

**REGULATION ON ABORTION WITHOUT A MEDICAL DIAGNOSIS IN
THE LAW OF CRIMES PERFORMED BY MEDICAL PERSONNEL**

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ABSTRACT

Promiscuity among the public, teenagers, and the rise of prostitution today. This in turn encourages certain people who tend to have an abortion by carrying out illegal abortions as a solution to eliminating disgrace. The rise of the practice of abortion at this time seems to be a social phenomenon that is difficult to solve. From year to year, the number of people who practice abortion is increasing and of course, this is a reflection for all parties to be able to find the best solution in resolving abortion cases. Indonesia is regulated by Article 299, Article 346, Article 347, Article 348, and Article 349 of the Criminal Code. In addition to the Criminal Code, it has also been regulated in the Republic of Indonesia Law Number 36 of 2009 concerning Health which also regulates the crime of abortion contained in Article 75, Article 76, and Article 77. For perpetrators of illegal abortion, it is regulated in Article 194 RI Law Number 36 the Year 2009 concerning Health. Clearer terms and conditions regarding the implementation of permitted abortions are contained in Article 76 of Law Number 36 of 2009 concerning Health. The law (criminal) in viewing the practice of abortion can be seen from three articles, namely articles 346, 347, and 348 of the Criminal Code. If the practice of abortion is carried out by a doctor or other health worker, such as a midwife, the criminal liability is aggravated and can be increased by a third of the criminal threat contained in each proven article. And the right to carry out a search can be revoked, in casu SIP or STR, the doctor is the heart of the medical practice.

Keywords: *Legal Effort, Pre-Trial of the Suspect*



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INTRODUCTION

In Indonesia, lawsuits against health workers with accusations or charges of committing malpractice are increasing. This shows that there is an increase in legal awareness and people are more aware of their rights. On the other hand, health

workers are required to carry out their duties and obligations according to their profession with more care (professional and proportional) and full of responsibility. A health worker, especially a doctor, should be able to establish or provide a diagnosis correctly and in accordance with applicable procedures, provide therapy, and solutions, and perform services (medical actions) in accordance with medical service standards and actions taken for the benefit of patients (Busro, 2018).

Malpractice acts are errors or omissions made intentionally or unintentionally by medical personnel that can result in health and safety losses to patients being treated. This greatly affects the quality of medical personnel in the eyes of the community the day after tomorrow and this action can affect the quality of hospitals in handling the community in general. Malpractice is also very contrary to the law because it is not in accordance with the Standard Operating Procedure (SOP), where every medical worker is required and obliged to always provide good service for patients who need medical personnel because this is one of the Standard Operating Procedures (SOP) that must and must be carried out by medical personnel to treat patients according to applicable regulations (Siswati, 2013).

Abortion is currently a fairly serious problem, seen from the high number of abortions that is increasing from year to year. In Indonesia alone, the number of fetal murders per year has reached 3 million. The numbers are not small considering the high pregnancy rate in Indonesia.

In the Indonesian legal system, the act of abortion is categorized as a criminal act, so the perpetrator and the person who helps to do it will be punished. Although some Indonesians are aware of these provisions, there are still many women who have abortions. In this millennial era, the moral values that exist in society are decreasing. Information on negative content that smells of pornography is increasingly widespread, association is becoming freer so that it violates the boundaries of moral values, behavior, and religion in people's lives. Sex that should only be done in a marriage bond is considered normal in courtship status (Dirgantari, 2021).

Abortion, more often referred to as abortion, is a social phenomenon that is increasingly concerning. This concern is not without reason, because so far the behavior of abortion has caused many negative effects both on oneself and on society. The essence of life is a gift given by God Almighty that must be respected by everyone. The life given to every human being is a human right that can only be revoked by the giver of that life. The right to life is one of the human rights enshrined in the constitution as explained in article 28 (a) of the 1945 Constitution which reads "everyone has the right to live and has the right to defend his life and life". With the right to life, the State will maintain and protect the right to life of every citizen, so that the state through state law enforcement tools will act if there is and it is known that the loss of the right to human life has occurred (Masrudi, 2016).

The practice of abortion is no longer a secret, especially with the widespread culture of promiscuity among the public, teenagers, and the rise of prostitution today. This in turn encourages certain people who tend to have an abortion by

carrying out illegal abortions as a solution to eliminating disgrace. The rise of the practice of abortion at this time seems to be a social phenomenon that is difficult to solve. From year to year, the number of people who practice abortion is increasing and of course, this is a reflection for all parties to be able to find the best solution in resolving the abortion case (Mulyana, Offset, & Kualitatif, 2006).

Pregnancy out of wedlock correlates with abortion cases, meaning that the abortion was carried out because of the condition of the pregnancy that was produced through promiscuous activities. Both promiscuity mode (sex with multiple partners) or because of cohabitation (*semenleven*). This is increasingly troubling the community, especially their families who have unmarried teenage girls.

The responsibility of doctors in criminal law is regulated in the Criminal Code that arises either by negligence or intentionally as regulated in Articles 267, 299, 304, 344, 347, 348, and 249 of the Criminal Code, is an error based on intent, other than. However, Ministerial Regulation No. 290 of 2008 concerning Medical Approval Measures, and Law No. 29 of 2004 concerning Medical Practices, this does not stipulate the slightest penalty for doctors who carry out abortions for medical indications without the permission of the pregnant or pregnant mother. his family.

The laws and regulations in force in Indonesia have regulated the act of abortion in book II (crime) as a material criminal law, each of these actions will be subject to criminal sanctions and can be criminally responsible for the perpetrator (*recht person*), the act of abortion is also not a legal activity if it is carried out for medical purposes, and is justified by the applicable positive law legislation. The act of abortion for medical purposes can also be considered not an unlawful act if it is associated with Human Rights (HAM) in Indonesia, but in practice even though this is contrary to human rights, until now legal abortion activities according to medical provisions are still running. and carried out with the conditions determined by the Law of the Republic of Indonesia Number 36 of 2009 concerning Health (Hanafiah, 2014).

Based on Law no. 36 of 2009 concerning Health, in Article 75 states:

"that everyone is prohibited from having an abortion and this can be excluded based on media emergency indications detected from an early age of pregnancy, and the rule is strengthened in Article 77 which states that the government is obliged to protect and prevent women from abortion as referred to in Article 75. The act of abortion in principle quality, unsafe, and irresponsible and contrary to religious norms and the provisions of laws and regulations that cannot be done in any form.

The act of abortion is legally prohibited, but in fact abortion is currently carried out by many women for various medical and non-medical reasons, causing the current regulations and laws to be less accommodating to the reasons that force women to perform abortions, from various information. that almost all over the world women die as a result of pregnancy and childbirth that are not handled by

medical professionals who are experienced in the field of childbirth, as well as criminal abortions.

RESEARCH METHOD

Based on the formulation of the problem and the objectives to be achieved in this research, namely the study of Health law, the type of research used is normative empirical research, by taking prevention and prosecution by looking at various existing/desired legal norms, not merely studying applicable legal norms, but also look at the various problems that occur with various existing approaches. Thus, the government and the police are trying to take preventive and repressive measures so that the government can hope that there will be no more criminal abortions by the community and teenagers.

The approach used in this research, namely the approach to legislation, and various policies made. In this context, the provisions that will be reviewed and reviewed are several national legal instruments and regional policies,¹² while to analyze the authors use a conceptual approach and a case approach (Marzuki & SH, 2020).

The data to be used in this study are categorized into secondary data obtained through library materials, which include (Soekanto & Mamudji, 2011, p. 14).

- a Primary legal materials, namely legal materials that are binding and consist of basic norms, basic regulations, laws and regulations, and relevant legal materials.
- b Secondary legal materials, which provide an explanation of primary legal materials such as draft laws, research results, and scientific journals.
- c Tertiary legal materials, namely materials that provide instructions and explanations for primary and secondary legal materials, such as dictionaries and encyclopedias.

RESULT AND DISCUSSION

Law Number 36 Year 2009

The provisions of Law Number 23 of 1992 concerning Health, which confirms that it is permissible to carry out abortion as an effort to save the life of the mother and or her fetus, this type of abortion is legally justified and has legal protection as stipulated in Article 15 paragraph (1) and (2), (Koeswadji, 1996) but there are several things that can be observed from this abortion, namely that it turns out that abortion can be justified legally if it is carried out with medical considerations. In this case it means a doctor or health worker who has the right to perform an abortion by using considerations to save the pregnant woman or her fetus, this abortion can be carried out with the consent of the pregnant woman or her husband or family and at certain health facilities.

Abortions carried out are legal, and in other words, medical verdicts by health workers on women's reproductive rights are not criminal acts or crimes.

"Based on medical indications, by health workers who have expertise and authority, with the approval of the pregnant woman concerned or her husband or family, certain health facilities"

Health facilities that have adequate personnel and equipment for these actions and have been appointed by the government.

Abortion is said to be an illegal act which has been regulated in the Criminal Code (KUHP), the act of intentional abortion (*abortus provocatus*) is regulated in the second

book of Chapter XIV concerning Moral Crimes, especially Article 299, and Chapter XIX Articles 346 to 349, and classified as a crime against life.

The enactment of Law No. 36 of 2009 on Health which replaced Health Law No. 23 of 1992, then the issue of abortion gained legitimacy and affirmation. Explicitly, in this Law there are articles that regulate abortion, although in medical practice it contains various reactions and causes controversy in various levels of society. Provisions for regulating abortion in Law Number 36 Year 2009 are set out in Articles 75, 76, 77, and Article 194.

Regulation on Abortion without a Medical Diagnosis in The Law OF Crimes Performed by Medical Personnel

Abortion in Law Number 36 of the Year 2009 is stated in Article 75, in paragraph (1) there is a prohibition to perform an abortion for everyone. in paragraph (2) there are exceptions in terms of indications of medical emergencies, as well as situations of a personal emergency nature, namely pregnancy due to rape which can cause psychological trauma to the rape victim. This is done under the supervision and authority of health experts b. Article 76 of this rule contains several special requirements that must be complied with when having an abortion. So it can't be done haphazardly. Whereas Article 77 the Government must provide protection and prevent women from having abortions that are of low quality, unsafe, and irresponsible as well as contrary to religious norms and statutory provisions.

Children on the other hand have the right to live and this is regulated in Law Number 23 of 2002 concerning Child Protection Article 1 number 2 which states:(Uu RI, 23AD)

"Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection, and receive protection from violence and discrimination"

Types of abortion can be grouped into two different types:

- i. *Spontaneous abortion*, which is an abortion that occurs naturally without any external effort or human intervention, including spontaneous abortion (abortion by accident) and natural abortion (natural abortion).
- ii. *Abortion provocatus*, namely intentional abortion, occurs because of human actions trying to abort unwanted contents, including:
 - a. *Abortus provocatus medicinalis* is an abortion that is carried out based on medical reasons / considerations. An example is *abortion provocatus therapeuticus* (abortion to save the mother's life).
 - b. *Abortus provocatus criminalis* is an abortion that is carried out intentionally by violating various applicable legal provisions. For example: abortion induced / abortion provoked (intentional abortion for various other reasons, such as embarrassment to neighbours, not being able to have children and so on)

Article 346 of the criminal law book states that:

“A woman who intentionally aborts or terminates her pregnancy or orders another person to do so, is threatened with a maximum imprisonment of 4 (four) years.

Criminal sanctions for women who abort their pregnancy are stated in Article 347 of the Criminal Code.

- a Whoever deliberately aborts or terminates the womb of a woman without her consent, shall be punished by a maximum imprisonment of twelve years.
- b If the act results in the death of the woman, she shall be punished by a maximum imprisonment of fifteen years

And in the provisions of Article 349 of the Criminal Code. If a doctor, midwife, or pharmacist assists in committing a crime under Article 346, or commits or assists in committing one of the crimes referred to in Articles 347 and 348, the penalty specified in that article may be increased by one-third and may be deprived of the right to search. in which the crime was committed.

Articles 348 and 349 of the Criminal Code contain the actions of people with the consent of the mother and imprisonment, if carried out by professionals in their fields, the sanctions are added to one-third, and additional sanctions are added in the form of revocation of rights in carrying out searches, so the license will be revoked. Practice (SIP) so that the person concerned cannot practice, either permanently or for a certain period depending on the category of unlawful act against the law he is doing.

In Article 350, in the case of a murder conviction, for premeditated murder, or one of the crimes under Articles 344, 347, and 348, the revocation of rights is based on Article 35 No. 1-5. If one observes these articles, it will be seen that there are 3 (three) elements or factors in the case of abortion, namely:

1. Fetus
2. Pregnant mother
3. The third person involved in the abortion

In the Criminal Code, the act of intentional abortion (*abortus provocatus*) is regulated in the second book of Chapter XIV concerning Moral Crimes, especially Article 299, and Chapter XIX Articles 346 to 349, and is classified as a crime against life, which states that if a person doctors, midwives, or pharmacists concocting drugs or assisting in committing the crime, the criminal penalty is increased by one third, and the license to practice may be revoked. When referring to Article 10 of the Criminal Code concerning the main criminal and additional penalties, which consist of:

1. Principal punishment: death penalty, imprisonment, confinement, fine
2. Additional penalties: revocation of certain rights, confiscation of certain goods, the announcement of judges.

The law (criminal) in viewing the practice of abortion can be seen from three articles, namely articles 346, 347, and 348 of the Criminal Code. If the practice of abortion is carried out by a doctor or other health worker, such as a midwife, the criminal liability is aggravated and can be increased by a third of the criminal

threat contained in each proven article. And the right to search can be revoked, in *casu SIP* or STR, the doctor as the heart of the medical practice.

Criminal sanctions regulated in the health Law no. 36 of 2009 are as follows:

- i. Criminal Acts of Deliberately Taking Actions on Pregnant Women (Article 194) Sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)
- ii. Criminal Acts of Health Service Facility Leaders and/or Health Workers Not Providing First Aid to Patients in Emergency Conditions (Article 190)
 - a. Sentenced to a maximum imprisonment of 2 (two) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).
 - b. Sentenced to a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah).

CONCLUSION

Abortion, more often referred to as abortion, is a social phenomenon that is increasingly concerning. This concern is not without reason, because so far the behavior of abortion has caused many negative effects both on oneself and on society. The practice of abortion is no longer a secret, especially with the widespread culture of promiscuity among the public, teenagers, and the rise of prostitution today. This in turn encourages certain people who tend to have an abortion by carrying out illegal abortions as a solution to eliminating disgrace. The rise of the practice of abortion at this time seems to be a social phenomenon that is difficult to solve.

Arrangements in the act of abortion related to the implementation of abortion without medical indications for maternal health in the criminal law system in Indonesia are regulated in Article 299, Article 346, Article 347, Article 348, and Article 349 of the Criminal Code. In addition to the Criminal Code, it has also been regulated in the Republic of Indonesia Law Number 36 of 2009 concerning Health which also regulates the crime of abortion contained in Article 75, Article 76, and Article 77. For perpetrators of illegal abortion, it is regulated in Article 194 RI Law Number 36 the Year 2009 concerning Health. Clearer terms and conditions regarding the implementation of permitted abortions are contained in Article 76 of Law Number 36 of 2009 concerning Health. The law (criminal) in viewing the practice of abortion can be seen from three articles, namely articles 346, 347, and 348 of the Criminal Code. If the practice of abortion is carried out by a doctor or other health worker, such as a midwife, the criminal liability is aggravated and can be increased by a third of the criminal threat contained in each proven article. And the right to carry out searches can be revoked, in *casu SIP* or STR, the doctor as the heart of the medical practice.

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