

A COMPARATIVE ANALYSIS OF SMEAR TEST AS WOMEN'S SEXUAL HEALTH RIGHTS IN INDONESIA AND THE UNITED KINGDOM

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Abstract

Smear Test is a test that functions as a preventive measure against cervical cancer. It is important to know in advance that the process of this test will be through the cervix, so this gives rise to differences of opinion, there are several opinions that state the importance of carrying out this test because it is the initial process in detecting cervical cancer. However, there are also several countries that believe that matters related to sex and sexuality are taboo. This will further complicate efforts to protect sexual health. This article aims to examine further the views on the Smear Test which are linked to the issue of women's sexual health rights while also examining its benefits. In the research and research process, the author will use qualitative methods and library research to obtain the necessary data. Comparative studies will also be used in comparative analysis of women's rights to Smear Tests in the Indonesian jurisdiction compared to the UK jurisdiction and several other countries as an additional reference. Based on previous research, the author believes that Indonesia must reflect on developed countries in terms of state efforts to increase protection of the sexual health rights of its people. Overall, there are two different views from the pro and con groups regarding the implementation of the Smear Test. However, in the end the Smear Test must still be recognized by the Government as an effort to prevent its people from problems related to sexual health.

Keywords: *smear test, women's rights, sexual health, preventive action, other jurisdictions.*

Intisari

Smear Test adalah sebuah tes yang berfungsi sebagai tindakan preventif terhadap penyakit kanker serviks. Perlu diketahui terlebih dahulu bahwa tes tersebut prosesnya akan melalui leher rahim (serviks) sehingga hal tersebut menimbulkan perbedaan pendapat, ada beberapa pendapat yang menyatakan pentingnya tes tersebut untuk dilakukan karena merupakan proses awal dalam mendeteksi penyakit kanker serviks. Meski demikian, terdapat pula beberapa negara yang percaya bahwa hal-hal yang berhubungan dengan seks maupun seksualitas merupakan suatu hal yang tabu. Hal ini akan semakin mempersulit upaya untuk melindungi kesehatan seksual. Artikel ini bertujuan untuk mengkaji lebih lanjut mengenai pandangan terhadap Smear Test yang dikaitkan dengan isu hak kesehatan seksual perempuan sekaligus juga mengkaji manfaatnya. Dalam proses riset dan penelitian, Penulis akan menggunakan metode kualitatif serta penelitian kepustakaan untuk memperoleh data yang diperlukan. Studi komparatif juga akan

digunakan dalam menganalisis perbandingan atas hak perempuan terhadap Smear Test dalam yurisdiksi Indonesia dibandingkan dengan yurisdiksi Inggris serta beberapa negara lainnya sebagai referensi tambahan. Berdasarkan penelitian yang ada sebelumnya, Penulis berpendapat bahwa Indonesia wajib berkaca pada negara-negara maju dalam hal upaya negara untuk meningkatkan perlindungan terhadap hak kesehatan seksual masyarakatnya. Secara keseluruhan, terdapat dua pandangan yang berbeda dari kelompok pro maupun kontra mengenai implementasi Smear Test ini. Namun, pada akhirnya Smear Test tetap harus diakui oleh Pemerintah sebagai upaya untuk menghindari masyarakatnya dari permasalahan-permasalahan yang berkaitan dengan kesehatan seksual.

Kata Kunci: *smear test, hak perempuan, kesehatan seksual, tindakan prefentif, yurisdiksi lain.*

A. Introduction

A Smear test is one type of sexual health check, its function is to test for any abnormalities that may indicate cervical cancer, but not a test for cancer.¹ Some countries offer free smear test to their citizens, such as the United Kingdom. This offers the citizens, particularly the women, to protect their sexual health. However, considering the test process is through cervix, some countries need support in encouraging their citizens access to this kind of protection.

Indonesia might be the best example, as the author's home country does not put much concern in protecting the sexual health of its citizens. Solehati emphasized that adolescents in Indonesia have poor knowledge towards reproductive health.² Although the previous study might only cover the scope of adolescents, this could work as a depiction of the country's action in managing sexual health reproduction knowledge to the people.

Further, Indonesia consists of a Muslim majority with a total number of 88% of Indonesia's population.³ The fact makes that there is a laid cultural sexual taboo in terms of Islamic understanding.⁴ Subsequently, this Author

1 NHS choices (NHS), "Cervical Screening", <https://www.nhs.uk/conditions/cervical-screening/> (accessed January 15, 2023).

2 Solehati, Tetti, Iqbal Pramukti, Agus Rahmat, and Cecep Eli Kosasih, "Determinants of Adolescent Reproductive Health in West Java Indonesia: A Cross-Sectional Study," *International Journal of Environmental Research and Public Health* 19, no. 19 (2022): 11927.

3 No Author, "Muslim Population of Indonesia," *Pew Research Center's Religion & Public Life Project (Pew Research Center)*, May 31, 2020, <https://www.pewresearch.org/religion/2010/11/04/muslim-population-of-indonesia/>.

4 Bennett, L. R., "Zina and the enigma of sex education for Indonesian Muslim youth," *Sex*

argues that it causes women in Indonesia to have limited rights than those living abroad.

Henceforth, assessing opposite points of view from each country, the author wants to conduct an in-depth research to understand the pros and cons of smear tests from Indonesia and United Kingdom perspectives. Subsequently, this legal assessment will utilize national and international regulations that recognize sexual health rights as part of human rights. Specifically, the author will focus on whether the smear test already become women's rights.

Post-pandemic era affects the whole country new opportunities to broaden its concept, particularly in protecting human rights. This includes recognising sexual health as part of human rights. The comprehension gap between countries regarding sexual health is a challenge because human rights should be equal for everyone. Therefore, this article comes along with the idea of contemporary women's issues that is seen and experienced in everyday life.

To obtain the data, the author will use a qualitative method to answer questions about exposure, interpretation, and most often from the standpoint of the participants.⁵ Further, qualitative research techniques will also include a "small group discussion" in investigating beliefs, attitudes, and concepts of normative behaviour.⁶ The author also conducted library research to assess the information through journals, textbooks, and articles. The author will examine mostly primary and secondary legal sources, such as international legal instruments and national legal instruments in order to compare each laws which are the Human Rights Act 1998, and Convention on Elimination Against Discrimination Against Women 1979 as well as the Indonesian Human Rights Law as the standard regulation.

This paper is aimed at the respondents, namely scholars, doctors, students, or anyone interested in the issue of women's rights and gender equality. The author chooses United Kingdom as a comparison because United Kingdom is a developed country could that is highly committed in protecting sexual health

Education: Sexuality, Society, and Learning 7, no. 4 (2007): 381.

5 K. Hammarberg, et.al, "Qualitative Research Methods: When to Use Them and How to Judge Them," *Human Reproduction* 31, no. 3 (2016): 499.

6 *Ibid.*

in their governmental action in which Indonesia could learn from. In addition, as a temporary resident, the author feels that the United Kingdom government offers a different experience by offering this sexual health right. Lastly, the author will conclude the discussion and give suggestions, if possible, as solutions to settle the encountered problems to create a harmonious society that is more understanding of women's sexual health rights.

B. Smear Test Definition and Its Position in International Law

Based on the definition from a medical dictionary, a smear test, also known as a cervical screening test, checks for the Human Papilloma Virus (HPV), and any abnormal changes to the cells of the cervix.⁷ The purpose of screening in the smear test is to test people for early stages of a disease before they have symptoms.⁸ All women with a cervix between the ages of 25 and 64 should go for regular cervical screening.⁹

Another terminology to define the test is "pap smear". It is known as that because the founder, George Nicholas Papanicolaou was the pioneer of creating the Papanicolaou test, commonly known as Pap smear, which revolutionised the early detection of cervical cancer.¹⁰ The founder's name was still being used until now.

In conducting a pap smear test, the author discovered that there is more than one technique to conduct sampling. In some cases, it is using automated cervical screening using colposcopy images. Colposcopy images or cervigrams are the images that capture the cervical region and are considered the gold standard by medical experts for the identification and evaluation of cervical cancer.¹¹ This automatic mechanism is provided by machine utilization in the

7 dr. Usha Sharma, "Smear Test: What Is It, Symptoms and Treatment", Top Doctors. <https://www.topdoctors.co.uk/medical-dictionary/smear-test> (accessed January 15, 2023)

8 Cancer Research UK, "About Cervical Screening," *Cancer Research UK*, January 18, 2022, <https://www.cancerresearchuk.org/about-cancer/cervical-cancer/getting-diagnosed/screening/about>.

9 NHS choices (NHS), "When you'll be invited for cervical screening", <https://www.nhs.uk/conditions/cervical-screening/when-youll-be-invited/#:~:text=All%20women%20and%20people%20with,go%20for%20regular%20cervical%20screening> (accessed January 15, 2023).

10 Tan, Siang Yong, Tatsumura Yvonne, "George Papanicolaou (1883-1962): Discoverer of the Pap smear," *Singapore Med J.* 56, no. 10 (2015): 586.

11 Saini, S.K., Bansal, V., Kaur, R. *et al.* "ColpoNet for automated cervical cancer screening using

sampling process.

A different method applies for the sampling test is through Cytobrush Technique to collect the required sample. It uses the baseline evolution of the Ayre spatula-cotton swab method.¹² With these various ways of collecting samples, it is really up to the health clinic which one they can provide for the patients.

Indeed, cervical cancer is a harmful disease. The data provided by the Gynecologic Cancer Intergroup, states that, worldwide, cervical cancer is the fourth most frequently occurring malignancy in women, and results in an estimated 530,000 new cases with 270,000 deaths.¹³ This huge number depicts that cervical cancer is a global problem, not limited only to certain countries. The author agrees that the existence of a pap smear test, therefore it is important to conduct because it acts as a preventive measure. It is better to prevent than to cure the disease.

In the United Kingdom, every woman aged above 25 and below 64 will be receiving a regular invitation to undergo the test every 3 years for people aged 25 to 49; or 5 years until the aged of 64. The National Health Service (“NHS”) as the health insurance provider will invite women in England and Northern Ireland in a periodic manner. NHS aim to promote high-quality health for all, providing health and care and improving the health of the population.¹⁴

According to the previous explanation, a smear test is a type of health check as preventive action against cancer. Even though women in the United Kingdom will receive an invitation, it is still optional for to take the test. In the author’s opinion, by the action of regular checking, would reduce the number of women infected with HPV later on. Since the government of the United Kingdom is also in favour to protect women through cancer prevention, it is easier for the citizens to then be conscious of their sexual health being.

colposcopy images,” *Machine Vision and Applications* 31, no. 15 (2020)

12 Murata, Paul J. MD, MSPH, Johnson, Richard A. MD, McNicoll, Krystyna E. MB, ChB, “Controlled Evaluation of Implementing the Cytobrush Technique to Improve Papanicolaou Smear Quality,” *Obstetrics & Gynecology* 75, no. 4 (April 1990): 690-695.

13 William Small, Jr., Bacon, Monica A., *et al.*, “Cervical Cancer: A Global Health Crisis,” *ACS Journals* 123, no 13 (July 2017): 2404.

14 NHS choices (NHS), “What we do”, <https://www.england.nhs.uk/about/what-we-do/> (accessed January 23, 2023).

In the United Kingdom, the number of women who have taken this test already reached the number of significant increase from the previous year. From the data obtained within 2021-2022, the number of tests carried out increased with a total of 3.50m individuals aged 25 to 64 being tested up 15.5% compared to last year, when it was only 3.03m were tested.¹⁵ This high number shows that the people in the United Kingdom are well-concerned towards the purpose of the test, as well as the United Kingdom considers the necessity of sexual health protection for all people living in the United Kingdom.

Next, on the issue of whether international law also protect sexual rights in their international legal instruments? Women's sexual and reproductive health is related to multiple human rights, including the right to life, the right to be free from torture, the right to health, and so on.¹⁶ The previous rights stated are inseparable from the concept of women's sexual health notion. On the Beijing Declaration and Platform for Action, it states that: "the human rights of women include their right to have control over and decide freely and responsibly on matters related to their sexuality, including sexual and reproductive health, free from coercion, discrimination and violence."¹⁷

In addition, the Committee on Economic, Social, and Cultural Rights ("CESR") General Comment No. 14, it is highlighting on the provision of maternal health services is comparable to a core obligation which cannot be derogated from under any circumstances.¹⁸ Article 3 of the Declaration on Elimination Against Women, describes as follows: "Women are entitled to the equal enjoyment and protection of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia: (f) The right to the highest standard attainable of physical

15 NHS choices (NHS), "Latest data on cervical screening shows 15.5% increase in number of people being tested in 2021-22", <https://digital.nhs.uk/news/2022/latest-data-on-cervical-screening-shows-15.5-increase-in-number-of-people-being-tested-in-2021-22-statistical-press-notice#:~:text=The%202021%2D22%20report%20shows,when%203.03m%20were%20tested> (accessed January 17, 2023).

16 OHCHR, "Sexual and Reproductive Health and Rights", [ohchr.org. https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights](https://www.ohchr.org/en/women/sexual-and-reproductive-health-and-rights) (accessed January 22, 2023)

17 The Beijing Declaration and Platform for Action.

18 Committee on Economic, Social, and Cultural Rights General Comment No.14.

and mental health; [...]”¹⁹

Pursuant to Beijing Declaration for Action and CESR General Comment No.14, it could be seen that under international law sexual health has been recognized and it further elaborated into types of rights, and it must be fulfilled in whatever circumstances because it is as obligatory as any other human right. The articles above explicitly recognised any law enacted or action to establish human rights for all. Considering that, the United Kingdom’s way of giving their citizens access towards sexual health through the promotion of smear tests for women who are sexually active is in line with the Conventions mentioned beforehand.

From the analysis above, the smear test is a part of ensuring the sexual health of women is consistent with the existing international legal instruments. Moreover, the national and international legal instruments also recognized law enacted in order to protect women’s health as women’s rights.

C. Smear Test as Women’s Rights from Pro-Perspectives

After analysing its position in international law, indeed there are countries in favour of the implementation of smear tests and give full support to uphold the citizens’ rights such as health rights. As a comparison, In the United Kingdom, the legal ground to enact the action smear test lies under Section 2 of the National Health Service Act 2006, which mentions as such: “(1) The Secretary of State may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any function conferred on the Secretary of State by this Act. (2) NHS England or an integrated care board may do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.”²⁰

This shows that it is legal to conduct pap smears as a way to facilitate their citizens considering the function is in line with the State’s purposes. Further, the United Kingdom also considers the importance of the rights in the Human Rights Act 1998, it emphasizes the right to life, the right to liberty

19 Declaration on Elimination Against Women 1993.

20 National Health Service Act 2006.

and security, the right to a fair trial, and so on. With no exact regulation, then the author interprets that the government allows its citizens to prohibition of discrimination as regulated under Article 14: “The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political, or other opinion, national or social origin, association with a national minority, property, birth or other status.”²¹

The aforementioned article will be translated as the rights for the women to opt to cease or to defer the invitation given by NHS to conduct the smear test because the freedom to choose is also part of human rights. Moreover, the United Kingdom also ratified the Convention on Elimination of All Forms of Discrimination Against Women 1979 (“CEDAW 1979”), whereas on Article 12(1) it stipulates: “States Parties shall take all appropriate measures to eliminate discrimination against women in the field of healthcare in order to ensure, on a basis equality of men and women, access to healthcare services, including those related to family planning.”²²

CEDAW 1979 works as the basis of elimination of any discrimination against women, here then expected a full effort conducted by the State Parties to take every measure possible in maintaining healthcare of men and women. This means that the United Kingdom manages to try to protect, respect, and fulfil women’s rights for the British based on the international and national legal frameworks that have been agreed upon accordingly.

For instance, the countries that have conducted the test besides United Kingdom are United States and Australia. In the United States, the number of women who are already participating in taking the test are considered to be high (at upwards of 80%)²³ and its proven that it reduces the number of deaths due to cervical cancer. Despite that some people did not participated in the screening process. These people are referred to as “under screened”, including racial or ethnic minorities, rural area residents, sexual or gender minorities, as

21 Human Rights Act 1998.

22 Convention on Elimination of All Discrimination Against Women 1979.

23 Institute NC, 2020; Watson *et al.*, 2017.

well as those with particular religious beliefs, and many more.²⁴ Seeing from the percentage itself, shows that the United States almost make it accessible to all kinds of women, despite that the rest cannot take part in the screening.

Compared to the United Kingdom which regulates health mandatory protection through its National Health Service Act, the United States discusses the protection of sexual health through Executive Order on Protecting Access to Reproductive Healthcare Services. The Order stated in Section 2(b) as follows: “the term “reproductive healthcare services” means medical, surgical, counselling, or referral services relating to the human reproductive system, including services relating to pregnancy or the termination of pregnancy.”²⁵ By that executive order, the government of the United States is strongly ordered the usage of healthcare services as effectively as possible in line with the principle of human rights protection. This is such a great example for other countries to ensure both the laws and the implementation has the same scope of action.

Australia has different measures from two other prior countries, in Australia the number of women who have ever participated in the cervical screening test are higher compared to the number in the United States. While little Australian data are available, it is evident that a substantial proportion of Australian women may not be having Pap smears within recommended screening intervals.²⁶ The data obtained by the same researchers provided that about 89 per cent of the per cent reported having at least one Pap smear in their lifetime.²⁷ The data indicates that most of the women in Australia are concerned with their sexual health, though it was not conducted within the recommended periods of time.

Pursuant to the previous discussion, the author agrees with the notions of the countries and every measure taken in order to achieve the highest result of

24 Fuzzell, Lindsay N., Perkins, Rebecca B., “Cervical cancer screening in the United States: Challenges and potential solutions for underscreened groups,” *Prev Med* 144 (March 2021).

25 Executive Order on Protecting Access to Reproductive Healthcare Services.

26 Bowman, Jennifer A., Redman, Selina., et.al, “The Accuracy of Pap Smear Utilization Self-Report: A Methodological Consideration in Cervical Screening Process,” *Health Services Research* 26, no. 1 (1991): 98.

27 *Ibid.*

equality for women's rights. As for the government to invite eligible women for a smear test because it is part of human rights. What's interesting is that the countries which are able to minimize the number of infected people are mostly developed countries. The intellectuality and education system overall might have a significant impact on how society works together in solving women's rights disparities.

Additionally, during the screening process, it is full decision of every invited woman to take or leave the screening test. It also respects the freedom of human rights, as it is not mandatory but optional to the citizens. The citizens could decide based on their personal reasons with careful consideration. These thoughts sum up that some countries can do better in providing healthcare access, although the specific laws were not provided inside the government.

D. Smear Test as Women's Rights from Contra-Perspectives

Suppose the previous discussion focused more on the developed countries that have tried to protect women's right to sexual health. However, on the contrary, some countries have not made any progress towards promoting women's rights through sexual health. In addition, developing countries find it harder to ensure that their citizens comprehend their rights sufficiently. For the first instance, cervical cancer is ranked second as the most popular cancer disease among women in Indonesia.²⁸ About 40,000 new cases are found every year.²⁹ This high number could be lower if Indonesian women are aware of the existence of the smear test.

The 1945 Constitution is the highest in the hierarchy of law in Indonesia, it regulates the basic rights and obligations of the Indonesians. According to Article 1(3) of the 1945 Constitution that constitutes that Indonesia is a state of law³⁰, so Indonesian citizen must act accord to the existing regulations. Further, in the 1945 Constitution Chapter XA specifically discuss human rights. Although there is none within the 1945 Constitution that is said explicitly to

28 Mitra Keluarga, "Ketahui Gejala Kanker Serviks Beserta Pencegahannya", <https://www.mitrakeluarga.com/artikel/artikel-kesehatan/kanker-serviks> (accessed January 17, 2023).

29 *Ibid.*

30 Undang-Undang Dasar Republik Indonesia Tahun 1945.

uphold healthcare issues, the Indonesian government would ensure in Article 28D (1) that stipulates: “Every person has the right of recognition, securities, protection, and fair legal certainty, and equal treatment before the law.”³¹

The article above emphasizes that the Indonesian government must support to protect in every action to maintain the security and protection of their citizens. Indeed, health care is also a protection from the disease. Moreover, Indonesia also has its Law Number 39 the Year 1999 concerning Human Rights (“Indonesian Human Rights Law”) to specify regulations regarding the compliance and fulfilment of human rights. Based on the Indonesian Human Rights Law, under Article 45 mentioned as follows: “Under this Act, women’s rights are human rights.”³²

The statement made it clear that Indonesia recognized women’s rights within the country. Indonesia respects women’s rights as part of human rights. Even though there is no explanation regarding what kind of women’s rights is here. Further, Article 49 (2) and (3) mentions as such: “(2) Women have the right to special protection in the undertaking of work or a profession that could put her safety and/or her reproductive health. (3) The special rights to which women are entitled arising from their reproductive function are guaranteed and protected by law.”³³

According to those articles, Indonesia recognized and put it as a mandatory requirement of the country through implementing of the law to protect healthcare. It must be translated that if the smear test is offered, the people should not deny the opportunity because it could reduce numbers of patients.

In contrast, even though Indonesia has ratified the CEDAW 1979 and also becomes the Member State of the United Nations, there are also “unwritten” regulations that popularly known as “custom” applies within the country. “Custom” as the abbreviation of “customary law” is made by oral tradition or found primarily in the lived practices of the community.³⁴ Pursuant to the

31 *Ibid.*

32 Undang-Undang Nomor 39 Tahun 1999 tentang Hak Asasi Manusia.

33 *Ibid.*

34 My DemocracyTree Namibia, “Customary Law,” *My DemocracyTree Namibia, Factsheet Series No.5 of 6*, https://www.lac.org.na/projects/grap/Pdf/Law_5-Customary_Law.pdf

previous discussion, it could be understood that custom in every country is different from one another. The custom that has been accepted within the community would somehow affect the implementation of other written rules.

For example, Indonesian citizens mostly agree with the principle of ‘no sex before marriage’. Therefore, they tend to think that conducting a smear test is not compulsory to check. This custom could hinder the effectiveness of written rules. In addition, Indonesians also believe that sex is still taboo to discuss. These beliefs were the reasons the country is not possible to achieve the highest result from the measures taken. The customs that were agreed upon in Indonesia are in line with the Islamic perspectives as a majority of people in the country are Muslims. The author realizes that religion must not be a barrier, particularly if the objective is for the well-being of the people.

The Indonesian data shows for around 80% of Indonesian women living in rural areas have never undergone a Pap smear test, and 60% of women reported a high intention of receiving a Pap smear test.³⁵ Compared to the developed countries that have stated earlier, these numbers show its total contradiction. Thus, even though there is a rule that stated the support of every action of women’s rights but if there is one customary law that prevents the act, the implementation of the laws would be ineffective either. The paradox in Indonesia is confusing indeed.

Other countries that have not made any satisfying efforts towards the implementation of smear tests as part of women’s rights would be other Asian countries because of several other reasons. Eastern or Asians are considerably more conservative and traditional than Whites in sexual attitudes and behaviour.³⁶ Indonesia’s neighbouring state, Malaysia, also had approximately 2,000-3,000 hospital admissions of cervical cancer per year, with the majority of cases presenting at the late stages of the disease.³⁷ Malaysia also experienced the same as Indonesia, where cervical cancer becomes the second

35 Sumarmi, S., Hsu, YY., Cheng, YM. *et al.* “Factors associated with the intention to undergo Pap smear testing in the rural areas of Indonesia: a health belief model,” *Reprod Health* 18, no. 138 (2021): 2.

36 Guo, Y. “Sexual Double Standards in White and Asian Americans: Ethnicity, Gender, and Acculturation,” *Sexuality & Culture* 23 (2019): 58.

37 Department of Statistics. Social statistics bulletin Malaysia 2005. Malaysia. 2005.

most popular cancer among Malaysians.³⁸ This being said, the reason behind this issue was happened due to lack of information about cervical cancer from an earlier period. As the smear test must act as a preventive action, one of the respondents thought that education about smear tests is essential to minimize the number of infected patients. Women in this study had poor knowledge and awareness of cervical cancer.³⁹ The awareness of the harm of cervical cancer must be spread out to the people so they understand the risks if not taking the screening test, this is to avoid more people being affected.

Speaking of the legal basis in Malaysia, Malaysia discusses the requirement of sexual health within no provided sexual health regulations. Therefore, it is crucial to pass new laws to protect the health rights of all women in Malaysia.⁴⁰ The author thinks that the limited regulations also make the country hesitate to take further action. Malaysia needs to consider having a new particular law on sexual health with the purpose to offer certainty of sexual health protection. Hence, the limited knowledge of the citizens also affected the country's effort in tackling the women's rights issue. Besides Indonesia and Malaysia, Nigeria as an African country also experiencing hurdles such as based on its educational level, awareness about pap smears and cervical cancer and the preventability of cervical cancer, are among the factors that showed a significant relationship with the utilization of pap smear.⁴¹ The higher the degree of the people in Nigeria, shows the awareness and preventable actions are familiar to the citizens.⁴²

In Nigerian Law, the law that ordered health protection was declared under Section 17 which deals with the social objectives of the Nigerian State making it obligatory for the government to direct policies and to ensure

38 *Ibid.*

39 LP, Wong, Wong, YL, et.al. "Knowledge and awareness of cervical cancer and screening among Malaysian women who have never had a Pap smear: a qualitative study," *Singapore Med J* 50, no. 1 (2009): 49.

40 Ames, "We Must Improve Maternal, Sexual, and Reproductive Health Rights in Malaysia," *Women's Aid Organisation*, April 25, 2022, <https://wao.org.my/we-must-improve-maternal-sexual-and-reproductive-health-rights-in-malaysia/>.

41 Hyacinth HI, Adekeye OA, Ibeh JN, Osoba T. "Cervical Cancer and Pap Smear Awareness and Utilization of Pap Smear Test among Federal Civil Servants in North Central Nigeria," *PLoS ONE* 7, no. 10 (2012): 6.

42 *Ibid.*

adequate medical and health facilities for all persons.⁴³ Further, it is also declared under section 54 of the Nigerian Labour Act, Chapter 21 and part 5 of the Criminal Code and Penal Code respectively.⁴⁴ Based on the research, Nigeria has other laws that also stated their support towards human rights which are scattered in different laws.

Based on the earlier paragraphs, Nigerian laws provided and are well-understood for human rights and also sexual health protection for their people. By these existing provisions, Nigerian people could possibly have adequate fulfilment of international legal instruments. What limited the knowledge of the people was due to its educational method.

In short, it can be seen from the earlier discussion that the most prominent issue in upholding women's rights in developing countries are coming from common beliefs in society and unreachable knowledge for most people. The availability of national laws in developing countries must be in line with the actual measures of the governments. If only the government would maximize its capability, it would reduce the number of patients.

E. Conclusions

All in all, the enactment of the smear test in international law is recognized under international legal frameworks such as under Human Rights Act 1998 and CEDAW 1979. It is considered part of women's rights in healthcare, even though it is being said implicitly through the law. The government only could support every matter possible related to the healthcare of the citizens. Since these are international legal instruments, the Member States must be obliged to the regulations. However, during the enactment of the laws, there are two points of view that made the smear test might and might not be effective to conduct. This thought comes from developed and developing countries that applied the rules differently to their citizens.

The United Kingdom provides free access for women aged 25 to 64 to undergo the smear test by giving a 3-year or 5-year invitation to prevent

43 Aloamaka, Patrick C., Ibekwe, Adaeze F., et.al. "The Prospect for Reproductive Health Rights Protection in Nigeria," *Predestination* 12, no. 2 (December 2019): 66.

44 *Ibid.*

cervical cancer. Followed Australia and the United States that give full support to the smear test with almost 90 per cent of women having experienced the smear test at least once in a lifetime.

Other than that, Asian countries were proven to handle the issues with fewer actions compared to the Westerns. In Indonesia, a country which beliefs in the principle of no sex before marriage, even though it is still taboo to talk about sex, people cannot receive the rights accordingly. The customary law is sometimes understood better than the written rules itself. Malaysia and Nigeria also experiencing similar problems with their citizens. Minimum access to education about sexual health is considered another obstacle.

Finally, it is the author's opinion that most countries have already recognized women's rights and are supposed to provide their capital in establishing a society that respects women's rights. This can be seen through the written regulations that the country has agreed upon. The author also strongly recommends that developing countries mirror the developed countries to learn about the most effective measures in assuring women's rights of the people, with the hope that the developing countries soon expanding their performance in avoiding human rights problems.

After identifying the regulations and the problems of the implementation, the author proposed some recommendations for the governments / the Member States, namely as follows:

1. Promote women's rights to healthcare through education on sexual health.

As mentioned earlier education also becomes one of the major problems in developing countries, therefore the government must conduct action in eradicating the issue. By that, the author suggests raising awareness among the citizens by making education on sexual health accessible to everyone. This also covers the main issue of healthcare as part of women's rights.

2. To work together with the United Nations bodies to tackle women's rights problems.

The supervision conducted by higher intergovernmental bodies might make the implementation way more effective within the countries. The intergovernmental bodies could understand the actual conditions in each

country because they are also taking part in making the possible actions for the Member States. Further, the countries might receive a regular review to improve the efforts in achieving women's rights for all.

3. For countries to set out standards in specific years.

By targeting several actions in some future time, the author believes that it would encourage the governments to take real action in order to achieve the targets. For instance, the goal for Indonesia in the next five years is to develop technology in healthcare work with the legislative in revising the laws of human rights.

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