

**JLPH:**
Journal of Law, Politic
and Humanities<https://dinastires.org/JLPH> ✉ dinasti.info@gmail.com ☎ +62 811 7404 455E-ISSN: 2962-2816
P-ISSN: 2747-1985DOI: <https://doi.org/10.38035/jlph.v5i6>
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Problems of Medical Emergency Law from the Perspective of Abortion Crimes (Government Regulation Number 28 of 2024)

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Abstract: Abortion is a highly controversial issue in Indonesia, sparking debates on legal, ethical and moral aspects. In the context of regulatory developments, Government Regulation (PP) No. 28 of 2024, which is the implementation of Law No. 17 of 2023 concerning Health, provides space for abortion in medical emergencies. Medical abortion, also known as *Medically Induced Abortion*, performed to save the mother's life or prevent serious malformations in the fetus. *Criminal Induced Abortion* means abortion carried out without a valid medical reason and can be subject to legal sanctions. The purpose of this study is to analyze the regulation of abortion in medical emergencies according to PP No. 28 of 2024, identify legal problems that arise during implementation and provide recommendations to improve the effectiveness of the implementation of the regulation. This study uses normative legal research methods to analyze the provisions on abortion contained in the articles of the Regulation. The findings show that this regulation has a major impact on regulating abortion practices, but challenges remain, including unclear regulations and potential violations of patient rights. Therefore, corrective actions are needed to ensure fair, transparent, and efficient implementation of the regulation and to guarantee the protection of women's health rights.

Keywords: Abortion, Medical Emergency, Regulation

INTRODUCTION

Abortion is a very sensitive and controversial issue in Indonesia due to the conflict between legal, ethical, and moral aspects. Abortion is generally prohibited and can result in lawsuits. However, over time and increasing awareness of women's rights, especially victims of sexual crimes, there has been a paradigm shift in abortion regulations (Arif & Syahid, 2024). Law No. 17 of 2023 concerning Health regulates the possibility of legal abortion with certain conditions (Presiden RI, 2023). Free association covers many different aspects and is one of the effects of the dynamics of modern life, which is influenced by technological advances, social change, and evolving global challenges. One example is that young people tend to take a more liberal attitude in their associations. This change in behavior often gives rise to new problems in society. The degree of freedom to socialize increases every year, and technological

advances become more sophisticated, giving people greater access to what they want. Within the framework of free association, young people, even those who are still minors, may engage in activities that carry a fatal risk, such as pregnancy outside of marriage. This condition causes a lot of psychological stress, especially for women, because they have to bear the humiliation if the man does not want to take responsibility. This has led to the emergence of a false belief that this stigma can be overcome through (Dinda et al., 2024).

Abortus provocatus, also known as abortion, is the intentional termination of pregnancy. This practice has recently become an increasingly common problem in Indonesian society, marking a worrying trend. Abortion is closely related to women. This is because women are the ones who bear the direct physical and psychological consequences of abortion. Abortion is generally carried out with the aim of ending an unwanted pregnancy, either for personal or social reasons, or in more complicated circumstances such as pregnancy resulting from extramarital affairs or sexual violence (Wijayati, 2017). This action is often seen as a shortcut to overcome problems caused by unplanned pregnancy. On the other hand, abortion presents a major dilemma because it is contrary to applicable moral, ethical, and legal values.

In general, there are two types of abortions that are commonly performed in society. One of them is *Medically Induced Abortion*, *Medically Induced Abortion* is an abortion performed by a doctor on medical indications. If the abortion is not performed, the mother's life may be at risk. This type of abortion is also called *artificially induced abortion* or *therapeutic abortion*. In Indonesia, the medical indication is to save the mother's life. The requirements that must be met to perform a medical abortion are that the abortion must be performed by medical personnel who have the appropriate expertise and authority, namely obstetricians and gynecologists, in accordance with their professional responsibilities (Chandra, 2019). And then there is *Criminal induced abortion* refers to an abortion performed as a result of an illegal act, such as an abortion to remove a fetus as a result of extramarital sex, or an abortion performed without medical indication. The general definition of the crime of abortion refers to premature birth, which occurs before the baby is capable of living independently outside the womb; the fetus that emerges is usually dead. Legally, *Criminal induced abortion* means ending a pregnancy before the product of conception is born, regardless of the age of the fetus in the womb. The fetus may be alive or dead (Ranoemihardja, 1991).

Discussion of abortion is a common topic in official forums, as it touches on many different fields, including medicine, law, and other sciences. With the increase in out-of-wedlock pregnancies and the various motivations behind them, some women end up choosing abortion as a solution to overcome the stigma. Abortion itself can occur due to human action (*Criminal induced abortion*) or it can also occur due to natural factors (i.e. occurs naturally, without human intervention) (Putra, 2023). In Indonesia, abortion is regulated by legal provisions, namely Articles 346 to 349 and 535 of the Criminal Code (KUHP). In addition, in terms of health, abortion is also regulated in Law No. 17 of 2023 concerning Health and is further regulated by Government Regulation No. 28 of 2024 concerning Implementing Regulations of Law No. 17 of 2023 concerning Health. The regulation emphasizes that health is one of the fundamental human rights that must be realized in accordance with the basic mission of the state and the 1945 Constitution of the Republic of Indonesia. Criminal law provisions are based on the idea that a fetus, namely a child, who is already in the womb is a legal entity and has the right to legal protection. However, from a human rights perspective, abortion can be considered a violation of human rights because everyone has the right to life and to protect their lives (Dinda et al., 2024).

The issue of abortion is not only about legal and health aspects, but also reflects the social and cultural dynamics of Indonesian society. In countries with strong religious norms, abortion is often considered a moral violation and a deep taboo. This stigma not only affects women

who have abortions, but also their families, who often face pressure and exclusion from society. Unintended pregnancies, especially those outside of marriage, often have severe psychological and emotional impacts, forcing many women to seek solutions outside the legal framework, such as unsafe and illegal abortions. This situation is exacerbated by the failure of society to provide adequate support and understanding, creating a cycle of stigma and marginalization that is difficult to break.

According to Lawrence Meir Friedman, a legal sociology expert from Stanford University, law enforcement consists of three main elements, namely: (Friedman, 2019)

1. Legal Structure

In the theory put forward by Lawrence Meir Friedman, this is called a substantive system, and its function is to determine whether the law can be applied. Substantive includes the products produced by individuals in the legal system, the decisions they make and the new regulations they develop. Furthermore, the content does not only include the regulations contained in the State Gazette, but also the current laws and regulations. Indonesia is still a country that adheres to the substantive system. *Civil Law System* or *Continental Europe* “although some laws and regulations have also adopted it” *Common Law Sistem* or *Anglo Saxon*), so that Indonesian law is recognized as written regulations. On the other hand, unspoken regulations are often not considered formal law. This system has a significant impact on the Indonesian legal system (Friedman, 2019).

2. Legal Substance

In Lawrence Meir Friedman's theory, it is the structural system that helps determine whether the law can be implemented properly. The legal form is regulated in Law No. 8 of 1981 which applies to the police, prosecutors, courts, and criminal law enforcement agencies (Lapas). The power of these law enforcement agencies is guaranteed by law and they can carry out their duties and responsibilities independently, without interference from state power or other influences. There is an adage that reads “*let justice be done and the world perish*”. This means that even if the world collapses, the law must still be enforced. But without credible, competent, and independent law enforcement officials, the law cannot function or be enforced. No matter how good the existing laws and regulations are, if they are not supported by competent law enforcement officers, justice will only be a dream. The weak mentality of the police is one of the main reasons why law enforcement agencies cannot carry out their functions properly (Friedman, 2019).

3. Legal Culture

According to Lawrence Meir Friedman, legal culture is the beliefs, values, ideas, expectations, and other attitudes of society towards law and the legal system. Referring to legal culture, it reflects the climate of society's thinking and the social forces that influence how the law is applied, circumvented, and even abused. Legal culture is closely related to public legal awareness. The higher the legal awareness in society, the better the legal culture that is created, which can ultimately have an impact on changing people's attitudes towards the law. In simple terms, the level of public compliance with the law is an indicator of the effectiveness of the law. The relationship between the three elements in a legal system can be likened to an operating mechanism. The legal structure functions like a machine, and the material is the result of the machine's work, but legal culture determines when the machine should be turned on or off, or how its use should be regulated. Legal culture is a determining factor (Friedman, 2019).

Abortus provocatus medicinalis abortion performed by a doctor for medical reasons, namely when it is necessary to avoid potential threats to the mother's life. *Medically induced abortion*, also known as *artificial abortion* or *therapeuticus*, is an abortion performed for clear medical reasons. In Indonesia, medical accommodation is an effort to save the mother's life. The requirements that must be met for an abortion to be performed for medical reasons are that

the abortion must be performed by medical personnel who have the appropriate expertise and authority, namely an obstetrician and gynecologist, according to their authority (Chandra, 2019). Other requirements include:

1. Must ask for advice from a team of experts (other medical teams, religion, law, psychology).
2. There must be written consent from the patient or her husband or closest family member.
3. Carried out in health facilities that have adequate personnel/equipment, as designated by the government.
4. The procedures are not confidential.
5. Medical documents must be complete.

In medical practice, medical abortion can also be used when a baby is expected to be born with severe defects and a very short life expectancy. For example, the fetus may be born with abnormalities *ectopia cordis* “the fetus will be born without a chest wall, so the heart is visible”, *rakishikis* “the fetus will be born with an open spine without being covered by skin” *oranensephallus* “the fetus will be born without a cerebrum” (Chandra, 2019).

METHOD

The term methodology consists of the words "method" and "logic". The word "method" refers to a specific procedure or step that is carried out regularly and systematically to achieve a goal. "Logie" comes from the Greek word "logos" and means science or research based on logical thinking. Therefore, methodology can be interpreted as a science that discusses structured and logical methods or procedures for completing a task. In the world of research, research methodology is a branch of science that studies various approaches, procedures, and techniques for conducting research in an organized and consistent manner. Its main goal is to ensure that the research process is carried out validly, accurately, and reliably, so as to produce high-quality knowledge. Specifically, legal research methodology is a branch of methodology that discusses procedures for conducting research in the field of law. This involves selecting the right method to analyze normative, empirical, or a combination of both approaches. By applying a systematic legal research methodology, it is hoped that the research results will make a significant contribution to the development of legal science and its application in people's lives (Muhaimin, 2020). The research method that the author uses is the Normative Juridical legal research method.

The normative juridical legal research method is a research method that studies law based on texts contained in statutory regulations (often referred to as “*law in books*”). In this normative legal research method, law is understood as a rule that is formally recorded in applicable legal documents such as laws, government regulations, and court decisions. Furthermore, law is also seen as a rule or norm that functions as a guideline for regulating human behavior, and these standards are believed to be in accordance with the values that apply in society (Muhammad Siddiq Armira, 2022). This normative legal research method focuses on analyzing the content of existing regulations and how these regulations act as standards for the operation of community life. Legal approach (*statute approach*) is a legal approach carried out by studying and analyzing all laws and regulations relevant to the legal problem being discussed (Santoso et al., 2022). Academic research requires researchers to investigate the jurisprudential and ontological foundations of law. Studying the jurisprudential and ontological foundations of law allows researchers to truly understand the philosophy underlying law. Understanding this philosophy allows researchers to draw conclusions about whether there is a philosophical conflict between the law and the problem at hand. In this approach, what researchers need to pay attention to is the structure of norms, including the order or hierarchy of laws and regulations, the location of norms, whether these norms are contained in certain

laws and regulations or in general. Are these norms contained in new laws and regulations or are they contained in old legal provisions.

RESULTS AND DISCUSSION

Analysis of PP Number 28 of 2024 Regarding Abortion

Abortion is the forced termination of pregnancy, often used as a last resort in certain circumstances. However, this action is not without various risks that can affect the physical and mental health of young people in particular. From a physical perspective, abortion can cause serious complications such as failed surgery that causes the pregnancy to not continue to term, heavy bleeding that requires emergency medical care, infections that can spread to other organs of the body, or permanent damage to the reproductive organs. These physical risks can increase if the abortion is performed without proper medical supervision or by a layperson. In addition to the physical impacts, psychosocial risks are also significant. After an abortion, adolescents often experience severe psychological stress. Feelings of guilt, deep sadness, and excessive anxiety can arise, especially if the behavior is considered to violate the moral, social, or religious values that they adhere to. These psychosocial conditions can worsen adolescent mental health and cause disorders such as depression, chronic anxiety disorders, and eating disorders as an escape from psychological pressure (Indrawati et al., 2024). Young people who experience this situation often feel socially isolated and lack the support they need, both from their families and their environment. Therefore, it is important to provide adolescents facing abortion decisions with access to comprehensive education, counseling, and psychological support to minimize potential adverse consequences.

In Indonesia, abortion is legal for medical reasons or in cases of medical emergency, and as long as it does not conflict with legal regulations or religious values. This is done to save the lives of pregnant women in emergency situations. In this context, health workers are authorized to perform abortions carefully and responsibly, and the act is not considered to violate any law or religious norms. However, abortion remains illegal and prohibited by law, except in medical or emergency circumstances. Therefore, any abortion must be carried out in accordance with the provisions and procedures set by the government and authorized institutions (Darmawan, 2020). Aborsi bagi pasangan yang sudah menikah sangat berbeda dengan aborsi bagi orang muda yang belum menikah. Abortion for married couples is very different from abortion for young people who are not married. Illegal abortion among minors has a very detrimental impact, especially on the young generation itself. The impact is not limited to physical health problems, but can also affect mental health. One of the most serious consequences of illegal abortion is the risk of death due to serious infections in the uterus. In addition, illegal abortion can also cause serious complications such as uterine rupture, pelvic infection, and endometrial infection (BR Sebayang et al., 2023). The psychological impact on adolescents who have illegal abortions is very serious. Emotional stress due to sadness and guilt over the loss of a baby often occurs in adolescents after an abortion. This can lead to depression and loss of self-esteem in adolescents. In addition, illegal abortions can also have an impact on adolescents' social lives. They may be judged by society and considered irresponsible. In fact, most of them have abortions due to social pressure and lack of knowledge about contraception (Indrawati et al., 2024).

Government Regulation (PP) Number 28 of 2024 concerning the Implementing Regulations of Law Number 17 of 2023 concerning Health, contains very detailed provisions regarding abortion. The regulation considers the need for clear regulations regarding the socially controversial practice of abortion. Several articles in Government Regulation No. 28 of 2024 have been regulated definitively and are summarized in the following analysis table. This table presents the relevant articles, the main substance regulated, and a systematic analysis of these provisions.

Table 1. Results of analysis of PP No. 28 of 2024

Chapter	Main Substance	Analyses
Article 116	Abortion ban with certain exceptions.	Affirming the prohibition of abortion except in the case of medical emergencies or pregnancy resulting from sexual violence. This provision reflects the protection of fetal life as well as respect for women's health rights.
Article 117	Indication of medical emergency.	Determining life-threatening pregnancy conditions for the mother or fetus with severe birth defects. This demonstrates a medical evidence-based approach to determining emergencies that require abortion.
Article 119	Authorized health facilities and personnel.	Stating that abortions can only be performed in advanced health facilities by qualified medical personnel. This regulation ensures the safety and quality of services, although the challenge of equalizing facilities in remote areas remains.
Article 120	The role of the consideration team and doctors.	The advisory team makes recommendations, while the doctor carries out the procedure. This structure ensures that abortion decisions are made transparently and responsibly.
Article 121	Formation of a consideration team.	The consideration team is formed by the head of the health facility with members of competent medical personnel. This provision emphasizes the importance of integrity and capability in decision making.
Article 122	Approval and decision.	Abortion requires the consent of the pregnant woman and her husband, except for victims of sexual violence. This shows respect for women's autonomy and provides special protection for victims of sexual violence.
Article 123	Mentoring and counseling.	Counseling is mandatory before and after an abortion by a health worker or other support staff. This provision supports women's mental and emotional health.

The provisions of Articles 116 to 123 reflect the government's efforts to ensure legal, ethical, and medical protection for the implementation of abortion. The regulations cover various important aspects, from permitted indications to consent and support services such as advice.

Basically Theory Medically Induced Abortion is a medical concept that explains abortions performed for medical reasons or in emergency situations where the life of the mother or fetus is at risk. In the past, this theory was often used to distinguish between abortions performed for medical reasons (such as to save the mother's life or because the fetus is severely deformed) and abortions without a legitimate medical reason. Ta. In the Indonesian context, this theory, which is regulated in Government Regulation No. 28 of 2024, is important because it provides a legal and ethical basis for legal abortion practices. Medically Induced Abortion can be seen in two main dimensions:

1. Medical

Here, abortion is performed to protect the health of the mother or if the pregnancy is defective and the fetus cannot survive. In these circumstances, abortion is not only a legal act but also a medical procedure that must be carefully considered and performed by competent medical personnel. In this context, the theory Medically Induced Abortion emphasizing that abortion should only be considered as a last resort when the life of the mother or fetus cannot be saved by any other means.

2. Legal

Legally, Medically Induced Abortion in Indonesia is very strictly regulated through several provisions of Government Regulation No. 28 of 2024, especially Articles 116 and 117 which state that abortion is only permitted in medical emergencies, or abortion can only be performed if the pregnancy results in abortion. That's a crime. Can. About sexual violence. The theory is that abortion in such circumstances should be legal and follow clear procedures, namely the consent of the woman and her husband (except in cases of victims of sexual violence) and with proper medical assistance. This is based on the premise that.

In general, Medically Induced Abortion provides a basis for distinguishing between legal and illegal abortion. In the context of Indonesian law, this principle can be seen as the government's effort to maintain a balance between protecting women's health rights and the right to life of the unborn child, while still paying attention to relevant social and ethical aspects.

Social and Legal Impacts of Performing Abortion in Medical Emergencies

In Indonesia, it is very important to thoroughly investigate the purpose of abortion. Is the act carried out with the intention of saving the life of the mother who is threatened (medical indication) or is it merely an attempt to cover up the shame and humiliation experienced by the family due to the pregnancy? Until now, the issue of abortion is still considered a criminal act by the majority of society, especially because of social norms that view it as an unacceptable act. However, within the framework of positive Indonesian law, abortion can be justified under certain conditions, especially if it is included in the category medically induced abortion, namely abortions performed for medical reasons can be justified. In contrast, abortions that are not medically indicated, or those performed for more personal or social reasons, are often considered criminal acts, called criminal induced abortion (Anshor, 2006).

In medical practice, maternal safety is usually the top priority, as the mother's life is considered more valuable at this point than the life of the fetus. However, in practice, doctors may have a different opinion. This opinion may be made after a more detailed review of the patient's medical condition and after consulting with family and relatives to ensure that the decision is best for all parties involved (Notoatmodjo, n.d.). This illustrates the complexity of medical practice, where a variety of medical and non-medical factors must be considered when determining the most appropriate procedure.

What makes abortion a medical emergency can change as medical science advances and develops. This means that the criteria that justify abortion are always evaluated based on current medical knowledge. Abortion is only permitted if the parents are not mentally prepared, cannot afford to support the child, the pregnancy is out of wedlock, the sex of the fetus does not match the parents' expectations, or the fetus is no longer in the womb. defects that do not endanger its survival. If any. In this case, social and psychological aspects cannot be the main reason for having an abortion. According to the Obstetrics and Gynecology Ethics Guidelines (POGI), abortion is only permitted if it can save the lives of the mother and fetus. Abortion is only considered a last resort, or an action that is carried out only when all other safer and possible efforts to save both parties have failed or are unsuccessful (Dinda et al., 2024).

Granting consent for medical procedures in emergency situations is different from medical situations that are not classified as emergencies. This is regulated in the Regulation of the Minister of Health No. 290/MENKES/PER/III/2008 concerning Consent for Medical Procedures. If the patient is in an emergency and requires immediate medical care, the patient's consent or permission is not required before treatment is given. However, after the medical procedure is performed and the patient has regained consciousness, the medical team is obliged to explain the actions that have been taken to both the patient and his/her immediate family. The situation is different when it comes to procedures involving emergency abortion without informed consent, which violates health laws and state regulations on reproductive health. Exceptions to abortion in medical emergencies can only be granted based on an evaluation by an abortion eligibility team consisting of two medical staff under the direction of a doctor who has the appropriate competence and authority. Abortion can only be performed after undergoing a counseling process by a competent and certified counselor before and after the procedure (Winoto, 2020).

Lawrence Meir Friedman's law enforcement theory is known as the legal system approach. (legal system theory) is very important in analyzing the issue of abortion in Indonesia, especially in the context of law enforcement, including medical, social, and regulatory norms that apply. This theory emphasizes that law is part of a system consisting of three main elements of legal structure, legal substance, and legal culture. To analyze the problem of abortion, we can connect these three elements with the context that we have described in the previous discussion.

1. Legal Structure

Legal structures include institutions, agencies, and authorities involved in law enforcement, such as courts, police, legislative bodies, and medical institutions. In the context of abortion in Indonesia, the institutions responsible for enforcing health regulations are the relevant legal structures, such as the Regulation of the Minister of Health No. 290/MENKES/PER/III/2008 concerning Consent to Medical Actions. In addition, the courts that handle abortion cases play a key role in ensuring that abortions are carried out in accordance with applicable laws and in accordance with permitted medical requirements. For example, in the case of abortion for legitimate medical reasons (medically induced abortion), this legal structure ensures that the procedure is strictly regulated and includes evaluation by a medical team and counseling before and after the procedure. On the other hand, in cases of abortion that do not meet medical requirements (criminal induced abortion), this legal structure must ensure that the perpetrators or persons involved are subject to legal sanctions in accordance with applicable regulations.

2. Legal Substance

Legal substance refers to the content of the law itself, namely the regulations and norms stipulated in the provisions of the laws and regulations. Regarding abortion in Indonesia, the legal substance of abortion regulations is based on the provisions of Government Regulation Number 28 of 2024 and the Guidelines for Medical Ethics on Abortion in Medical Emergencies. According to Friedman's theory, the contents of the law are clear, consistent, and can be applied reasonably. The Health Law in Indonesia provides an exception for abortion in medical emergencies that aim to save the mother's life. This regulation states that abortion can only be performed in very limited circumstances and only if it is possible to save the mother and fetus. Therefore, the contents of Indonesian law must be interpreted and applied carefully, taking into account the medical and social complexities involved in the decision. In applying legal principles to abortion cases, it is necessary to consider the medical aspects (such as medical indications) and social aspects (such as family and social norms) that influence decision-making.

3. Legal Culture

Legal culture refers to the attitudes, values, and behaviors of a society towards the law and how the law is understood and accepted by society. In the case of abortion, Indonesia's legal culture is heavily influenced by social norms and religious views, and abortion is often considered unacceptable except in very limited circumstances. This reflects the tension between the laws governing medical abortion and societal norms that tend to be conservative in this regard. According to Friedman's theory, legal culture can be both a barrier and a driving force in law enforcement. Abortion for medical reasons is legal in Indonesia, but remains taboo in the legal culture of the society. Prosecution of abortion is heavily influenced by public perception of the law. Although medical abortion is legal in emergency situations, the procedure is often questioned and rejected by society because it goes against prevailing social norms. For example, while the law allows for medically permissible abortion, even if the abortion is not illegal, if the abortion is performed for non-medical reasons, such as out-of-wedlock pregnancy or financial inability, the society may view abortion as an unlawful act. This highlights the importance of educating the public about

their reproductive rights and the need to strike a balance between positive law and cultural norms in society.

CONCLUSION

Government Regulation Number 28 of 2024 provides a clear legal framework for abortion practices in Indonesia, taking into account medical, social, and ethical aspects. Abortion is only permitted in cases of medical emergency or in cases of pregnancy resulting from a crime of sexual violence, as regulated in Article 116. Abortion must be performed in an advanced health facility involving a team of considerations and counseling. The decision to terminate a pregnancy must take into account not only the mother's physical health but also psychosocial considerations and prevailing community norms. The social and legal implications of abortion remain controversial. On the one hand, medical abortion to save the mother's life is legally acceptable. However, abortion without a legitimate medical reason is illegal and is often considered a violation of societal norms. Therefore, it is important to enforce these rules by ensuring a clear and transparent process for all abortion decisions and by educating the public about the importance of understanding reproductive rights and applicable laws. Medically Induced Abortion provides strong legal justification for abortions performed to protect the mother and fetus, but requires strict supervision by authorities to prevent abuse. In addition, effective law enforcement and a legal culture that is sensitive to social and religious issues will have a significant impact on the implementation of this regime. As medical science advances, abortion standards must be continually reviewed to ensure their relevance to current medical conditions, so the authors recommend:

1. Infrastructure Strengthening
The government needs to ensure that advanced health facilities are evenly available.
2. Socialization
The public needs to be educated about this rule to prevent misunderstandings.
3. Medical Personnel Training
Special training for doctors and health workers is needed so that they understand and apply these rules correctly.
4. Preparation of Technical Guidelines
Detailed implementation guidelines will assist health workers and advisory teams in carrying out their duties consistently.

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