



Abortion Perspective of The Criminal Code and Law Number 17 of 2023 Concerning Health

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Abstract. Health is a human right that must be protected and noticed by the government because health is also an indicator of social welfare in addition to economic and social. Life is a gift given by God that must be respected by everyone. The life given to every human being is a human right that can only be revoked by the God. Talking about abortion, is definitely talking about human life because abortion is closely related to women and fetuses that are in women's womb. This study aims to find out about abortion according to the Indonesian Criminal Code and Indonesian Law No. 17 of 2023 on health related to human rights.

This research is normative law research, that based on legal principles, and also juridical empirical means that research done by focusing on field study to obtain primary data. Further complementing the data obtained from the field research needs to be supported by library research. Based on the results of the Indonesian Criminal Code, it is mentioned that abortion is the expenditure of conception at each stage of development before the completion of pregnancy (38-40 weeks) or expression of conception before the fetus can live outside the womb (weight less than 500 grams or less Of 20 weeks). The criminal offense against the life of the Indonesian Criminal Code is contained in Chapter XIX under title "Crimes Against People's Lives" set out in Articles 338 to 350. In Positive Law of Indonesia, the arrangement of abortion acts is contained in the Criminal Code Article 299, 346, 347, 348, 349 And 535 which expressly prohibits abortion for any reason. Based on Indonesian Law No. 17 of 2023 on Health. Everyone is prohibited from having an abortion but can be excluded on the basis of medical emergency indications detected since the beginning of pregnancy process. In Indonesian Law No. 17 of 2023 on Health, the concerns of abortion is provided in articles 60, 61, and 62 which prohibit the act of abortion but still permit abortion of medical indication, and also mentioned in article 194 of Law Number 17 Year 2023 on health.

Keywords: Abortion; Criminal; Health

1. Introduction

Talking about the abortion of course we are talking about human life, because abortion is really close with the fetus in the womb of women. Abortion is always a talk of both official and unofficial forums concerning medicine, law and other disciplines. Now a days, abortion is a social phenomenon that increasingly apprehensive. The concern is not without reason, because, abortion behavior has many negative effects both for self-perpetrators or the wider community. This is due to abortion concerning the moral norms and laws of a nation's life.

Abortion has long been known and has a long history, it also has been done by various methods including natural or herbal, the use of sharp tools, physical trauma and other traditional methods. Legality, normality, culture and views of abortion are

substantially different across the country. In many countries of the world the issue of abortion is a prominent and divisive issue of the public over ethical and legal controversies. The law of abortion in Indonesia needs to be seen again about the purpose of the act of abortion. So far, the problem of abortion is generally regarded by most people as a crime. However, in positive law in Indonesia, the act of abortion in certain cases may be justified if it is a medical *provocate* abortion.

While the generalized of abortion becomes a crime known as “*abortusi provokatus criminalis*”. Abortion itself can occur either due to human acts (*abortuis provokatus*) as well as by natural causes, which occur naturally, in the sense not by human actions (*spontaneous abortion*). In terms of positive law in Indonesia, there is still debate and from the pros and cons about the perception or understanding of the laws that exist this day. Neither of Health Law, the Law on medical practice, the Indonesian Criminal Code, Law on the elimination of domestic violence, and also Human Rights. Before the issuance of Law no. 17 of 2023 on health, the provisions of abortion are regulated in Law no. 39 of 2009. Where in the provisions of the Health Act contains about the abortion performed on medical emergency indications that threaten the lives of mothers and babies born disabled, so it will be difficult to life outside the womb.

There is a difference between Indonesian Criminal Code and Law no. 17 Year 2023 on Health in regulating the problem of abortion. The Criminal Code strictly prohibits abortion for any reason, whereas the Health Law allows abortion of medical emergency indications as well as rape. However, the provision of abortion in Law no. 17 of 2023 there are still limitations that should not be violated, such as the condition of pregnancy up to 6 weeks after the first day of the last menstrual period.

Based on the background elaborated above, then the problem is formulated as follows:

1. How does a juridical review of abortion be associated with human rights?
2. What is the review of abortion based on the Criminal Code and the Law on Health and legality of rape victims?

2. Method

This research is normative law research, Data collection in this research is done by :

1. Library research, intended to obtain secondary data that is used as a theoretical basis in this study, that is by studying books, opinions of scholars and the applicable Laws and Regulations.
2. Field Research, intended to obtain primary data by conducting interviews with the parties directly related to the issues to be discussed.

3. Results and Discussion

Based on the research, there are some results:

Abortion is the act of cessation of pregnancy or abortion before the fetus can live outside the womb (before the age of 20 weeks of pregnancy) is not merely to save the life of pregnant women in an emergency but also biased because the mother does not want her pregnancy. Based on the Article of the Criminal Code, it means any reason beyond the medical grounds of women shall not take an act of abortion. From the examination in the Criminal Code, it is based on a thought or paradigm that a child still in the womb is a legal subject so as to be entitled to obtain legal protection.

Based on Indonesian Law on Health No. 17 of 2023, everyone is prohibited from having an abortion but can be excluded on the basis of medical emergency indications detected since early childhood of pregnancy.

d. Conclusion

Abortion is the expenditure of conception at each stage of development before a complete pregnancy (38-40 weeks) or expression of conception before the fetus can live beyond the womb (weight less than 500 grams or less than 20 weeks). The criminal offense against the life of the Criminal Code is contained in Chapter XIX under the heading "Crimes Against People's Lives" set forth in Articles 338 to 350. In the Positive Law in Indonesia, the arrangements of abortion are contained in the Criminal Code Article 299, 346, 347, 348, 349 And 535 which expressly prohibits abortion for any reason.

In Law NO. 17 of 2023 on Health, the abortion is provided in articles 60, 61 and 61 which prohibit the act of abortion but still permit abortion of medical indication.

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