

IMPOSITION OF SANCTIONS ANALYSIS OF BUSINESS CRIME CRIMINAL ABORTION

I Gusti Ngurah Ketut Hendra Gunawan
Ganesha Education University
E-mail : ngurahketuthendra@gmail.com

Abstract

Abortion is misconduct when committed intentionally abort way without any obvious reason to do so. Regarding the crime of abortion is regulated in the Act Positive in Indonesia. Perform abortions should not be just anyone do it because they have to kill the fetus in the womb. In this case I raised the issue that is how the imposition of criminal sanctions against perpetrators of criminal acts of abortion and how the alleviation and prevention of criminal acts of abortion in Indonesia.

Keywords: Abortion, Crime, imposition of sanctions Abortion

Preliminary

Abortion is one of reproductive health issues dangat serious attention, and energy draining emotionally as well. Various groups have membincangkannya in the frame of debate and differences of opinion that has no end. Especially when abortion was associated with the law, morality, health or human rights to life, abortion becomes very problematic and controversial.

In definitive abortion is the cessation of (dead) and the issuance of a pregnancy before 20 weeks (counting from the last day) or fetal weight of less than 500 grams, less than 25 cm long¹, Medical definition means that abortion is the termination of a pregnancy before viability, before the fetus is able to live on her own outside the womb, which is estimated gestational age below 20 weeks (WHO). This definition clearly mengandung meaning that the act of abortion performed on a fetus can not survive outside the womb²

The diversity of views on the legality of abortion is a reality of abortion is a reality of the discourse of normative discourse by various groups to address the problems that arise in the community. The discourse about abortion is already as old as man and his life. Point "dispute" and the polarization of the differences of view this is an extreme

¹Guraldi HW "Life and Fetal Development Problems," in Maria Ulfah Anshor, Wan Nendra, and Sururin (ed.) *Abortion in Contemporary Fiqh Perspective*. Jakarta: Balai Publisher Faculty of Medicine, University of Indonesia partnership with Fatayat NU and the Ford Foundation, 2002. Pg: 3.

²Rita Serena Kalibonso, "Abortion is viewed from the perspective of Law". In Maria Ulfah Anshor, et al. (Ed.) *Ibid.*, P: 51.

defense of the right to life of the fetus / embryo or defense of the interests of the pregnant woman. Points is then led to 'quarrel' between the pro-choice and pro-live³ in addressing abortion. Whether for the right to life of the fetus or the mother rescuer containing the fetus.

In the Indonesian context, legality and regulation on abortion dibincang from the Law until fatwa. However, the process of legalization and regulation of abortion is not able to reduce the differences of opinion that arise. Still, abortion becomes hot topic that is always interesting to debate. This paper does not pretend to cut deeply into different opinions on all kinds of abortion, but only in the case of abortion of unwanted pregnancies (KTD) which was later re-surfaced after the passing of PP 61 of 2014 on Reproductive Health dated 21 July 2014. One of the controversial points in this PP is the legalization of abortion for rape victims⁴,

Results And Discussion

How To Criminal Sanctions Business Crime Abortion?

In ethics, we try to give reasons for what we do, especially for our good and bad behavior. In the framework of ethics, it is not enough if it is answered with "yes" or "no" to the question "should it be done?". Must be given also the reason why such actions are permissible or not. In this case it seems fairly urgent moral clarity, because abortion is a topic that is most crowded discussed in biomedical ethics and the most controversial. Hence, there would be surprising if the reasons given to justify position in this case is very different. In this case such as for some of Discourse Rights; Rights of Pregnant Women and Fetus Rights⁵,

Pregnant Women's Rights, for those who approve of abortion, the right approach is a line of thinking that the most widely adopted. They stressed that pregnant women have the right to control her own body. Women have the right to decide whether to continue the pregnancy or on the contrary, want to stop it in the sense of an abortion. Other people should not interfere in this decision. If this argument put forward by the extreme way, the right to abortion is often presented with a more moderate, the right to abortion could be considered again on other factors. Many things can not be said about these arguments, the first of course is not true that a pregnant woman is allowed to do anything with her, in the

³Pro-live and pro-choice is polarized camps that support abortion and prohibit abortion surfaced in America. This polarization is very massive impact on the social and political life in America, this polarization seems also implicated in Indonesia. See K. Bertens, *Abortion as Ethical Issues*. Jakarta: PT. Grasindo 2002.

⁴Mufliha Wijayati, *Abortion Unwanted Pregnancy Due (KTD)*, PPs UIN Sunan Gunung Jati Bandung. Pp: 44-45.

⁵Bertens. K, *Abosri As Ethical Issues*, PT. Gramedia Widiasarana Indonesia, Jakarta, 2002, p. 1.

sense that he did not control his own body in full. Second, because the condition of pregnancy caused by sexual intercourse, pregnant women can not escape responsibility for the condition. But soon to be added, that responsibility involves two beings who engage in sexual intercourse, male or female⁶, Third, the most important fetus in the womb is not a part of the body of pregnant women. The human fetus is new and therefore must be respected as well as humans. It is true that the fetus can not live without her. In all vital organic systems (circulatory, respiratory, nutritional) he is dependent on his mother.

Fetal rights, where the rights could be used also to reject abortion as unethical. Therefore, not only pregnant women have the right, but the fetus in the womb also have rights. Namely the right to life. This argument is often used to menilak abortion. But this argument is also not immune from trouble. The first can not be said that the fetus has legal rights. There is no legal system that recognizes the rights of the fetus in a legal sense, although illegal in many countries to protect human life is conceivable that the law can provide such rights. Talking about the right to life of the fetus, which is just a moral right. Moral rights can be prosecuted through legal channels. As well as legal rights. Hence the reason for human rights is a right in the legal sense, is never applied to the fetus in the womb⁷,

Settings abortion in the positive law in Indonesia, contained in two laws which include the Code of Penal (Penal Code) and Act No. 36 of 2009 on Health. In the Criminal Code expressly prohibit abortion for any reason, while in the Health Law Law No. 36 of 2009 to allow abortions for medical indications as well as rape. But the abortion provisions in the Act No. 36 of 2009 still there are limits that should not be violated, for example the condition of pregnancy up to 6 months after the first day of the last menstrual period. Also based on the Health Act No. 36 of 2009, abortion, as an attempt to Saving the pregnant mother or her fetus can be done by health workers who have the expertise and authority to do so and performed in accordance with professional responsibility and consideration of the expert team. It shows that the abortion is legal and can be justified and protected by law, and all actions undertaken by health personnel against women's reproductive rights is not a criminal act⁸, In contrast to the abortions performed in the absence of medical considerations, such abosri said illegal and can not be justified legally. Abortion is regarded as a criminal offense or crime because of the abortion of the Criminal Code qualifies as a crime against life. Abortion in the process, nothing is done alone and there is also the help of others. Abortion itself, for example by way of consuming drugs that harm the

⁶Ibid p. 26.

⁷Ibid p. 28.

⁸Sulistyowati Irianto, *Women and the Law: The Berspektif Towards Equality Law And Justice*, (Djakarta: Obor Indonesia Jaya IKAPI Member), 2006, p. 521.

fetus, or to perform acts that intentionally want to abort the fetus. Whereas when using the help of others, abortion can be performed with the help of a doctor, midwife or TBA. When abortion is done with the help of other people, then the criminal event there is more than one perpetrator,⁹

The person who was involved in the criminal act of abortion in criminal law, called the Deelneming. Participate and is a criminal offense committed by one or more than one person, which among people with each other and there is a relationship of inner attitudes or actions very closely to the realization of such crime¹⁰, Forms of participation in this case consists of: persuader, maid, and who told committing a crime. The position of the author (dader), and helpers (mededader) stipulated in the Criminal Code, namely in Article 55 of the Penal Code which states four categories maker who may be liable are the perpetrator (pleger), told to do (doenpleger), participated (medepleger), and advocate (uitloker) ie those who deliberately provide relief at the time the crimes were committed and those that allow the means or information to commit a crime. either crime or offense offense offense contained in the Criminal Code and the Criminal Code outside the realm of criminal law enforcement refers to the general provisions in the Criminal Code as a book of its parent. Penal Code itself has 3 (three) of the first book set of general provisions, Sanctions can be imposed against the perpetrators of criminal acts of abortion are:

1. Article 346
A woman who deliberately abort or shut down abortion or tell others to it, threatened with jail Criminal maximum of 4 Years
2. Article 347
 - (1) Whoever intentionally 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, threatened with jail Criminal maximum of 15 years.
3. Article 348
 - (1) Whoever intentionally abort or lethal womb of a woman with her consent, punishable by a prison Criminal maximum 5 years 6 months.
 - (2) If the act results in the death of the woman, threatened with a criminal jail longer than 7 years.

⁹Adami Chajawi, Experiment and Inclusion (Lesson Criminal Law Section), Eagle Press, Jakarta, 2002 p. 72.

¹⁰Adami Chajawi, Experiment and Inclusion (Lesson Criminal Law Section), Eagle Press, Jakarta, 2002, p. 73.

How Do The Prevention Efforts To Police In Crime Of Abortion In Indonesia?

There are two forms of action or efforts made by the police in order to reduce and prevent the occurrence of abortion provocatus:

A. Preventive efforts

In anticipation of these circumstances the police are trying to be the maximum. Starting with the routine raids to places where rental and sale of VCD, to prevent the proliferation of pornographic VCDs in the community as well as raids on bookstores, to prevent the circulation of pornographic books. The police in tackling the crime, has been doing some prevention. For example through a religious approach. The police work closely with religious leaders who were in the area of Police. In addition, the police also provide insight and understanding to the community and especially to the many teenagers who come into contact with this issue. By giving the sense that the actions of a criminal provocatus abortion is a crime that violates the law,¹¹,

B. Repressive efforts

Another effort that the police are working with the government officials are putting some police personnel called by BAPEMKAMTIBMAS (Board of Trustees of Public Order and Security). The goal is to bring the community with the police to provide information or assistance from the police to reveal cases of criminal acts of a criminal case of abortion provocatus in each urban area¹²,

Conclusion

Abortion is generally divided into spontaneous and induced abortion provokatus (artificial) is the legal aspect can be classified into two, namely abortion provokatus terapeuticus (artificial legal) and criminalist provokatus abortion (illegal artificial). Legislation in Indonesia, an agreement on abortion contained in the two laws are the Criminal Code and Health Act. In both the Act has been arranged on the sanctions which have an abortion.

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.

¹¹<http://hukumkes.wordpress.com/2010/12/16/aborsi-menurut-hukum-di-indonesia/html>

¹²Sri Helianty. Abortion as a Solution, From: [http / www.mediacare@yahoo.com](http://www.mediacare@yahoo.com), September 24, 2011.

Law enforcement should pay more attention to the problem of abortion due to a problem on abortion are very many and frequent and actors who perform abortion be punished more wary.

References

- Guraldi HW "Life and Fetal Development Problems," in Maria Ulfah Anshor, Wan Nendra, and Sururin (ed.) *Abortion in Contemporary Fiqh Perspective*. Jakarta: Balai Publisher Faculty of Medicine, University of Indonesia partnership with Fatayat NU and the Ford Foundation, 2002. Pg: 3.
- Rita Serena Kalibonso, "Abortion is viewed from the perspective of Law". In Maria Ulfah Anshor, et al. (Ed.) *Ibid.*, P: 51.
- Mufliha Wijayati, *Abortion Unwanted Pregnancy Due (KTD)*, PPs UIN Sunan Gunung Jati Bandung. Pp: 44-45.
- Bertens. K, *Abosri As Ethical Issues*, PT. Gramedia Widiasarana Indonesia, Jakarta, 2002, p. 1.
- Sulistyowati Irianto, *Women and the Law: The Berspektif Towards Equality Law And Justice*, (Djakarta: Obor Indonesia Jaya IKAPI Member), 2006, p. 521.
- Adami Chajawi, *Experiment and Inclusion (Lesson Criminal Law Section)*, Eagle Press, Jakarta, 2002 p. 72.
- Adami Chajawi, *Experiment and Inclusion (Lesson Criminal Law Section)*, Eagle Press, Jakarta, 2002, p. 73.
- Sri Helianty. *Abortion as a Solution*, From: [http / www.media care@yahoo.com](http://www.media care@yahoo.com) , September 24, 2011.
- <http://hukumkes.wordpress.com/2010/12/16/aborsi-menurut-hukum-di-indonesia/html>