity to provide these services, and trained medical personnel are also scarce. As a result, women often find themselves resorting to unsafe methods, which pose risks to their health and safety. Therefore, it is essential for the government to expand access to equitable and quality reproductive health services, as well as ensure that women have adequate information regarding their rights. [24] The social impact of abortion must also be taken into account, as women who undergo abortion often face stigma, psychological pressure, and discrimination. Society and medical personnel should create a supportive environment for women to make



reproductive health decisions without fear of stigma. Additionally, education regarding reproductive rights presents a significant challenge, particularly in remote areas where many women are unaware of the options available to them when facing unwanted pregnancies. [25] The role of medical personnel is also crucial in providing safe and non-discriminatory services. Attitudes and knowledge among medical personnel regarding abortion vary, with some being reluctant to provide these services. Therefore, specific training is needed to enhance their knowledge and empathy when dealing with patients. Furthermore, the government should strengthen regulations to protect women from unsafe abortions by monitoring illegal medical practices and permitting only accredited facilities to provide these services.

Regulations such as Law Number 17 of 2023, the new KUHP, and Law Number 8 of 2016 concerning Persons with Disabilities emphasize the importance of equitable access for ODGJ to safe reproductive health services. However, challenges in the implementation of these regulations remain, particularly in ensuring that all parties understand the reproductive rights of ODGJ. Comprehensive socialization and education are required for effective implementation on the ground, along with strict oversight to prevent violations of the rights of ODGJ during abortion procedures. The government is expected to continue improving access and quality of reproductive health services, especially for ODGJ who are victims of sexual violence.

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## **Conclusion**

Legal protection for Persons with Mental Disabilities (ODGJ) experiencing Unwanted Pregnancy (KTD) is regulated under Law Number 17 of 2023 concerning Health, which provides a legal basis for them to undergo abortion under clear conditions. Referring to Law Number 17 of 2023 concerning Health, although ODGJ are classified as individuals who lack legal capacity, they are still granted access to abortion services if they meet specific criteria that have been established. This is stipulated in Article 77, which regulates that abortion can be performed under certain special requirements to ensure the safety and reproductive health of ODGJ, as well as in Article 79, which outlines the minimum gestational age that must be met before the abortion procedure can be carried out. Additionally, these provisions are reinforced by Government Regulation Number 61 of 2014 concerning Reproductive Health, which further elaborates on the implementation and procedures for abortion in specific circumstances, including for victims of rape. Thus, these regulations provide legal protection that supports the reproductive health rights of ODGJ, particularly in emergency situations or when KTD poses significant risks, demonstrating the state's attention to vulnerable groups such as ODGJ, and ensuring that their rights are protected within a comprehensive legal framework.

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