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Abortion In The Aspects of Criminal Law And Health

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ABSTRACT

Abortion or commonly referred to abortion into the human civilization because humans do not want the pregnancy. Since centuries ago, many nations have known checkers wear some plant species believed to stimulate contraction of uterus to shed or dropped fetus. Abortion itself can occur either due to human actions (*abortion provocatus*) or because of natural causes, that happens by it self, in the sense that not because of human actions (abortion spontatus). Abortion is happening because of human actions can occur either because it is driven by medical reasons, such as pregnant women who suffer from a disease and to save the lives of these women then abortion must be terminated (*abortion therapeuticus*). Besides, for reasons that are not justified by the law (*abortion criminalis*). The method used in this research is *normative juridical* consideration that the starting point of the research analysis of the laws and regulations of the Criminal Code, Act No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Child Protection, and Law No. 36 of 2009 on health associated with the renewal of the crime of abortion.

Keywords: abortion provocatus, aspects of criminal law and health

1. INTRODUCTION

In Indonesia, abortion is not a new problem, since a long time already there are medicines (herbs) traditionally efficacious abort This means that the practice of abortion has long been the case in Indonesia, today abortion is still a problem in Indonesia it relates to the practice of abortion is often done by the younger generation especially incidence of abortion provocatus criminalist in Indonesia reached 2.5 million cases per year, or 43 abortions for every 100 pregnancies and approximately 30% in the case of abortion it in done by people aged 15-24.

The debate on abortion in Indonesia lately increasingly crowded due to be triggered by various events that shook the foundations of human life. Life is given to every human being is a human rights can only be revoked by the life giver. Talking about the abortion of course we are talking about human life through abortion is closely related to women and fetus in the womb of women.

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Killing womb (abortion) always be topic of conversation, in both official and unofficial forums related to the fields of medicine, law and other disciplines.⁴ Abortion is a social phenomenon that is increasingly concern. The concern is not without reason, because so far the behavior of abortion many negative effects both for themselves perpetrators and the community at large. This is because abortion involves moral norms and laws of a nation.

Abortion has been known for a long time, abortion has a long history and has been carried out by various methods either natural or herbal, the use of sharpened tools, physical trauma and other traditional methods. Contemporary era utilizing drugs and high-tech surgical procedures in an abortion. Legality, normality, culture and views on abortion differ substantially across countries. In many countries of the world, the issue of abortion is a divisive issue and a public stand on the controversy and legal ethics. Abortion and the problems related to the topic of abortion become prominent in national politics in many countries often involves the movement against abortion pro-life and prochoice on abortion worldwide.

According Subekti, that the law consists of norms of decency, obscenity and legal norms called social norms.⁵ Social norms are general provisions applicable to guide the individual to behave in social life. Are important and need to be considered in this case is the activity of the individual in relation to the social life that have a social norm.

The problem of abortion can not be released to do with the values and norms of religion that developed in Indonesian society, associated with positive criminal law in Indonesia settings issue of abortion are included in Article 346, 347, 348, 349 and 350 of the Criminal Code. According to the provisions contained in Article 346, 347, and 348 of the Penal Code *abortion criminalis* include actions as follows:⁶

- 1. Abort (afdrijvingvan devrucht).
- 2. Killing womb (*dedood van vrucht*veroorzaken).

The legislation does not provide an explanation of the discrepancy to abort and kill the content, as well as to the understanding of the content itself. In terms of grammar abort means to make the fall or cause a fall, which is tantamount to falling or loose.⁷ So abort means making the content becomes void or cause to be killed.

⁷ Kamisa, *Complete Dictionary Indonesian* Kartika, Surabaya, 1997.



⁴ Achadiat Charisdiono, *Dynamics Ethics and Legal* Medicine, Medical Books, Jakarta, 2007, p.12.

⁵ Abdul Jamil, *Psychology In* Law, Armico, Jakarta, in 1984, hal.118.

⁶ Moses Perdana Kusuma, *chapters About Forensic* Medicine, Ghalia Indonesia, Jakarta, in 1981, hal.192.

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While killing the same as causing death or loss of life. So, kill the womb means to cause death or eliminate the content into the content lives. On abortion, namely the release of the contents of the uterus and the womb family of a woman's body contains. While the content of the act convicted murder is causing the demise of the womb.(Nugroho 2018)

In terms of positive law in Indonesia, there is still debate and opposition from the pros and cons about the perception or understanding of the laws that exist to this day. Good health legislation, law medical practice, the draft Penal (Penal Code), the law the abolition of domestic violence, and the law of human rights.

Circumstances like this with so many complex issues arise that make a lot of practice clandestine abortions carried out both by medical personnel formal and informal medical personnel, and in accordance with the operational standards of medical or not. Before the release of Act No. 36 of 2009 on Health, abortion provisions stipulated in Law No. 23 of 1992. Where in the provision of health care legislation includes about abortions performed on emergency medical indications, which threatens the lives of mothers and babies born deformed so difficult to live outside the womb.(Nugroho 2018)

Before the revision of health legislation, there is still much debate about abortion performed by rape victims.⁸ That's because there is no clause that clearly addresses on abortion for victims of rape. During this time many of the views that interprets likened abortion to rape victims with medical indications that can be done because of mental disorders to mothers who also threaten the life of the mother. But on the other hand there is also a view that abortion for victims of rape is a criminal abortion because they do not endanger the life of the mother and in Act No. 23 of 1992 on Health is not included explicitly in the article. With the release of revised health legislation that the legality of abortion for victims of rape have been included clearly in Article 75 paragraph 2 of Law No. 36 of 2009 on Health.

In the Code of Penal (Penal Code) while the provisions relating to the issue of abortion and its causes can be found in Chapter XIX of the Criminal Code Article 229, 346, 347, 348, 349. The load apparent ban on abortion. While the provisions of Law No. 36 of 2009 on Health regulate abortion provisions of Article 76, 77, 78 there is a difference between the Criminal Code by Act No. 36 of 2009 on Health in regulating the abortion issue. Penal Code expressly prohibiting abortion for any reason, while the health care legislation allow abortions or emergency medical indications as well as rape.

⁸ <u>http://DMPurba.blogspot.com/2011/07/abortus</u>, RS.Dr. Pringadi.



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In medicine, known as abortion, an abortion, which means spending the products of conception (meeting the egg and sperm cells) before the fetus can live outside the womb. World Health Organization (WHO) provides a definition that abortion is the cessation of life fruit under 28 weeks gestation or fetal weight of less than 1000 grams. Abortion is also interpreted issued or discard either an embryo or fetus is *preterm* (prematurely). The term abortions also called abortion provocatus. An act of deliberate abortion.

Abortion (Latin: abortion) is the cessation of pregnancy before 20 weeks of pregnancy that resulted in death of the fetus. Abortion / miscarriage itself means a threat or spending the products of conception before the fetus can live outside the womb, and as boundaries used less than 20 weeks of pregnancy or child weighs less than 500 grams.

The types of abortion:

- 1. Spontaneous abortion
 - a. threatened abortion.

Spotting bleeding indicates a threat to the survival of a pregnancy. Under these conditions, pregnancy still may continue or be maintained.

b. Abortion insipiens.

Light to moderate bleeding in early pregnancy where the products of conception are still in the *uterine cavity*. This condition shows the abortion process is ongoing and will continue to be incomplete or complete abortion.

c. Incomplete abortion.

Bleeding in early pregnancy where most of the products of conception have been out of *the uterine cavity* through the cervical canal.

d. Complete abortion.

Bleeding in early pregnancy where all products of conception have been expelled from *the uterine*cavity.

2. Artificial abortion.

Abortion is caused by a specific intervention that aims to end the pregnancy. The terminology for this situation is abortion, abortion or *abortion* provocatus.

3. Unsafe Abortion.

Attempts to terminate a young pregnancy wherein executing the action does not have sufficient expertise and standard safe procedures so as to endanger the safety of life of patients.

4. Infectious abortion.



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Is abortion complicated by infection. The spread of the virus germs or toxins into the circulation and *the peritoneal cavity* can cause *septicemia, sepsis or peritonitis*.

5. Dying Fetus retention (*Missed* Abortion).

Bleeding in early pregnancy is accompanied by the retention of products of conception have been dead for up to 8 weeks or more. Usually the diagnosis can not be determined only in a single examination, but requires the observation time and re-examination.

2. METHODS

Method used is the approach the problem in socio-juridical means to describe and illustrate the problem under the provisions of the law and the facts of the applicable law in the wider community as well as the existing problems are discussed based on the fact that occur in society.

The primary data obtained directly from the parties concerned with writing materials, including: officials of the relevant agencies. Secondary data were obtained from agency documents related to the research, literature books, laws that are relevant to the issues discussed and the literature data.

Data coming from the parties concerned with the issues discussed were collected through interviews, whereas the data obtained from the document institutions associated with research materials, books of literature and literature data collected by the recording is then combined with legislation that is relevant to the issues discussed.

Data analysis was done by descriptive analysis is to describe and illustrate the data relevant to the issues discussed in the writing of this article and combined with regulations applicable law so that the results are scientifically justifiable.

3. CONCLUSIONS

3.1. Setting Criminal Law Against Crime Of Abortion In Indonesia Criminal Law

Basically abortion (abortion) which qualify as acts of crime or criminal offenses can only be seen in the Criminal Code although in Act No. 36 of 2009 on Health also contains sanctions against a crime of abortion. Penal Code regulate various crimes and offenses. One crime regulated under the Criminal Code is a criminal abortion issue. Provisions concerning a criminal abortion can be found in Chapter XIV of Book II of the Criminal Code concerning all crimes against life (in particular Articles 346-349). The formulation of more to these articles:



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Article 299:

- 1. Whoever willfully treating a woman or tell him so treated deliberately tell or incurred hope, that due to the treatment that the pregnancy can be terminated, threatened imprisonment of four years or a fine of three thousand rupiahs,
- 2. If the guilty do so for profit or to make such actions as search or habit or if he is a physician, midwife, or interpreter of drugs, plus a third criminal.
- 3. If guilty, committed the crime in carrying out the search, the inalienable right to conduct a search.

Article 346:

A woman who intentionally abort or shut down abortion or tell others to it, subject to imprisonment for a maximum of 4 years.

Article 347:

- 1. Whoever willfully abort or lethal womb of a woman without her consent, punishable by a maximum imprisonment of 12 years.
- 2. If the act results in the death of the woman, because the maximum imprisonment of 15 years.

In the Criminal Code is not given an explanation about the definition of the content itself and provide a clear sense about abortions and kill (disable) the content. Thus we know that the Criminal Code only regulates abortion provocatus criminalist, where all types of abortion is prohibited and not allowed by law for whatever reason.

Setting *provocatus abortion* in the Criminal Code that is contrary to the legacy of the Dutch period the legal and political foundation is "to protect the people of Indonesia and to promote the general welfare based on Pancasila and the 1945 Constitution because provocatus an abortion without exception". It is considered very burdensome medical community who are forced to have an abortion provocatus to save the lives of the mother who had been the exception beyond the law. An example is the application of Article 349 of the Criminal Code, if this article is applied absolutely, then the Doctors, Midwives, Nurses, Medical and others can be accused unlawful and threatened with imprisonment. Though they could have an abortion provocatus to save the life of the mother. Therefore it takes to rule the new legislation containing a high aspect legal protection for medical workers to perform their duties. The need for new legislation are fulfilled in Act No. 36 of 2009 on Health.

In the development of legislation on abortion or abortion provocatus criminalist can be found in Act No. 36 of 2009 on Health. If Article 299 and 346-349 of the Criminal Code there is no organized the abortion issue provocatus (especially criminal law) is



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merely set and explain. This principle serves to explain the effect of Article 75-78 when it should be confronted with the articles of the Criminal Code that regulate the issue *of abortion* provocatus.

See the formulation of Article 75 of Law No. 36 Year 2009 on Health is clearly apparent that the law prohibits abortion except for the type of abortion *provocatus therapeuticus* (abortion for mental help mother and / or fetus). In medicine *abortion provocatus medicinalis* do if the life of the mother is in danger of death and can also be done if a child will be born is expected to experience a severe disability and indicated can not live outside the womb, eg fetal disorder *ectopia kordalis* (fetus will be born without walls chest so it looks heart), *rakiskisis* (fetus will be born with an open spine without leather covered), and *anencephaly* (a brain of the fetus will be born without large). In the health care legislation has also arranged on abortion conducted by the rape victim that indicated may cause psychological trauma for the mother. If the health legislation that is long not loaded specifically about abortion for victims of rape, giving rise to debate and interpretation in various circles. With the health law's new then it is undisputed about legal certainty because there has been a clause that specifically.

Based on the description above can be concluded that Article 75 of Law No. 36 Year 2009 on Health regulates provocatus abortion is allowed in Indonesia, namely abortion provocatus or medical indication or medicinalis. If we analyze further, the rules are different from each other. Penal Code provocatus recognize abortion ban without exception, including abortion provocatus medicinalis or abortion provocatustherapeutics.But the Law No. 36 Year 2009 on Health actually allow abortion provocatus medicinalis with specifications therapeutics. In the context of criminal law, there was a difference between the old law (the Criminal Code) by legislation new. Though the legislation here apply the principle of "lex posteriori derogate legi priori". This principle assumes that if enacted new regulations to not repeal the old rules that govern the same material and both are conflicting with each other, then the new regulation to defeat or cripple the old regulation.⁹ Thus Article 75 of Law No. 36 Year 2009 on Health that regulates abortion medicinalis provocatus can still apply in Indonesia, although the actual rules are different from the formulation of criminalists provocatus abortion under the Criminal Code.

⁹ Basri Hasnil Siregar, *Indonesia Introduction to*Law,Law Study Group Publisher and Public Law Faculty USU, Medan, 1994, p. 53.



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Applicability of principle *of lex posteriori derogate legi priori* is actually one of the government's efforts to develop criminal law in Indonesia. Many of the rules of the Criminal Code that in special circumstances no longer relevant to be applied at the present time. To overcome the disadvantages of the Criminal Code of the government passed health care legislation in the hope of providing an atmosphere conducive to the dynamics of the Indonesian community at the present time. The principle of *lex posteriori derogate legi priori* is a legal principle that developed throughout the legal field.

One thing that is the excess of the Articles of abortion provocatus Act 36 of 2009 on Health is a criminal provision. Criminal sanctions against the perpetrators given *of abortion provocatus criminalis* much heavier than a similar penalty of the Criminal Code. In Article 194 of Law Number 36 Year 2009 on Health punishable offense is imprisonment of ten (10) years. While in the Criminal Code, a criminal who threatened a maximum of only four (4) years imprisonment or a fine of three thousand rupiah (Article 299 of the Criminal Code), a maximum of four (4) years of imprisonment (Article 346 of the Criminal Code), not later than twelve (12) years of imprisonment (Article 347 of the Criminal Code), and a maximum of 5 (five) years and 6 (six) months imprisonment (Article 348 of the Criminal Code).

Criminal provisions regarding *abortion provocatus criminalis* in health legislation is considered good because it contains general and special prevention to reduce the number of abortions criminalist crime. By feeling the penalty of such severity that it was expected that the abortion be deterrent and not to repeat his actions, in this case the legal world is referred to as special prevention, which is the effort to prevent that abortion provocatus criminalist not repeat his actions(Roesli, Heri, and Rahayu 2017). While prevention is generally valid for citizens due to consider carefully before performing an abortion from the criminal penalties are very severe. General prevention and specialized prevention it is expected by the legislators to reduce to a minimum the number of crimes of abortion provocatus in Indonesia.

3.2. Impact On Abortion And Health Psychic

Phenomena abortion is difficult to remove because there are many DARK (Disease Society) among intercourse without marital status. Though abortion has a very hazardous to the health of the perpetrators, both physical and mental health disorders. Here we convey the dangers of abortion to health:

1. Bleeding severe

Bleeding may cause someone loss of blood and if not immediately treated medically will lead to death. Abortion can lead to the culprit (the pregnant woman) to bleed because the



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cervix is torn wide open. Abortion is an unnatural effort for out of cycle / track so it is very dangerous.

2. Affected cancer risk

For the perpetrators of abortion, know that this practice could create an increased risk of cancer, such as cervical cancer, cancer, ovarian, breast and other cancers. Cervical cancer itself is a kind of cancer that 99.7% are caused by human papilloma virus (HPV) oncogenic, which attacks the cervix. This cancer usually will lead to bleeding in her vital organs, but the symptoms of this cancer is not seen until the cancer entered a stage further. Hmmm, how dangerous abortion for health.

3. Causing infection

Many people who have an abortion using medical devices that are not sterile and there are a lot of bacteria that is a potential cause of infection in vital organs and other internal organs. Infection itself is not only possible because not sterile medical devices but can also because there may be parts of the fetus left inside the uterus. And this is often overlooked by abortion.

4. The risk of death

Deaths due to abortion is often the case, because it is generally the perpetrators only think of how to abort without thinking about his health. Often the perpetrators of abortion who died because of bleeding, infection or other human error.

5.Risk of preterm birth

Premature only because of the will of god and disorders, but can by abortion. In general, after an abortion then in the next pregnancy will give birth prematurely abortion.

In the case of abortion there is the effect of abortion. The effects of abortion are divided into two, namely:

1. Short-term effects

- of intense pain
- leak occurred uterine
- bleeding a lot
- Infection
- Section baby left inside
- Shock / comma
- Destructive other organs
- Death

2. Long-Term Effects

• Unable to get pregnant again



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- Miscarriage Gynecology
- Tubal Pregnancy
- Premature Birth
- Symptoms of inflammation of the pelvis
- Hysterectom

Abortion Risks

Abortion have prolonged suffering risk to health or safety of a woman's life. Health risks for women who have abortions health and safety risk for physical and psychological disorders following a health risk and the risk of psychological disorders in women who have abortions

health risks

- Sudden death due to severe bleeding.
- Sudden death due to anesthesia failed.
- Deaths were slow due to a serious infection around the womb.
- A torn uterus (*Uterine* Perforation).
- Damage to the cervix (*Cervical Lacerations*) which will lead to defects in subsequent child.
- Breast cancer (due to an imbalance of estrogen in women).
- Ovarian cancer (Ovarian Cancer).
- Cancer of the cervix (*Cervical* Cancer).
- Liver cancer (*Liver* Cancer).
- Abnormalities of the placenta (*placenta previa*), which will lead to defects in subsequent children and severe bleeding during subsequent pregnancies.
- Being sterile / not able to have children again (*ectopic* pregnancy).
- Pelvic infection (*pelvicinflammatory* disease).
- Infection of the lining of the uterus (*endometriosis*)

The process of abortion is not just a process that has a high risk in terms of health and safety of a woman physically, but also has a very great impact on the mental state of a woman.

This phenomenon is known in psychology as "*post-abortion syndrome*" or PAS. These symptoms are noted in the *psychological reactions after abortion reported* in the publication. Basically, a woman who abort will experience things like the following:

- 1. Loss of self-esteem
- 2. Screaming hysterically



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- 3. Nightmare many times regarding the baby
- 4. Want to commit suicide
- 5. Start trying to use illegal drugs
- 6. Can not enjoy sexual relations

outside matters foregoing the women who have abortions will be filled with feelings of guilt are not lost during the years of his life.

Based on the data found that 50% of women who undergo abortion will experience emotional trauma or psychological trauma. Some of the characteristics of the psychological trauma is sadness deep, depressed, angry, afraid to open up, do not feel ready to get pregnant again, nightmares, occurring sexual dysfunction, cold, increased use of alcohol and drugs, eating disorders, anxiety, pictured continue the process of abortion back, even to suicide. Deep depression for the loss is common in mothers who lost their babies from abortion.

3.3. Setting The Future Crime Of Abortion In The Context Of Criminal Law Revision In Indonesia

child protection efforts need to be done as early as possible, in from the fetus in the womb until the child is aged 18 (eighteen) years. Based on the conception of the child protection intact, thorough and comprehensive, this law laid the obligation to provide protection to children based on the principles of non-discrimination, best interests of the child, the right to life, survival and development and respect for the views of the child.

In doing coaching, development and protection of children, it should be the role of the community, whether through child protection agencies, religious institutions, non-governmental organizations, community organizations, social organizations, businesses, media, or educational institution. Definition of a child, child protection and child rights respectively given in Article 1 number 1, number 2, and number 12 of the Law No. 35 of 2014 on the Amendment of Act No. 23 of 2002 on Child Protection. Article 1 point 1 determines that: "The child is a person under 18 (eighteen) years, including the unborn child". Article 1 paragraph 2 specify: "Child protection is all the activities to ensure and protect children and their rights in order to live, grow, develop and participate optimally in accordance with human dignity, and protection from violence and discrimination". Article 1 paragraph 12 that: "Children's rights are part of human rights which must be guaranteed, protected and fulfilled by parents, families, communities, governments and the State".



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From the general description and definitions of the above can be note that the rights of the child in the womb or fetus is a part of human rights which must be guaranteed, protected and fulfilled by parents, families, communities, government and the State in order to live, grow, thrive and participate optimally in accordance with human dignity, and protection from violence and discrimination as defined in Article 2, Article 3 and Article 4. Article 2 determines: "the implementation of child protection based on Pancasila and the Constitution of the Republic Indonesia Year 1945 as well as the basic principles of Convention on the rights of the child include: non-discrimination, best interests of the child, the right to life, survival and development, and respect for the views of the child ".¹⁰ Article 3 specifies: "Child protection aims to ensure the fulfillment of children's rights in order to live, grow, develop and participate optimally in accordance with human dignity, and protection from violence and discrimination, in order to achieve quality of Indonesian children, morals noble and prosperous ". Article 4 states that: "Every child has the right to live, grow, develop and participate fairly in accordance with human dignity, and protection from violence and discrimination".

4. CONCLUSION

Abortion is a public health problem because an impact on maternal morbidity and mortality. As we know the main causes of maternal deaths are haemorrhage, infection, eclampsia.

But in fact abortion is a leading cause of maternal death, only appeared in the form of complications of bleeding and sepsis. However, maternal mortality due to abortion complications often do not appear in the reports of deaths, but reported as bleeding or sepsis. It happened because until now, abortion is still a controversial issue in society. On the one hand, abortion is illegal and prohibited by religion, so people tend to hide abortion, on the other hand abortions occur in the community. This is evident from the news written in the newspapers about the occurrence of abortion in society, besides easily obtained herbs and medicines and quack massage laxative for those who are late coming months.

Abortion is generally divided into spontaneous abortions and abortion provocatus (*artificial*). Abortion provocatus (*artificial*) is the legal aspect can be classified into two, namely abortion provocatus terapeticus (*artificial legal*) and criminalist provocatus

¹⁰ Mardjono Reksodipuro, *Legal Reform: abortion*Gynecology, Ministry of Health, *set of manuscripts Scientific In the*Symposium, Jakarta, 2014, p. 47-48.



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abortion (*illegal artificial*). In Indonesian legislation, regulations on abortion contained in the two laws, namely the Code of Criminal Law and Health Law. In the Criminal Code and Health Act set penalties abortion (abortion, not mentioned about the type of abortion), whereas artificial abortion legal (or medicinalis terapeticus), set in the Health Act. Appreciation and practice of the profession oath and code of conduct of each health worker, may indirectly reduce the occurrence of artificial abortion illegal, even more if followed by an exploration and understanding of their respective religious teachings.

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