



Analysis of Legal Uncertainty for Medical Personnel and Human Rights Violations in the Practice of Female Genital Mutilation in Indonesia

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Abstract

Female genital mutilation is a practice permitted according to some Islamic legal norms and some customary laws in Indonesia, but this practice contradicts legal norms, including Article 102 letter a of Government Regulation No. 28 of 2024 concerning the Implementation of Law No. 17 of 2003 concerning Health, as well as Article 4 and Article 49 paragraph 2 of Law No. 39 of 1999 concerning Human Rights. From this background, the author attempts to analyze how legal certainty is analyzed for medical and non-medical personnel regarding the practice of female circumcision regulated in Article 102 letter a of Government Regulation No. 28 of 2024 concerning the Implementation of Law No. 17 of 2003 concerning Health, and how the analysis of female circumcision practices can be categorized as a form of discrimination against women according to Law No. 39 of 1999 concerning Human Rights. This research uses normative legal research with a case study approach and regulatory comparison to identify existing inconsistencies and legal gaps. The results of this study are that medical personnel performing female circumcision in Indonesia face legal certainty, being free from criminal sanctions, but are at high risk of facing severe professional disciplinary sanctions and civil lawsuits, as the practice contradicts national health policies and medical ethics. Furthermore, Article 4 of Law No. 39 of 1999 on Human Rights states that the state should guaranty protection for non-derogable rights, but the regulatory reality is that the state still allows this. The next conflict is found in Article 49 Paragraph (2) of Law No. 39 of 1999 on Human Rights. Fundamentally, this practice violates women's right to bodily integrity and health, so the state must provide clear legal certainty and protection to women, in line with the broader protection goals of the Human Rights Law.



1. Background

Indonesia is a state of law, as explicitly stated in Article 1 paragraph (3) of the 1945 Constitution, which states, “The Republic of Indonesia is a state of law.” This statement affirms that all aspects of national and state life must be based on law, not solely on power (*machtstaat*) (Abbas & Eliza, 2019). As a consequence, both the government and citizens have an obligation to comply with the applicable laws. Sovereignty rests in the hands of the people, but its implementation must still be subject to the 1945 Constitution of the Republic of Indonesia. This principle aims to create an orderly, just life and provide legal certainty for every citizen (Dewi et al., 2021).

Within Indonesia’s legal system, the 1945 Constitution of the Republic of Indonesia is supported by various norms that regulate social order, including legal norms themselves, as well as norms of politeness, morality, and religion (Bangun & Manik, 2025). Legal norms have specific characteristics because they are written, binding, and made by authorized institutions, with clear sanctions for violators. These norms, ranging from the constitution to subordinate regulations, work synergistically to achieve the goals of law, namely legal certainty, justice, and benefit for society. Thus, the existence of these diverse norms becomes an important foundation ensuring the rule of law, equality before the law, and the principle of legality in Indonesia (Elnakib et al., 2025).

However, Indonesian society’s legal culture is not only required to adhere to legal norms, but they must also submit to and obey religious norms as a consequence of being God’s creations who must carry out God’s commandments, even if those norms are not regulated by legal norms or even if those religious norms contradict legal norms. One example of this is female circumcision, also known in medical terms as “female genital mutilation (Ortensi et al., 2025). “ Female circumcision practices in Indonesia have deep roots in tradition and culture, often associated with interpretations of Islam in some communities. Although there is no strong evidence in the Quran, this practice is passed down thru generations, especially in various regions such as South Sulawesi, Banten, and Sumbawa. Female circumcision is often considered a ritual that symbolizes purity, the confirmation of Muslim status, or an attempt to control women’s sexual desires in order to preserve honor. The practice varies widely, from purely symbolic to more invasive actions, and is often performed by traditional birth attendants or older individuals, rather than medical professionals (Fauziyah, 2017).

However, the modern history of female circumcision in Indonesia is also marked by controversy and efforts to ban it, particularly from the perspectives of health and human rights. Since 2006, the Ministry of Health has been working to limit this practice in healthcare facilities, culminating in the revocation of the Minister of Health Regulation in 2014, which created legal uncertainty. Nevertheless, this practice is still found in many places. This controversy reflects the debate between medical authorities and human rights advocates who view female circumcision as violence and a violation of women’s rights, versus religious and customary perspectives that still uphold the practice.

From the spectrum of religious norms, the basic assumption that female circumcision is part of Islamic teachings stems from the interpretation of several hadiths and the views of classical scholars,

particularly from the Shafi'i school of thought, which considers it obligatory or recommended (sunnah). This interpretation is often associated with traditions that link circumcision to fitrah (natural purity) and the view of controlling women's sexual desires. This practice was then passed down thru generations in some Muslim communities, especially in Indonesia, and is considered part of religious and cultural rituals. However, it is important to note that there is no verse in the Quran that explicitly mentions female circumcision.

However, the view that female circumcision is part of Islamic teachings faces strong criticism from many contemporary scholars and hadith experts who doubt the authenticity and interpretation of the hadiths used as a basis. They argue that this practice contradicts the fundamental principles of Islam, which forbid self-harm and harming others. Additionally, the 2008 fatwa from the Indonesian Council of Ulama (MUI) states that female circumcision is not obligatory and should not be performed if it causes harm, indicating that there is no absolute obligation in Islam to do it. This difference in opinion highlights that the association of female circumcision with Islamic teachings is more based on tradition and disputed interpretations, rather than on solid teachings from primary Islamic sources.

Beside being a subject of debate among Indonesian Muslim communities, from a health regulation perspective governed at the level of Government Regulations in Indonesia, it also faces several conflicts, including; Article 102 letter a of Government Regulation No. 28 of 2024 concerning the Implementing Regulations of Law No. 17 of 2003 concerning Health states that "female circumcision practices are abolished," which results in legal uncertainty for medical personnel and doctors to perform female circumcision, protection for victims of malpractice, and punishment for doctors, medical personnel, or non-medical personnel who perform it.

From a legal and human rights perspective, female circumcision also faces opposition, even to the point where some legal norms do not condone this religious and cultural practice. Female genital mutilation, which has no medical basis and can cause serious health risks, potentially violates Article 4 of Law No. 39 of 1999 concerning Human Rights. This article explicitly prohibits torture and cruel, inhuman, and degrading treatment. Actions that injure or mutilate female reproductive organs without medical indication, even on the basis of tradition, can clearly be categorized as acts of violence that violate the right not to be tortured and the right to personal freedom.

Additionally, female circumcision can also contradict Article 52 of Law No. 39 of 1999 concerning Human Rights, which guaranties protection for every child from various forms of violence. Considering this practice is often performed on children who are not yet able to give consent, it constitutes a violation of children's right to be protected by parents, family, society, and the state. Other violations can also occur under Article 9 paragraph (1) of Law No. 39 of 1999 concerning Human Rights, which states that every person has the right to adequate health, because this practice actually poses health risks, not benefits.

Furthermore, women's rights are specifically protected in Article 49 of Law No. 39 of 1999 concerning Human Rights, where paragraph (2) states that women are entitled to special protection against matters that may threaten their safety or health, especially those related to reproductive

function. Female genital mutilation, which is directly related to reproductive organs and poses a serious threat to women's health, is contrary to the spirit of such protection. Although some of the articles from Law No. 39 of 1999 on Human Rights mentioned above do not specifically prohibit female circumcision, the human rights principles contained in those articles are sufficient to provide a strong legal basis for opposing the practice. From this background, the author attempts to analyze how legal certainty is analyzed for medical and non-medical personnel regarding the practice of female circumcision regulated in Article 102 letter a of Government Regulation No. 28 of 2024 concerning the Implementation of Law No. 17 of 2003 concerning Health, and how the analysis of female circumcision practices can be categorized as a form of discrimination against women according to Law No. 39 of 1999 concerning Human Rights.

2. Method

This research employs a normative legal research method, also known as doctrinal research, to examine the issue of legal uncertainty and human rights violations in the practice of female circumcision in Indonesia. This approach focuses on analyzing various norms, rules, and legal doctrines in force to evaluate the alignment between Indonesian legislation and international human rights instruments. The primary data sources for this research are primary and secondary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, Law of the Republic of Indonesia No. 7 of 1984 on the Ratification of the Convention on the Elimination of All Forms of Discrimination Against Women, Law No. 39 of 1999 on Human Rights, Government Regulation No. 28 of 2024 on the Implementation of Law No. 17 of 2003 on Health, as well as international instruments such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Meanwhile, secondary legal materials consist of relevant literature, journals, fatwas, and expert opinions to enrich the analysis.

Next, this research applies a case study and regulatory comparison approach to identify existing inconsistencies and legal gaps. Thru this method, a systematic interpretation will be conducted to understand how these norms are applied and the extent to which the inconsistencies found have led to legal uncertainty and inadequate protection for women and girls in Indonesia. The analysis will continue by linking the findings from the legal materials examined to universal human rights principles, particularly regarding the right to bodily integrity, health, and freedom from cruel, inhuman, and degrading treatment. Thus, this study aims to present a comprehensive analysis of the existing legal framework and identify gaps that need to be addressed to combat human rights violations resulting from female genital mutilation practices.

3. Results and Discussion

3.1 Analysis of Legal Certainty for Medical and Non-Medical Personnel Regarding Female Genital Mutilation Practices Regulated in Article 102 Letter A of Government Regulation No. 28 of 2024 Concerning the Implementation of Law No. 17 of 2003 Regarding Health

Female circumcision practices in Indonesia are in a state of significant legal uncertainty and are the subject of sharp controversy, bringing together medical, legal, cultural, and religious aspects.

Historically, the government has attempted to regulate this practice thru specific policies, but the current policy direction tends to prohibit it as part of formal healthcare services. Historically, this issue was specifically regulated in the Minister of Health Regulation No. 1636/Menkes/Per/XII/2010. Article 1, paragraph 1 of the Minister of Health Regulation defines female circumcision as “the act of cutting the skin covering the front part of the clitoris, without injuring the clitoris.” This regulation provides a kind of legal basis for medical personnel, although with very specific and minimal limitations.

However, this provision has now been revoked and declared invalid by Ministry of Health Regulation No. 6 of 2014. Consideration of Permenkes No. 1636/Menkes/Per/XII/2010 reinforces the fundamental principle that every medical action must be based on medical indications and scientifically proven to be beneficial. Female genital mutilation, to this day, does not meet those criteria because there is no medical indication and no scientifically proven health benefits. Therefore, Permenkes No. 1636/Menkes/Per/XII/2010 is considered no longer in line with the dynamics of global policy development and the need to protect women’s health. Furthermore, this prohibition is also reinforced by Article 102 Letter A of Government Regulation No. 28 of 2024 concerning the Implementation of Law No. 17 of 2003 concerning Health, which clearly states “eliminating the practice of female circumcision,” meaning the state is no longer responsible for any malpractice or medical consequences resulting from female circumcision.

Permenkes No. 6 of 2014 concerning Amendments to Permenkes No. 1636/Menkes/Per/XII/2010 and Article 102 Letter A of Government Regulation No. 28 of 2024 concerning the Implementation of Law No. 17 of 2003 concerning Health fundamentally change the regulatory paradigm of female circumcision in Indonesia. Previous policies had attempted to regulate the practice by limiting it to skin-scratching actions without injuring the clitoris,” but this approach was abandoned. The considerations and substance of this regulation affirm a key principle in the medical world: every medical procedure must have clear medical indications and be scientifically proven to be beneficial. The key phrase in this policy is that female circumcision is not a medical procedure because its performance is not based on medical indications and has not been proven beneficial for health.

The legal consequences of this determination are very significant for medical personnel (doctors, midwives, nurses). When an action is declared non-medical, the healthcare professionals performing it are not under the legal protection of their profession. This practice is considered a violation of medical ethics and healthcare service professionalism standards (Heryani et al., 2020). The position of the Indonesian Ministry of Health aligns with the global consensus promoted by the WHO, the United Nations Children’s Fund (UNICEF), and the United Nations Population Fund (UNFPA). These organizations classify Female Genital Mutilation as a severe human rights violation against girls and women. The WHO explicitly states that Female Genital Mutilation, also known medically as Female Genital Cutting and Mutilation (FGM/C), has no scientifically proven health benefits. Conversely, this action is inherently dangerous and leads to various short-term and long-term health complications. International medical consensus emphasizes that the physical and anatomical integrity of female genitalia must be preserved, and non-medical modifications are unjustifiable actions. Health professional organizations in Indonesia, such as the

Indonesian Medical Association (IDI) and the Indonesian Midwives Association (IBI), generally support the Ministry of Health and WHO's position, prohibiting their members from engaging in P2GP practices (Isnaini, 2025).

This is because the analysis results from WHO and IDI indicate that this practice is not urgent and can even pose inherent health risks, with scientific evidence showing the physical and psychological harm caused by P2GP, even in its most minimal form ("scratching"). These risks include: Acute Complications: Severe pain, excessive bleeding, infection (including tetanus and sepsis), urinary retention, and injury to surrounding organ tissues. Long-Term Complications: Recurrent urinary tract infections, cysts, abscesses, chronic pain during sexual intercourse (dyspareunia), sexual dysfunction, serious complications during childbirth (due to scar tissue), obstetric fistulas, and an increased risk of maternal and infant death. The next impact is psychological: trauma, anxiety, depression, and post-traumatic stress disorder (PTSD) are often experienced by victims. From a medical perspective, the clear risks and lack of benefits justify a total ban on this practice in formal healthcare facilities (Jannah & Hermawan, 2022).

Legal uncertainty is also experienced by doctors and medical personnel who practice this, including the lack of criminal sanctions for the perpetrators, with sanctions only revolving around internal medical regulations and professional discipline. Professional Disciplinary Sanctions: Healthcare professionals are prohibited from performing medical procedures without clear medical indications. Professional organizations such as the Indonesian Medical Association (IDI), the Indonesian National Nurses Association (PPNI), and the Indonesian Midwives Association (IBI) can impose disciplinary sanctions on their members who violate ethical codes and professional standards, which may include revoking their practice licenses.

Government Regulation No. 28 of 2024 on the Implementation of Law No. 17 of 2003 Concerning Health: This regulation strengthens the elimination of female circumcision practices in healthcare facilities and by healthcare workers, affirming that such actions are not part of healthcare services. Violations of these regulations can lead to administrative and disciplinary sanctions.

Child Protection Law: If female genital mutilation is performed on children, medical personnel can be prosecuted under Law No. 35 of 2014 concerning Child Protection, which prohibits abuse or actions that endanger a child's health and development. Next is a civil lawsuit: Victims of female genital mutilation who have suffered health damage, both physical and psychological, can sue for civil legal liability based on Law No. 17 of 2003 concerning Health and Law No. 39 of 1999 concerning Human Rights, because the act disrupts physical integrity and the normal function of the reproductive system.

The basis for prohibiting female circumcision in Indonesia includes: Ministry of Health Regulation (Permenkes) No. 6 of 2014: This Permenkes revokes the previous Permenkes that allowed female circumcision. Permenkes No. 6 of 2014 effectively prohibits healthcare workers from performing female circumcision because there are no medical indications and it carries a risk of health complications such as infection, chronic pain, psychological disorders, and childbirth problems.

WHO Recommendation: The World Health Organization (WHO) categorizes female genital mutilation/cutting (FGM) as a human rights violation and does not recommend it medically. Government Organization Positions: The Ministry of Health, the Ministry of Women's Empowerment and Child Protection, and the National Commission on Violence Against Women consistently state that the practice of female circumcision must be eliminated because it is dangerous and violates women's rights. In summary, medical professionals performing female circumcision in Indonesia face legal certainty that they are free from criminal sanctions, but are at high risk of severe professional disciplinary sanctions and civil lawsuits, as the practice contradicts national health policies and medical ethics (Kasim & Sembadra, 2025).

3.2 Analysis of Female Genital Mutilation Practices as a Violation of Human Rights Based on Law No. 39 of 1999

The 2021 National Survey of Women's Life Experiences (SPHPN) reported that 55% of girls aged 15-49 in Indonesia have undergone Female Genital Cutting and Mutilation (FGM/C), placing Indonesia among the top three countries with this practice based on UNICEF data from 2015. Acting Secretary of the Ministry of Women's Empowerment and Child Protection, Titi Eko Rahayu, stated that internationally, female genital mutilation is a violation of women's human rights to health and integrity, and legally constitutes an act of violence due to its negative impact on health. Cultural factors, religious interpretations (68.1%), social pressure (40.3%), and misconceptions about health (40.3%) are the main reasons for this practice. This practice contradicts Law Number 23 of 2004 concerning Domestic Violence, Law Number 35 of 2014 concerning Child Protection, as well as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which has been ratified by Indonesia. The handling efforts are outlined in the 2020-2030 P2GP/FGM/C Prevention Roadmap. Government Regulation Number 28 of 2024 concerning Health removes female circumcision from healthcare services, aligning with laws on the elimination of violence against women and children. This policy prohibits medical personnel from performing Female Genital Cutting and Mutilation (FGM/C) procedures, which are considered to be in conflict with human rights and universal health standards, and are potentially harmful.

The response from the Indonesian Council of Ulema (MUI) was to reject the policy, as it contradicts Islamic law. According to the Chairman of the Central MUI, KH Cholil Nafis, female circumcision is a *makrumah* (recommended) and a symbol of Islam that should not be prohibited, even tho its legal status is debated (*khilaf*) between *sunnah* and *wajib*. MUI recommends that female circumcision be performed according to *sharia*, only removing the clitoral hood without excessive injury.

One of the largest Islamic organizations in Indonesia, Nahdlatul Ulama (NU), stated that banning female circumcision is an inappropriate action. He stated that female circumcision is part of Islamic teachings that must be carried out. According to him, in Islam there are three views regarding female circumcision: obligatory, recommended, and the lowest is honorable (*makrumah*), but there is no opinion that forbids it. This statement was made in response to the government's policy thru the Ministry of Health (Depkes), which has banned female circumcision since May 20, 2024, citing it as harmful.

On the other hand, the Director of Maternal and Child Health Development at the Ministry of Health, Siti Hermianti, stated that female circumcision is very dangerous, especially because the target often involves cutting the clitoris. This practice has become a tradition in several areas such as Padang, Pariaman, Serang, Sumenep, Makassar, and Bone. Research in these areas found that excessive practices can lead to serious negative consequences, including menstrual difficulties, chronic urinary tract infections, sexual dysfunction, and an increased risk of HIV/AIDS transmission.

Nevertheless, some religious organizations rejected the ban. The Deputy Chairman of the NU Health Services Institute, Dr. Bina Suhendra, believes that if the Prophet Muhammad (PBUH) has made something a sunnah, its purpose must be good. He suggested that medical personnel be taught the correct way to circumcise, rather than banning the practice altogether. MUI Chairman Amidhan also agreed, stating that circumcision serves to cleanse dirt, and if there are any errors, they lie in technical issues, not the substance of circumcision itself. The Ministry of Health itself still limits the ban to medical professional organizations and plans to discuss this sensitive issue with the Ministry of Religious Affairs, religious organizations, and traditional leaders' organizations, considering that Indonesia must be governed by positive legal norms that uphold human rights values. In addition, there are customary legal norms and religious norms that actually contradict positive law and human rights values.

3.2.1 Analysis of Female Genital Mutilation Practices According to Article 4 of Law No. 39 of 1999 on Human Rights

Article 4 of Law Number 39 of 1999 states that the right to life, the right not to be tortured, the right to personal freedom, thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized as a person and equality before the law, and the right not to be prosecuted on the basis of retroactive laws are human rights that cannot be diminished under any circumstances (non-derogable rights). The main interpretation of this chapter is the explicit establishment of fundamental rights that are absolute and absolute. This means that even if the country is in a state of emergency, war, or other public danger, the rights listed in this article must not be restricted, revoked, or suspended in their execution by anyone, including the state. This reflects Indonesia's commitment to upholding universal human rights standards, particularly those rights recognized as core to human dignity (Nurdiyana, 2010).

The rights listed in Article 4 are known as non-derogable rights because they have a fundamental value that transcends momentary public interest or specific political conditions. This interpretation emphasizes that protecting these rights is the state's first and foremost obligation. For example, the right to life should not be arbitrarily deprived, and the prohibition of torture must be strictly adhered to without exception. This article serves as a constitutional bulwark against repressive or authoritarian actions, ensuring that individuals are always protected from abuse of power, even in the most extreme circumstances (Pratiwi, 2016).

Legally, Article 4 serves as the basis for interpreting all laws and government actions. If there are regulations or actions that could potentially diminish or suspend any of the rights mentioned, then those regulations or actions can be considered contrary to the fundamental principles of

human rights. This interpretation is also in line with international legal instruments, such as the International Covenant on Civil and Political Rights (ICCPR), which also regulates non-derogable rights. Thus, the interpretation of Article 4 strengthens the integration of Indonesia's national legal system with the global human rights framework, affirming that these rights must be respected as *jus cogens* norms (norms of law accepted and recognized by the international community as norms that cannot be violated).

Article 4 of Law Number 39 of 1999 concerning Human Rights explicitly stipulates a number of non-derogable rights under any circumstances, including the right not to be tortured and the right to be recognized as a person. Female Genital Mutilation (FGM), globally defined as procedures involving the alteration or injury to female genital organs for non-medical reasons, directly has the potential to violate these absolute rights. Although this practice is often classified as symbolic or ritualistic in Indonesia, medical studies and international human rights consider FGM to be a form of gender-based violence and cruel, inhuman, and degrading treatment. Therefore, if the practice causes pain, trauma, or long-term harm, it contradicts the guaranty of the right not to be tortured as enshrined in Article 4 of the Human Rights Law. The interpretation of Article 4 also emphasizes the protection of personal freedom and bodily integrity. In the context of FGM, this practice is often performed on girls who are not yet able to give valid informed consent, making the procedure a violation of bodily autonomy and the right to self-determination. Although this practice is sometimes defended on the basis of tradition or religious belief, Article 4 places fundamental individual rights, such as the right not to be tortured and to be recognized as a person, above cultural or communal arguments. The state has a positive obligation to protect its citizens, especially children, from all forms of treatment that are detrimental to physical and mental health, which is reaffirmed in child protection, an integral part of the non-derogable interpretation of human rights.

The Indonesian government, thru various regulations and policies, has shown an ambivalent attitude toward FGM, creating legal tension with the spirit of Article 4 of the Human Rights Law. On the one hand, Indonesia has ratified international human rights instruments that prohibit torture and violence against women. On the other hand, there was a technical regulation by the Ministry of Health that tended to regulate (not completely prohibit) the practice of female circumcision, although this regulation was revoked in 2014. This revocation strengthens the interpretation that practices potentially harmful and violating the bodily integrity of girls are inconsistent with the protection of non-derogable rights. Article 4 serves as the highest legal basis for urging the total prohibition of FGM practices, regardless of their form, if they have a negative impact on the child's physical and mental well-being.

Referring to Article 4 of Law No. 39 of 1999, it shows that the practice of female genital mutilation (FGM) in all its forms is vulnerable to human rights violations, which are absolutely guaranteed. The principle of the right not to be tortured and bodily integrity contained in non-derogable rights must be prioritized. Therefore, the state has a constitutional obligation to take effective measures to ensure that no traditional or cultural practices may violate the fundamental human rights of individuals, particularly girls, as mandated by Article 4, in order to guaranty that every citizen is fully recognized and protected as a person before the law.

3.2.2 Analysis of Female Genital Mutilation Practices According to Article 9 Paragraph 1 of Law No. 39 of 1999 on Human Rights

Article 49 Paragraph (2) of Law Number 39 of 1999 concerning Human Rights specifically states, “Women have the right to receive special protection in the performance of their work or professional activities against things that can threaten their health and safety, morality, and status related to reproductive function.” This provision is a legal recognition that women have unique vulnerabilities and needs related to their reproductive functions, and therefore, require different and more comprehensive legal protection than men in the context of work. The interpretation of this article indicates the state’s and employers’ obligation to recognize and accommodate women’s biological needs, such as pregnancy, childbirth, breastfeeding, and menstrual cycles, so that these reproductive functions do not become an obstacle or threat to their right to work and access healthcare (Rahman et al., 2001).

The relationship between Article 49 Paragraph (2) and women’s reproductive rights is very close. Reproductive rights, as an integral part of human rights, encompass the right of every individual to make free and responsible decisions about their reproduction without discrimination, coercion, and violence. This article applies reproductive rights in the professional sphere by guaranteeing that a woman’s reproductive status (such as pregnancy) should not be grounds for discrimination, termination of employment, or placement in a work environment hazardous to the fetus or the mother’s health. Additionally, protection of morality and status related to reproductive function interprets that women are entitled to privacy and dignity regarding their reproductive health in the workplace, opposing any form of harassment or demands that are detrimental to their reproductive function.

Furthermore, Article 49 Paragraph (2) of Law Number 39 of 1999 concerning Human Rights states, “Women have the right to receive special protection in the performance of their work or professional activities against matters that can threaten their health and safety, morality, and status related to reproductive function.” This provision is designed to ensure that women’s biological functions, particularly reproductive functions, do not become a source of threat or discrimination in the public and professional spheres. Textually, this article focuses on protection in the workplace, but a broader and more holistic interpretation of human rights indicates that protection of health and safety related to reproductive function should be considered from the outset (Sulahyuningsih et al., 2021).

Female Genital Mutilation (FGM) directly poses a serious threat to women’s health and safety, both in the short and long term, making it relevant to be examined under the umbrella of Article 49 Paragraph (2) protection. Although FGM is generally performed in childhood, its impact on reproductive function, such as childbirth complications, chronic urinary tract infections, and psychosexual problems, persists until the woman reaches her productive and professional years. Thus, FGM can be considered a pre-existing factor that threatens women’s reproductive health, indirectly weakening the protection sought by Article 49 Paragraph (2) in adulthood.

Furthermore, Article 49 Paragraph (2) protects the status of women related to reproductive function. FGM is often rooted in cultural beliefs that aim to control women’s sexuality, making them “pure” or “clean.” This control fundamentally undermines women’s autonomy and dignity

over their own bodies. This practice essentially degrades the status of women as autonomous individuals and deprives them of their right to bodily integrity. Damage to the reproductive organs can be considered a threat to women's reproductive status, which is guarantyd by this article, as it reduces reproductive function to an object of social control rather than a personal right (Zahra & Indriani, 2025).

Linking Article 49(2) with FGM provides an additional legal basis beyond Article 4 (the non-derogable right not to be tortured). If the practice of FGM leads to serious health complications, it means the woman cannot perform her job or profession optimally or safely, thus violating the spirit of this article. For example, a woman suffering from chronic pain or childbirth complications due to FGM does not receive full protection of her health and safety in the workplace as mandated by the Human Rights Act. This article serves as an instrument to demand that the state take preventive and curative measures.

However, there are limitations in directly applying Article 49 Paragraph (2) to prohibit FGM, as this article focuses on protection in the workplace/profession, while FGM is an act that occurs in the private/cultural sphere during childhood. To achieve a total ban on FGM practices, stronger legal emphasis must be placed on Article 4 (Right Not to Be Tortured) and the Child Protection Act. Nevertheless, Article 49 Paragraph (2) remains relevant as an argument for indirect impact: actions that threaten reproductive health in childhood will hinder women from fully enjoying their rights as adult citizens and workers protected by this article. In conclusion, the study of Article 49 Paragraph (2) of the Human Rights Act against FGM practices reinforces the urgency of prohibiting this practice thru the lens of protecting women's reproductive health and dignity. Although the context is work, a progressive interpretation shows that actions that damage women's reproductive organs from an early age pose a long-term threat to their right to a healthy and dignified life, which is an absolute prerequisite for enjoying protection in the workplace. The state has an obligation to ensure that women's reproductive functions are protected, and this begins with ending the practice of FGM, which fundamentally violates women's right to bodily integrity and health, thus aligning with the broader protection goals of the Human Rights Act.

4. Conclusion

Female Genital Mutilation (FGM) has faced opposition from the World Health Organization (WHO), which categorizes it as a human rights violation and does not recommend it medically. The relevant government legal positions in this practice: The Ministry of Health, the Ministry of Women's Empowerment and Child Protection, and the National Commission on Women consistently state that female genital mutilation must be eliminated because it is dangerous and violates women's rights. In summary, medical professionals performing female circumcision in Indonesia face legal certainty that they are free from criminal sanctions, but are at high risk of severe professional disciplinary sanctions and civil lawsuits, as the practice contradicts national health policies and medical ethics.

From the perspective of human rights as regulated in Article 4 of Law No. 39 of 1999 on Human Rights, it shows that the practice of female genital mutilation (FGM) in all its forms is

in a vulnerable position regarding human rights violations that are absolutely guaranteed. The principle of the right not to be tortured and bodily integrity contained in non-derogable rights must be prioritized. Therefore, the state has a constitutional obligation to take effective measures to ensure that no traditional or cultural practices may violate the fundamental human rights of individuals, particularly girls, as mandated by Article 4, in order to guaranty that every citizen is fully recognized and protected as a person before the law. Furthermore, according to Article 49 Paragraph (2) of Law No. 39 of 1999 on Human Rights, this practice fundamentally violates women's right to bodily integrity and health, so the state must provide clear legal certainty and protection to women, in line with the broader protection objectives of the Human Rights Law.

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