JURIDICAL ANALYSIS of ABORTION LEGALIZATION IN GOVERNMENT REGULATION NUMBER 61 of 2014 CONCERNING REPRODUCTION HEALTH

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ABSTRACT

Purpose: The purpose of this treatise is to enshrine the legalization of abortion in Government Regulation Number 61 of 2014. This is an analysis of laws originating from statutory regulations.

Theoretical reference: The definition of abortion or abortion according to the World Health Organization (WHO) is the cessation of fruitful life during pregnancy under 28 weeks or a fetus weighing less than 1000 grams. The act of abortion that is carried out intentionally is called abortion provocatus. Gynecological age for abortion or abortion World Health Organization (WHO) which states that 24 weeks of gestation is the maximum safe gestational age for women to have an abortion.

Method: Research results from doctrinal studies with a legislative approach. Doctrinal research results from studying the regulations relating to abortion law in Indonesia, while the legislative approach used in this research aims to see and analyze in depth how the regulations regarding abortion in Indonesia are enforced. To strengthen the analysis, this research also uses several research results related to abortion. Apart from that, this research also uses various information related to abortion case data, this is used so that the analysis carried out is accurate and appropriate to the abortion issues and problems that occur in Indonesia.

Results and Conclusion: Abortion of a pregnancy resulting from rape which can cause psychological trauma to the rape victim can only be carried out if the conditions specified in Article 75 paragraph (3) and Article 76 of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health have been met. Pregnancy as a result of rape violates the reproductive rights of rape victims, therefore the exclusion of abortion for rape victims aims to provide guarantees and legal protection of rape victims' reproductive rights as a manifestation of human rights. Thus it can be concluded that Article 31 of Government Regulation Number 61 of 2014 concerning Reproductive Health can be carried out based on indications regarding medical emergencies.

Implications of research: Government Regulation Number 61 Of 2014 Concerning Reproduction Health

Originality/value: Abortion, Reproductive health, legalization.

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ANÁLISE JURÍDICA DA LEGALIZAÇÃO DO ABORTO NO REGULAMENTO GOVERNAMENTAL NÚMERO 61 DE 2014 RELATIVO À SAÚDE REPRODUTIVA

RESUMO

Objetivo: o objetivo deste tratado é consagrar a legalização do aborto no Regulamento do Governo Número 61 de 2014. Esta é uma análise de leis originadas de regulamentos estatutários.

Referência teórica: A definição de aborto ou aborto de acordo com a Organização Mundial da Saúde (OMS) é a cessação da vida frutífera durante a gravidez com menos de 28 semanas ou um feto com peso inferior a 1000 gramas. O ato de aborto que é realizado intencionalmente é chamado de aborto provocatus. Idade ginecológica para aborto ou aborto Organização Mundial da Saúde (OMS), que afirma que 24 semanas de gestação é a idade gestacional máxima segura para as mulheres fazerem um aborto.

Método: Resultados de pesquisa de estudos doutrinários com uma abordagem legislativa. A pesquisa doutrinária resulta do estudo das regulamentações relacionadas à lei do aborto na Indonésia, enquanto a abordagem legislativa usada nesta pesquisa visa ver e analisar em profundidade como as regulamentações relativas ao aborto na Indonésia são aplicadas. Para fortalecer a análise, esta pesquisa também utiliza vários resultados de pesquisa relacionados ao aborto. Além disso, esta pesquisa também utiliza várias informações relacionadas com dados de casos de aborto, isso é usado para que a análise realizada seja precisa e apropriada para as questões e problemas de aborto que ocorrem na Indonésia.

Resultados e Conclusão: O aborto de uma gravidez resultante de estupro que pode causar trauma psicológico à vítima de estupro só pode ser realizado se as condições especificadas no artigo 75, parágrafo 3 e artigo 76 da Lei da República da Indonésia Número 36 de 2009 sobre Saúde tiverem sido cumpridas. A gravidez em consequência de violação viola os direitos reprodutivos das vítimas de violação, pelo que a exclusão do aborto para as vítimas de violação visa proporcionar garantias e proteção jurídica dos direitos reprodutivos das vítimas de violação como uma manifestação dos direitos humanos. Assim, pode-se concluir que o artigo 31 do Regulamento do Governo n.o 61 de 2014 relativo à Saúde Reprodutiva pode ser realizado com base em indicações relativas a emergências médicas.

Implicações da pesquisa: Regulamento do Governo nº 61 de 2014 relativo à saúde reprodutiva.

Originalidade/valor: aborto, saúde reprodutiva, legalização.

Keywords: aborto, saúde reprodutiva, legalização.

1 INTRODUCTION

The issue of abortion is a controversial issue because abortion is not only related to medical problems, but is also closely related to health issues, moral ethics, religion, and law. Data from the International Planned Parenthood Federation (IGOVERNMENT
REGULATION states that out of 1,000 women there are 32-46 (3.2- 4.6%) had an abortion. Meanwhile, according to the World Health Organization (WHO), 15% of pregnancies will end in spontaneous miscarriage, so this states that in Indonesia there are 15-20 out of 100 pregnancies ending with intentional abortion. It is said that in Jakarta alone every day around 50-70 people make requests for abortions and there is one clinic in Surabaya which is managed by two doctors who have already performed 300 abortions.

The physical health and safety risks that a woman will face when having an abortion illegally are sudden death, due to heavy bleeding, failed anesthesia, slow death due to serious infections around the womb, torn uterus, damage to the cervix, ovaries, liver cancer, becoming infertile and not having any more offspring, pelvic cavity infections, and infections of the uterine lining. Abortion not only affects health, but also affects women's psychology. To ensure that reproduction is well maintained, Indonesia should regulate the provisions on abortion, because abortion cases are serious cases. Albania has legalized abortion to save women who want to have an abortion, this aims to avoid health risks for women when abortion is carried out illegally.

Abortion in Indonesia is a prohibited behavior, exceptions are given if there are medical indications as stated in Health Law no. 36 of 2009, Law no. 39 of 2009 concerning Reproductive Health Article 15 and Article 80. Apart from this, the issue of abortion is also related to the Indonesian Doctor's Oath which, among other things, states that doctors will respect every life. Government Regulation of the Republic of Indonesia Number 61 of 2014, Article 34 Pregnancy due to rape as per referred to in Article 31 paragraph 1 letter b is a pregnancy resulting from sexual intercourse without the consent of the woman in accordance with the provisions of statutory regulations. Pregnancy resulting from rape as intended in paragraph (1) is proven by the gestational age corresponding to the rape incident, as stated by a doctor's certificate; and information

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from investigators, psychologists and/or other experts regarding the alleged rape. Article 31 An abortion can only be carried out based on indications of a medical emergency; or pregnancy resulting from rape. The act of abortion resulting from rape as referred to in paragraph 1) letter b can only be carried out if the gestational age is no more than 40 (forty) days calculated from the first day of the last menstruation11.

Research by Sarah E. Ratcliffe, Reed Boland, Siddhivinayak S Hirve, Heloise Robinson, has explained that abortion tends to have a negative stigma, making it difficult for abortions to obtain comprehensive health services and access, this condition can influence the process of legalizing abortion. Some of those who have legalized abortion have strictly regulated both abortion providers, medical services and even permits for carrying out abortions. This aims to ensure that abortions are not carried out outside of health control which could ultimately endanger lives. However, quite a few regulations relating to abortion are considered to be very discriminatory against women. Departing from several of these studies, this article aims to analyze abortion law in Indonesia. This article will also critically examine Government Regulation no. 61 of 2014 concerning Reproductive Health.

2 THEORETICAL FRAMEWORK

The definition of abortion or abortion according to the World Health Organization (WHO) is the cessation of fruitful life during pregnancy under 28 weeks or a fetus weighing less than 1000 grams. The act of abortion that is carried out intentionally is called abortion provocatus. Gynecological age for abortion or abortion World Health Organization (WHO) which states that 24 weeks of gestation is the maximum safe gestational age for women to have an abortion. Meanwhile, several other countries that

14 Boland and Katzive.
legalize provocatus abortion provide different pregnancy limits for being allowed to have provocatus abortion, namely:

1. Singapore

In Singapore, provocatus abortion is legal and can be performed up to 24 weeks of gestation, but most doctors prefer not to perform provocatus abortion when the pregnancy has reached 23 weeks, unless the condition endangers the mother's life.

2. Vietnam

Vietnam legalizes provocative abortion as long as it is carried out by professional medical personnel. Based on the National Standards and Guidelines (NSGs) for Reproductive Health Services, abortion in Vietnam can be done up to 22 weeks of gestation.

3. France

France legalizes provocatus abortion if it is carried out at a maximum of 10 weeks of gestation. If the pregnancy is more than 10 weeks, an abortion may only be performed if the pregnancy threatens the life of the mother or if the baby is likely to be born sick.

4. Russia

The regulations regarding provocative abortion in Russia state that legal abortions are performed up to 12 weeks of gestation and must be carried out by a licensed doctor.

5. Sweden

Sweden is one of the countries most vocal in its support of the right to induce abortion. Provocatus abortion may be carried out until the 18th week of pregnancy. As for those who want to have a provocatus abortion up to 22 weeks of pregnancy, but must be accompanied by a doctor's statement that the pregnancy is dangerous if it continues, so it needs to be aborted.

6. Netherlands

The website of the Government of the Kingdom of the Netherlands said that provocatus abortion may be carried out until the 24th week of pregnancy. After 24 – 41 weeks of pregnancy, provocatus abortion should only be carried out if it endangers health. If the perpetrator is aged 18 years and over, then to get the right to abortion provocatus no longer requires parental consent.

7. Canada

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There is no federal limit on gestational age for the right to abortion provocatus, but regulations vary by province and territory. Some of them legalize provocatus abortion up to 12 weeks of age, some legalize it up to 24 weeks of gestation.

8. United States

There are no federal restrictions on the limit of pregnancies that can have abortions in the United States, but 43 states have restrictions on the limits of pregnancies, ranging from 20 – 24 weeks.

9. Norwegian

The Norwegian government says that women have been given full rights to decide on abortion provocatus since 1978. The right to abortion provocatus can also be carried out free of charge at the hospital. Before a provocatus abortion is carried out, the doctor has an obligation to notify the impact that will occur after a provocatus abortion and the risks.\(^{17}\)

Abortion, also known as abortion or abortion, according to Bambang Poernomo, abortion is the premature birth of a fetus by someone's actions which are criminal acts. What is meant by the act of aborting a womb is carrying out an act regardless of its form and method to a woman's womb which results in the birth of a baby or fetus from inside the woman's womb prematurely according to nature. According to Taufan Nugroho, abortion is a threat or expulsion of the products of conception (the meeting of the egg and sperm) at a gestational age of less than 20 weeks or a fetus weighing less than 500 grams, before the fetus can live outside the womb. This is a process of ending the life of the fetus before it grows.\(^ {18}\)

3 CAUSES OF ABORTION

The other causes of abortion are: First, Unwanted pregnancy, in a marriage, for example. Secondly, because the number of children is enough, because the last child is still small or not ready to have children. Third, Pregnancies carried out consensually by teenagers out of wedlock but not using contraception. Fourth, Pregnancy using failed contraceptive methods. Fifth, Pregnancy caused by rape. Sixth, Pregnancy based on medical indications, because if the pregnancy is continued it can endanger the life of the

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prospective mother, because she is exposed to serious illnesses, such as severe tuberculosis and severe kidney disease.

3.1 TYPES OF ABORTION

According to medical, abortion is divided into 2 types, namely:

a) abortus spontaneus

Spontaneous abortion is an abortion that occurs naturally, either without any reason or for certain reasons, such as disease, toxoplasma virus, high fever, anemia, accidents and so on. Such an abortion does not have any legal consequences. Spontaneous abortion in medical science is further divided into 4 namely:

- **Abortus Imminens (threatened abortion)**, namely the presence of symptoms that threaten the occurrence of abortion. In such cases sometimes the pregnancy can still be saved.

- **Abortus Incipiens (inevitable abortion)**, This means that there are symptoms of impending abortion, but the fruit of the pregnancy is still in the uterus. In this case the pregnancy can no longer be maintained.

- **Abortus Incompletus** is an event when some of the fruit of pregnancy has come out but the rest are still left inside. Bleeding that occurs is usually quite a lot but not fatal, for treatment it is necessary to empty the uterus as soon as possible.

- **Abortus Completus** is the expulsion of the entire fruit of pregnancy from the uterus. Such conditions usually do not require treatment.

- **Missed Abortion** this term is used for conditions where the results of a dead fertilization are retained in the uterus for 8 weeks or more. Sufferers usually do not suffer any symptoms except for not getting menstruation. Most will end with spontaneous discharge of the fruit of pregnancy with the same symptoms as other abortions.

- **Abortus Habitualis** is an abortion that occurs repeatedly and occurs consecutively, at least 3 times in a row.

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b) *Abortus provocatus*

This abortion is done intentionally for certain reasons, this type of abortion has legal consequences which type of punishment depends on the factors behind it. This second type is further divided into two types:

- *Abortus artificialis/therapicus*, namely abortion performed by a doctor on the basis of medical indications. Usually this type of abortion is carried out by removing the fetus from the womb even though it is far from its birth as one of the measures to save the mother's soul. For example, if the pregnancy continues, it can endanger the life of the expectant mother, for example due to serious illnesses such as tuberculosis, kidney and so on.

- *Abortus provocatus/criminalis*, namely the practice of abortion performed without a medical indication. Usually done at the request of the patient. For example, abortion is done to abort unwanted pregnancies.

### 3.2 POSITIVE IMPACT ON THE LEGALITY OF ABORTION

Abortion is a fact that is a serious problem in society. The issue of abortion is indeed a controversial issue, especially for those who associate it with moral values, as well as the attitude of the law which views abortion as a crime. This is because abortion is often assumed only in cases of pregnancy outside of marriage.

The Positive Impact on the Legality of Abortion based on the reasons for enforcing Government Regulation Number 61 of 2014 concerning Reproductive Health article 31 letter b is:

1. **First**, Protecting a woman's right to her body.
2. **Secondly**, Helping rape victims who have abortions re-socialize with society.
3. **Third**, Availability of safe abortion services.
4. **Fourth**, Helping the post-traumatic stress recovery process.
5. **Fifth**, Protect women who are vulnerable to discrimination and harassment.

Women who have had abortions feel that their rights have been protected, their rights to their bodies are the result of rape, women think that they are meaningless so the legality of abortion is a choice for their bodies to have or not have abortions when they become victims of rape which results in pregnancy, although there are still many paths before having an abortion, women feel that they and their bodies are protected.

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Abortion has so far been carried out illegally or clandestinely in an unsafe, irresponsible and unprofessional manner because it is carried out by people who are not experts in this matter, there is the legality of abortion, there is a safe service for carrying out abortions because it is done by people -person a Government Regulation pointed to be responsible and professional.

3.3 NEGATIVE IMPACT ON THE LEGALITY OF ABORTION

Continuous bleeding and infection that occurs after an abortion is the main cause of death for women who have abortions. In addition, abortion has an impact on a person's psychological and mental condition with feelings of guilt that haunt them. Feelings of guilt and fear are signs of a psychological disorder.

Some of the consequences that can arise as a result of abortion, viz:

- Can lead to criminal acts of rape
- Free sex among adolescents increases promiscuity between young men and women that goes beyond the usual limits, by putting aside customs, religion, norms and culture so that the younger generation easily engages in free sex leading to pregnancy, young men have a long future they don't want to marry a woman who is pregnant wants to release responsibility for her actions because she is not ready to lead the household, abortion opens up opportunities for women who become pregnant because of free sex to report that they were raped by a man who made her pregnant.22

4 METHODOLOGY

Research results from doctrinal studies with a legislative approach23. Doctrinal research results from studying the regulations relating to abortion law in Indonesia, while the legislative approach used in this research aims to see and analyze in depth how the regulations regarding abortion in Indonesia are enforced. To strengthen the analysis, this research also uses several research results related to abortion. Apart from that, this research also uses various information related to abortion case data, this is used so that

22 Agusrimanda.
the analysis carried out is accurate and appropriate to the abortion issues and problems that occur in Indonesia.

5 RESULTS AND DISCUSSION
5.1 ABORTION REGULATIONS IN GOVERNMENT REGULATION NUMBER 61 OF 2014 CONCERNING REPRODUCTIVE HEALTH

Regulation number. 61 of 2014 concerning reproductive health also states that abortion is permissible for pregnancies resulting from rape victims. Government Regulation Number 61 of 2014 concerning reproductive health was ratified by President Susilo Bambang Yudhoyono on July 21 2014. This regulation is the implementation of Law Number 36 of 2009 concerning health, especially Article 75, Article 126 and Article 127. What is in the spotlight is the legalization of abortion in the Government Regulation, which reads:

Article 31 government regulation ah Number 61 of 2014 Abortion can only be performed based on: (a) medical emergency indications; or (b) pregnancy due to rape. The act of abortion as a result of rape as referred to in paragraph (1) letter b can only be carried out if the gestational age is no longer than 40 days from the first day of the last menstruation.

Article 34 government regulation Number 61 of 2014 Pregnancy as a result of rape as referred to in Article 31 paragraph (1) letter b is a pregnancy resulting from sexual intercourse without the consent of the woman in accordance with the provisions of laws and regulations. Pregnancy as a result of rape as referred to in paragraph (1) is proven by:
- gestational age according to the incident of rape stated by a doctor's certificate: and
- information from investigators, psychologists, and/or other experts regarding the alleged rape.

Regarding pregnancy as a result of rape victims, this can be done if the gestational age is at most 40 days from the first day of the last menstruation. While what is meant by medical emergency indications are: a. Pregnancy that threatens the life and health of the mother; and/or b. Health that threatens the life and health of the fetus, including those with severe genetic diseases and/or congenital defects, as well as those that cannot be repaired, making it difficult for the baby to live outside the womb. Assessment of medical indications is carried out by at least 2 health workers led by a doctor who has the
competence and authority Government Regulation Number 61 of 2014 concerning Reproductive Health.\(^{24}\)

5.2 ABORTION IS LINKED TO HUMAN RIGHTS

Reproductive rights are part of human rights which include the right of every couple and individual to decide freely and responsibly the number, spacing and time of birth of children, as well as to have information and ways to do so. Sexual health is a condition in order to achieve reproductive health which requires that a person's sex life must be carried out in a satisfactory and healthy manner in the sense that it is free from diseases and other disorders. Related to this is sexual rights, which are part of human rights to decide freely and responsibly on all matters relating to sexuality, including sexual and reproductive health, free from coercion, discrimination and violence. Abortion is closely related to human rights, on the one hand it is said that every woman has the right to her body and herself and has the right to live a reproductive and sexual life that is healthy, safe and free from coercion. However, on the other hand, the fetus in the womb also has the right to continue to live and develop. These two things are indeed contradictory to each other because they involve two lives.\(^{25}\)

If the abortion that is done is a criminal abortion, of course this is very contrary to human rights. The Law on Human Rights also regulates the protection of children from the fetus because even if a mother has rights over her own body, we still have to remember that the human rights that everyone has are still limited by law. But when a mother has to abort her pregnancy with indications of a medical emergency that can threaten the life of the mother or the fetus, in human rights this can be justified because the mother also has the right to live and defend her life. Abortion is indeed related to a woman's right to reproduce and the right to her body. The health law itself also contains provisions on the freedom of every person to reproduce. If it is interpreted that freedom to reproduce can open reproaches for carrying out abortions, but what we need to remember and emphasize here is that everyone's freedom to reproduce here is responsible freedom which certainly does not conflict with human rights.\(^{26}\)

\(^{25}\) Aborsi, “Problematika Yuridis Peraturan Pemerintah Number 61 Tahun 2014.”
5.3 ANALYSIS OF THE IMPLEMENTATION OF ABORTION

Based on Articles 31-35, P.P. Number 61 of 2014 concerning Reproductive Health, carrying out abortions based on medical emergency indications and pregnancies as a result of rape must be carried out in a state of complete physical, mental and social health, not merely free from disease or disability related to the system, the function of the reproductive process in men and women. Meanwhile, the implementation of abortion that is contrary to the Criminal Code (KUHP) Article 348 is elective abortion: an abortion that is carried out for other reasons, namely as a result of free sex so that no one is responsible for the pregnancy, as well as reasons that really want to promote irresponsible actions to achieve the goals of certain parties. Social factors are the main factor in the occurrence of abortion crimes in society. Bad associations between men and women often result in a woman getting pregnant out of wedlock, still at a young age and in a weak economic condition.

5.4 CRIMINAL RESPONSIBILITY FOR THE CRIME OF ABORTUS PROVOCATUS

The articles in the Criminal Code clearly do not allow abortion in Indonesia. The Criminal Code does not legalize without exception. Even provocatus medicalis abortion or provocatus therapeutics abortion is prohibited, including provocatus abortion which is carried out by women victims of rape. The difference between the article above and Article 341 and Article 342 of the Criminal Code lies in the time limit for an abortion. So that in that article if it is carried out it is not an abortion but a murder of a child. In positive law in Indonesia, the regulation of abortion is contained in two laws, namely the Criminal Code articles 299, 346, 347, 348, 349 and 535 which strictly prohibit abortion for any reason and in RI Law Number 36 of 2009 concerning Health article 75,76,77,78 prohibits abortion but still allows abortion for medical indications and psychological trauma with certain conditions. The act of abortion according to the Criminal Code in Indonesia is categorized as a crime or categorized as a crime against life.

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The articles of the Criminal Code that regulate this are articles 229, 346, 347, 348, 349 and 535. Although there is not a single article in the Criminal Code that allows a doctor to perform an abortion for medical reasons, even to save the mother's life, in practice doctors who do so are not punished if they can state strong reasons and these reasons are accepted by the judge (Article 48)²⁹.

Criminal liability for the crime of abortion is regulated in the Indonesian Positive Law Criminal Code, arrangements for abortion are contained in two laws, namely the Criminal Code articles 299, 346, 347, 348, 349 and 535 which strictly prohibit abortion for any reason. as well as in RI Law Number 36 of 2009 concerning Health article 75,76,77,78 prohibits abortion but still allows abortion for medical indications and psychological trauma with certain conditions³⁰.

5.5 ANALYSIS OF COURT DECISIONS WITH CASE REGISTER NUMBER 5/PID.SUS-ANAK/2018/PN. MBN. IN ORDER TO FULFILL A SENSE OF JUSTICE FOR CHILDREN WHO COMMIT THE CRIME OF ABORTION AS VICTIMS OF RAPE

Crimes related to sex and an act of abortion is a study regarding the administration of justice. Much has been neglected from the reach of the law and there are twists and turns, this is reflected in several cases where the victims were women, which were not resolved fairly and satisfactorily. For example, the case of a child victim of rape who became the perpetrator of the crime of abortion which was tried by the Muara Bulian District Court with court decision Number5/Pid.Sus-Anak/2018/Pn.Mbn. dated 19 July 2018 in the decision stated that the child was tried and sentenced to 6 months in prison, 3 months of job training and paying for the case. The social and psychological condition of the child cannot be ignored, the child as a victim of rape who has an abortion must be given protection to ensure safety and given psychological assistance, not imprisoned³¹.

The existence of Law Number 36 of 2009 concerning Health and Government Regulation Number 61 of 2014 concerning Reproductive Health which provides an opportunity to legalize abortion has not in fact been able to protect victims of rape as perpetrators of abortion free from the threat of punishment

²⁹ Silalahi and Luciana.
³⁰ Silalahi and Luciana.
The thing that should be obtained by the child is that the child does not need to be punished but is protected by laws that involve him because the child is a victim who then becomes pregnant and has an abortion with an element that endangers him by threatening to give the child the opportunity to become a rape victim who has an abortion not to be sentenced as a reason for forgiveness, as has also been regulated in Article 49 of the Criminal Code. In addition, the lack of medical health services and psychological assistance to child victims of rape as abortionists should require physical and psychological healing as stated in the convention on the Right of the Child 1989, where detention of children must be the last resort and the shortest possible time for children.

As well as efforts to overcome acts of rape that result in abortion. Many can be involved in countermeasures, namely not only institutions or the government, the community can also participate. the lack of adequate medical personnel and the community's understanding of law and health awareness is not optimal, the Government should send health personnel to several places where there are still many women and children, especially areas that are vulnerable to having an abortion As in Article 76 letter b Health states that only Those able to carry out abortions are health workers who have the authority and certified expertise given by the minister, while in some there are still very few who have certified health workers so that women and children can have abortions other than what has been regulated by the government, for that it can help them by giving them an understanding in carrying out the action This is what is happening in Indonesia.

5.6 EXCEPTIONS TO THE PROHIBITION OF ABORTION FOR RAPE VICTIMS

Law Number 7 of 1984 Concerning Ratification of the Convention Concerning the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as the CEDAW Convention) in its formation there was a consideration that the Universal Declaration of Human Rights. The Declaration of Human Rights affirms the principle of the inadmissibility of discrimination and states that all human beings are born free and equal in dignity and rights, that each person is entitled to all the rights and freedoms contained therein, without any distinction whatsoever, including differences in sex.

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32 Dewi and Gorda.
Discrimination against women violates the principles of equal rights and respect for human dignity and is an obstacle to women's participation on an equal basis with men. The CEDAW Convention provides a definition of discrimination against women contained in Article 1 namely

“Any distinction, exclusion or restriction contained on the basis of gender which has the effect or purpose of reducing or eliminating the recognition, enjoyment or use of human rights and fundamental freedoms in the field of social, cultural, civil and other social issues by women regardless of their marital status, on the basis of equality between women and men”.

Article 3 of the Convention contains a statement regarding the state's obligation to eliminate all forms of discrimination by saying, among other things

“… participating countries make appropriate rules, including law-making in all fields... and enjoy human rights and fundamental freedoms on an equal basis with men”

The state in accordance with the contents of Article 3 must make a Government Regulation appropriate rules. Protection of women is the responsibility of the state. The state must eliminate all discrimination against women in all fields based on equal rights and obligations between men and women. All forms of discrimination against women if left unchecked will lead to violence against women so that it is the state's obligation to eliminate it. For women victims of rape who have abortions, the state must provide protection in addition to providing legal protection in abstracto. Abortion as an option for victims who become pregnant due to rape has been accommodated through Law Number 39 of 2009 concerning Health. However, in practice, many victims did not understand and many medical personnel at government hospitals were reluctant to treat them. The Criminal Code (KUHP) strictly prohibits abortion for any reason as stipulated in articles 283, 299 and articles 346 – 349. In fact, article 299 essentially threatens a maximum prison sentence of four years to someone who gives hope to a woman that her womb is can be aborted. Article 299 of the Criminal Code:

(1) Any person who intentionally treats a woman or orders a woman to be treated by informing or issuing a hope that because of this treatment her pregnancy will abort, shall be punished with imprisonment for a maximum of four years or a fine

34 Jurnal Ilmu Hukum, “240061-Perlindungan-Hukum-Bagi-Perempuan-Korban-9Be02E13” 9, Number 18 (2013).
of up to forty-five thousand rupiahs

(2) If the offender commits the act for seeking profit, or commits the crime as a means of livelihood or habit or if he is a doctor, midwife or pharmacist, the sentence can be increased by one third.

(3) If the person who is guilty of committing the crime in his work, his right to do that work can be revoked.

Then paragraph (2) stipulates that the threat of punishment is increased to that of cannabis, if the crime is a livelihood or a habit, or is carried out by a doctor, midwife or medicine man.

In this article it is necessary to prove that the woman is really pregnant, but it is not required that the pregnancy actually aborts because of the treatment (intentional abortion is punishable under Article 348). It is enough if the perpetrator has taken medication or committed an act against a pregnant woman with information or a method that can give rise to hope, that by doing so he can abort the woman's womb. If the perpetrator wrongly suspects that the woman is pregnant, when in fact she is not, then she cannot be punished, because her actions did not result in an abortion. The commission of the crime is considered complete when treatment or massage has been given, giving rise to the hope that the womb will fall as a result of the treatment or massage.\(^{35}\)

According to Article 346 of the Criminal Code: “A woman who deliberately causes the death or death of her womb, or orders someone else to cause it, shall be punished with a maximum imprisonment of four years”.

Abortion or killing of the fetus in the womb can be done in various ways, for example: with medicine taken or with a device inserted into the uterus.

In Article 348 of the Criminal Code (1) Whoever intentionally causes the death or death of a woman's womb with the consent of the woman, shall be punished by a maximum imprisonment of five years and six months. (2) If the said act results in the woman's death, she shall be punished with imprisonment for a maximum of seven years.

Explanation of article 348 of the Criminal Code: Paragraph (1) of this article threatens punishment for a person who deliberately causes the death or death of a woman's womb, with the woman's permission. While paragraph (2) threatens a more severe penalty for a person who intentionally causes a woman's womb to abort or dies with the permission of the woman concerned and results in the woman's death.

\(^{35}\) Hukum.
In Article 349 of the Criminal Code “If a doctor, midwife or pharmacist assists in the crimes referred to in Article 346, or is guilty of committing or assisting one of the crimes described in Articles 347 and 348, then the sentence specified in the said articles may be increased by one third and the right to carry out his work used to carry out the said crimes may be revoked”.

The elucidation of the article states that those who are subject to more severe punishment in this article are doctors, midwives or pharmacists who help women who deliberately cause their womb to fall or die (Article 346), or help someone who intentionally causes a woman's womb to fall or die, , without the permission of the woman concerned (article 347 paragraph 1), or also helping someone who intentionally causes a woman's womb to fall or die, with the permission of the woman concerned (article 348 paragraph 1), or if the act resulting in the death of the woman concerned (articles 347 and 348 paragraph 2) 36.

In addition to a more severe sentence, a doctor, midwife or pharmacist who assists in the crime may be subject to the additional penalty of revoking the right to work as a doctor, midwife or medicine interpreter. On the other hand, if a doctor, midwife or pharmacist who helps abort or kill the womb actually saves the soul or maintains the woman's health, she will not be punished 37.

This understanding of reproductive health includes the rights of everyone to obtain safe, effective and affordable reproductive health services. Therefore, maternal and fetal health efforts are also regulated in Government Regulation Number 61 of 2014 concerning Reproductive Health, Article 2 letters a, b, and c, as well as in Chapter IV concerning Indications of Medical Emergencies and Rape as an Exception to the Prohibition of Abortion in Article 31 to Article 39. Reproductive rights are human rights, and are guaranteed by law, to guarantee these reproductive rights the government makes the following provisions, as stated in Law Number 36 of the Year 2009 Concerning Health, Article 73 to Article 74. As stated in Government Regulation Number 61 of 2014 concerning Reproductive Health, in Chapter II Government and Regional Government Responsibilities, Article 4 to Article 7. The normal length of pregnancy is 280 days or 40
weeks counting from the first and last menstruation. Sometimes it ends prematurely and sometimes it exceeds the normal time\textsuperscript{38}.

Government Regulation Number 61 of 2014 concerning Reproductive Health states that the State in principle prohibits abortion, this prohibition is reaffirmed in Law Number 36 of 2009 concerning Health. The act of abortion in several medical conditions is the only way that must be done by medical personnel to save the life of a mother who has health problems or serious complications during pregnancy. In several conditions due to coercion of the perpetrator's will, a rape victim will suffer physically, mentally, and socially. And pregnancy as a result of rape will worsen the mental condition of the victim who has previously experienced severe trauma from the rape incident\textsuperscript{39}.

Serious mental trauma will also have a negative impact on the development of the fetus in the victim's womb. Most of the rape victims experience a rejection reaction to their pregnancy and want to have an abortion. Law Number 36 of 2009 concerning Health is in principle in line with the provisions of existing criminal regulations, which prohibits everyone from having an abortion. The state must protect its citizens, in this case women who have abortions based on medical emergency indications and as a result of rape, and protect medical personnel who do them. Law Number 36 of 2009 concerning Health opens exceptions for abortions based on emergency indications. Abortion based on medical emergency indications and Quoted from the Regulation Government Number 61 of 2014 concerning Reproductive Health, pregnancies resulting from rape must be carried out in a safe, quality and responsible manner. Safe, quality and responsible abortion practices as referred to in paragraph (1) include: (a) Performed by a doctor according to standards. (b) Facilitated health services that meet the requirements set by the minister. (c) At the request or consent of the pregnant woman concerned. (d) With the husband's permission, except for rape victims. (e) Not discriminatory. (f) Do not give priority to material rewards

In the event that a pregnant woman as referred to in paragraph 2 letter (c) is unable to give consent, the family concerned can give consent for abortion. In the event that the husband cannot be contacted, permission as referred to in paragraph 2 letter (d) is given by the family concerned\textsuperscript{40}. The implementation of abortion regulated in Law Number 36

\textsuperscript{38} Aji Mulyana, “Perlindungan Hukum Terhadap Perempuan Dan Anak Akibat Tindak Pidana Abortus Provokatus Criminalis,” \textit{Jurnal Wawasan Yuridika} 1, Number 2 (2017): 139.


\textsuperscript{40} Lubis.
of 2009 concerning health is emphasized by Government Regulation Number 61 of 2014 concerning Reproductive Health Article 35, which reads.

In addition, the provisions of Article 37 of Government Regulation Number 61 of 2014 concerning Reproductive Health also regulate abortion, namely: (1) Abortion based on medical emergency indications and pregnancy due to rape can only be carried out after counseling. Counseling as referred to in paragraph (1) includes pre-action counseling and ends with post-action counseling carried out by the counselor.\(^{41}\)

Pre-action counseling as referred to in paragraph (2) is carried out with a purpose: (a) Assess the needs of women who wish to have an abortion. (b) Convey and explain to women who wish to have an abortion that an abortion may or may not be performed based on the results of a clinical examination and sorptionrichting examinations. (c) Explain the stages of the abortion that will be carried out and the possible side effects or complications. (d) Helping women who want to do so to make their own decision to have an abortion or cancel the desire to have an abortion after receiving information about abortion. (e) Assess the patient's readiness for abortion.\(^{42}\)

Post-action counseling as referred to in paragraph (2) is carried out with the aim: (a). Observing and evaluating the patient's condition after the abortion, (b). Helping patients understand the state or physical condition after undergoing an abortion, (c). Explain the need for a repeat visit for further examination and counseling or referral action if necessary, (d). Explain the importance of using contraception to prevent pregnancy.\(^{43}\)

6 CONCLUSION

Legal protection for victims of rape includes fulfillment of the right to compensation for serious human rights violations, compensation provided by the state because the perpetrators are incapacitated. It is possible as an effort to provide services to victims of crime in the context of developing welfare and justice. Giving the right to restitution or compensation is the responsibility of the perpetrators of criminal acts. Decisions regarding compensation and restitution are made by the court. Further provisions regarding the granting of compensation and restitution are regulated by


\(^{42}\) Salamor.

\(^{43}\) Salamor.
government regulations. Victims legally also receive legal assistance and rehabilitation assistance in the form of medication, mental recovery (psychiatrists, psychologists, volunteers), victims must be informed about their health conditions.

Abortion of a pregnancy resulting from rape which can cause psychological trauma to the rape victim can only be carried out if the conditions specified in Article 75 paragraph (3) and Article 76 of the Law of the Republic of Indonesia Number 36 of 2009 concerning Health have been met. Pregnancy as a result of rape violates the reproductive rights of rape victims, therefore the exclusion of abortion for rape victims aims to provide guarantees and legal protection of rape victims' reproductive rights as a manifestation of human rights.

Thus it can be concluded that Article 31 of Government Regulation Number 61 of 2014 concerning Reproductive Health can be carried out based on indications regarding medical emergencies, namely: Spontaneous abortion, Induced abortion or procured abortion, and pregnancy due to rape, namely: Therapeutic abortion.

Law enforcement officials (police, prosecutors, judges) in providing services and protection to women victims of rape should be based on humanity, and in handling rape cases not only use the basis of the Criminal Code, but also use laws outside the Criminal Code (not using a single presumptive article). And also, law enforcers should know that Article 75 of Law Number 36 of 2009 has included the psychological element of women as victims of rape as a reason for medical indications. It is necessary to make changes to the statutory provisions governing the issue of abortion, namely an explanation of what is meant by abortion and abortion for rape victims. There is a need for cooperation between law enforcers, namely the police, prosecutors and judges with forensic doctors and also the active role of the community in handling criminal abortion cases.
REFERENCES


