Abortion: A Review on Indonesia Regulations

Aborsi: Tinjauan atas Peraturan Indonesia

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The position of women in legal construction in Indonesia today is still difficult to adjust to the circumstances that occur, especially in terms of equality issues. The abortion that has been a problem for so long time, being discussed because of the rules that are considered not in accordance with the existing rules, and the amount of pressure from various things. Law and Women are always placed in objects that are not neutral, especially in terms of discussing reproductive health. The government and legislation feel that they have a stake in integrating reproductive health owned by women. It is the position of women in the law that gives rise to many struggle movements and the diffusion of feminism in Indonesia. The rules of Article 31 paragraph 1 and 2 of Government Regulation Number 61 of 2014 which regulate safe abortion need to be more attention and safeguarded, so that a woman has the right to be based on herself.

Keywords: Abortion, Law and Women, Reproductive Health, Feminism

Posisi perempuan dalam konstruksi hukum di Indonesia saat ini masih sulit untuk menyesuaikan dengan keadaan yang terjadi, terutama dalam hal masalah kesetaraan. Aborsi yang telah menjadi masalah sejak lama, sedang dibahas karena aturan yang dianggap tidak sesuai dengan aturan yang ada, dan besarnya tekanan dari berbagai hal. Hukum dan Perempuan selalu ditempatkan pada hal yang tidak netral, terutama dalam hal membahas kesehatan reproduksi. Pemerintah dan undang-undang merasa bahwa mereka memiliki kepentingan dalam mengintegrasikan kesehatan reproduksi yang dimiliki oleh perempuan. Posisi perempuan dalam hukumiah yang memunculkan banyak gerakan perjuangan dan penyebaran feminisme di Indonesia. Aturan Pasal 31 ayat 1 dan 2 dari Peraturan Pemerintah Nomor 61 Tahun 2014 yang mengatur aborsi yang aman perlu lebih diperhatikan dan dijaga, sehingga seorang wanita memiliki hak untuk didasarkan pada dirinya sendiri.

Kata Kunci: Hukum dan Perempuan, Kesehatan Reproduksi, Feminisme, Aborsi
Abortion in Indonesia is regulated in Article 75 paragraph (2) of Law No. 36 of 2009 concerning Health which basically regulates the prohibition of abortion with exceptions regulated in Article 34 paragraph 1 and 2 Government Regulation number 61 of 2014. Although it has been regulated as above, Abortion in Indonesia can be done with doctors who are experts in their fields and prior to counseling to determine whether the request to have an abortion is in accordance with applicable rules. But in reality the number of Abortions in Indonesia increased from year to year, even the National Population and Family Planning Board (BKKBN) using data from the Indonesian Demographic and Health Survey (IDHS) in 200, recorded the national average maternal mortality rate (AKI) reaching 228 per 100 thousand live births. Of these, deaths due to abortion were recorded at 30%. In 2013 the Australian Consortium for Country Indonesian Studies showed results of research in 10 major cities and 6 regencies in Indonesia, which accounted for 43% of abcesses per 100 live births. The abortion was carried out by women in urban areas by 78% and women in rural areas as big as 40%. Kusumawati (2014)

With the development of the abortion ban that is rife in the world of international law and the consequences that have arisen even though it has been regulated regarding abortion in Indonesia has made the prohibition of abortion and condemnation to those who have both abortions and those who assist abortion awaited development. Although all legal codification that occurs in the outside world must always be in accordance with the prevailing norms in Indonesian society, so that it needs to be clarified dealing with the prevailing rules and regulations which may apply later and the legal norms that apply in Indonesia.

The regulation of abortion in Indonesia is contained in two laws, namely the Criminal Code article 299, 346, 347, 348, 349 and 535 which expressly prohibits abortion for any reason and in the RI Law No. 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. In the Criminal Code the abortion action is categorized as a crime against life, even by the WHO (World Health Organization) made a category of things referred to as unsafe abortion (Unsafe Abortion) is termination of pregnancy carried out by people who are not trained / competent and use facilities that are not adequate, giving rise to many complications and even death.

Own abortion according to Skogrand et al. (2011) is an action to end a pregnancy by spending the results of conception before the fetus can live outside the womb. This action must be done intentionally to be categorized as abortion, either with the help of obstetricians, medicines, traditional ingredients, acupuncture, to massage on certain body parts. Unsafe abortion is the termination of an unwanted pregnancy carried out by untrained personnel, or not following a health procedure or both.

Five years since the Health Law was issued which regulates abortion, the government made new rules in Article 31 paragraph 1 and 2 Government Regulation number 61 of 2014. Even, in Article 34, an abortion can be done due to rape.

Government Regulation Number 61 of 2014 concerning Reproductive Health also regulates the gestational age allowed to have an abortion. According to Article 31 of the regulation, the act of abortion due to rape can only be done if the gestational age is no longer than 40 days from the first day of the last menstruation.
Prohibitions that were previously carried out by the Indonesian government then made a rule that the act of abortion could be carried out on the condition that it seemed to provide a solution to the Indonesian people, especially women. This can happen because of the many activists from all fields who fight for this, an abortion if the state prohibits it should provide a solution for the community of women who experience unwanted pregnancies, to refer to unmarried women (teenagers) who want to continue her pregnancy. Darwin (2015) The solution that is hoped for cannot be found in Indonesian society because the culture inherent in this country which is more of an eastern culture makes those who experience this still consider this as a taboo so that those who are pregnant will be excluded from their surrounding environment. With the growing law and the more open minded society, a solution must be found for this, many of us today, a haven for those who are pregnant at an early age but there is no place to go. The act of abortion is not always the answer for those who experience many of those who continue to choose to continue the pregnancy. In some areas in Bali, they even provide shelter for those who are pregnant and do not have families, even in shelters such as in Healthy Houses in Bali, a place for maternity is provided and the cost is free. The birth process is assisted by Ms. Robin Lim as the owner who is also a certified midwife who is the initiator and manager of this Healthy Home. Even in the delivery process is packaged in a pleasant concept so that the process of childbirth is no longer a painful thing but is a pleasant thing. Oktaviandita (2018)

WOMEN AND LAW IN INDONESIA

The principles in the CEDAW Convention (Convention on the Elimination of All Forms of Discrimination Against Women) have been ratified through Law No. 7 of 1984 as a reference in reviewing the position of women in the prevailing laws and regulations in Indonesia. In fact, in drafting a legislation the value of neutrality and objectivity is difficult to present if it has been associated with legal science. This is the basis of the CEDAW Convention which is also a strengthening of the struggle in upholding the emancipation of women in Indonesia. Although the legal theory of feminism originates from western world literature, this feminism theory can develop in Indonesia which has eastern culture because the problem of discrimination does not only occur in the global world but even in the local world. Discrimination is actually born from the culture adopted by the community, as in Indonesia which adheres to the values and concepts of patriarchy where in this concept women and men are placed in unequal power relations, this happens open only because of the sexuality of women themselves. History notes that the placement of women in colonial history because women are considered to be from ethnic, racial, skin color, class, and minority groups is happening continuously in various places in the world. Irinato (2008)

Various legal logic develops in this regard, but adherents of Legal Positivism assume that legal certainty will only be achieved if the law is right (its object) can motivate and then legitimizes existing rights and turns social rights into legal rights. Therefore, the law must be made by sovereign rulers, legal research must be separated from research on the relationship between law and social realities, some of which arise from social inequality that occurs in society. Law must be regarded as a closed system and has its own internal logic, so that legal decisions can be made deductively without the need to consider morality and politics. Weisberg (1993) Feminist approaches are political in relation to efforts to prioritize the political agenda in the form of extermination of women as disclosed by Patricia Smith as follows:

"... a feminist can believe and some do, that law can be conceptually determined by either reference to objective morality or preexisting legal standard but that as it currently stands, it is unjust and discriminatory because it is patriarchal.”

Feminists believe that law can be applied in a conceptual manner by paying attention to and referring to subjective morality or legal standards that have existed in the community for a long time, but in reality the current law is unfair because it is patriarchal and found in the hierarchy. Even in the world of law where the concept departs from the goal of being fair cannot be separated from the hierarchical order, it is difficult to find an equal relationship, there is an arrangement in which one is more powerful than the other, although in our history women have constitutional rights granted by this country in full.

Women in Indonesia get their rights from the struggle that has been carried out since the 19th century which essentially fought for the independence of the nation, including increasing the position, role and progress of Indonesian women. On December 28, 1928 the Indonesian Women's Congress I was held with the theme "The Unity of the Indonesian Movement" which eventually became an inseparable part of the various national women's movements in Indonesia. The struggle was then expressed through the enforcement of equal rights with men in the 1945 Constitution and its amendment KOWANI (1986) . The international organization is increasingly aggressively regulating instruments related to the position of women, as it is said that the calm Convention on Women's Political Rights in 1953 which was ratified by Indonesia with Law No. 68 of 1956. Indonesia ratified the Women's Convention with Law No. 7 of 1984 concerning Ratification of the Convention concerning the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Women) with a reservation against paragraph 1. The ratification contained in article 7 (2) of Law No. 39 of 1999 concerning Human Rights, determines that "Provisions of international law which have been accepted by the Republic of Indonesia concerning Human Rights become national law.

The legalization of the legalization of abortion that was recently signed in Alabama was debated because of the Pro Life movement that agreed because it considered abortion to be
legalized because the fetus has the right to live. Abortus Provo- 
catus can be justified as a medical treatment if it is the only 
way to help the mother's soul from death. (abortus provocatus therapeuticus) Sofoewaan (2010) . In the ratification carried 
out there were very far-reaching differences in dealing with 
victims, perpetrators and doctors. Doctors who are known to 
help carry out abortion can be subject to life imprisonment and 
can be revoked for permission to practice. Victims who experi-
ence pregnancy must continue the pregnancy that happened to 
er, and despite various ways to have an abortion, such as the 
migration to Australia because in her country (eg Alabama) abortion is prohibited, can still be punished because someone's 
abortion will not change circumstances, as long as those who 
are going to have an abortion are citizens who have ratified the 
rules regarding abortion which are prohibited for any reason. It 
is different from the actors whose handling has used criminal 
provisions without any renewal of the Act on these actions.

Safe and legal abortion is one of the keys to reproductive 
health Berer (1993) but this applies to those who want to have 
an abortion. With the existence of rules that apply in Indonesia 
related to this, it actually becomes an initial step to maintain 
the position and freedom of women to determine good repro-
ductive health.

DEVELOPMENT OF ABORTION IN 
INDONESIA

Abortion in Indonesia at this time is still a debate in Indone-
sia Chusna (2016). The debate arises from two sides, one 
side considers that if reproduction is a right, safe abortion is 
also a right. While the other side considers that abortion viol-
ates social values. The International Conference on Popula-
tion and Development in 1994, discussing about unsafe abor-
tion is a health problem that has received global attention. 
Entrepreneurs in developing countries have access to contra-
ceptive methods and as a result experience unwanted preg-
nancies and limited knowledge and access to methods of pre-
venting pregnancy so many women have abortions in unsafe 
conditions. About 20 million unsafe abortions have resulted in 
the deaths of 70,000 women, because of their ignorance of the 
danger of doing illegal abortion practices. In one study it was 
found that in Africa, an estimated 3.7 million unsafe abortions 
were carried out each year to cause the deaths of around 23,000 
women. Makinwa-Adebusoye et al. (1997)

The Maternal Mortality Rate (MMR) that occurred in 
Indonesia gave a large role to the formulation and development 
of Abortion rules. The National Conference of the Indone-
sian Family Planning Association (PKBI) on 28 August 2000 in 
Jakarta said that the number of abortions in Indonesia was 2.3 
million as a result of the increase in the number of unwanted 
pregnancies due to the lifestyle behavior of young people, infor-
mation advancement, promiscuity and contraceptive devices 
that fail because they cannot prevent pregnancy. Problems like 
this even now remain a problem for this country, because the 
existing rules can also regulate in detail and firmly, so that 
the level of MMR in Indonesia cannot be reduced. The fam-
ily planning program was planned and began to be realized 
by the government in the 1970s by using a forceful approach 
to society because Indonesian culture believed that many chil-
dren were a lot of luck. From around the 1990s until now the 
Family Planning Program was developed but until now it still 
often receives protests. Even in Bali, the Government ordered 
to stop the socialization of family planning programs because 
in Bali, a family should have 4 or more children, given their cus-
tom to give names based on the number of child. Mardiastuti 
(2019) Giving that name is one of the reasons the government 
of Bali stopped the KB campaign, because finding the name of 
the third and fourth child in Bali for now is very difficult 
because of the birth control program. The state of Bali, which 
is one of the tourism areas, requires it to safeguard the charac-
teristics of Bali to maintain itself as a tourism area that offers 
culture and hospitality from traditional Balinese people.

Article 31 paragraphs (1) and (2) and Article 34 of PP No. 
61 of 2014 which regulate abortion can be done should be 
maintained but still also provide new provisions for related par-
ties such as medical parties and perpetrators who commit rape 
so that pregnancy can occur. If these rules are implemented 
properly, and counseling and knowledge are shared, AKI can 
be controlled by an increase in Indonesia. By continuing to pay 
attention to the criminal sanctions for illegal abortion perpe-
trators regulated in Article 194 of the Health Law.

Article 194 of the Health Law can ensnare doctors and / or 
health workers who intentionally carry out illegal abortions, 
as well as women who intentionally do so without fulfilling excep-
tions to the permissible abortion in this country.

The law of abortion in ius constitutum establishes rights 
and obligations, but because of the influence of "development 
of people's lives" on "legal regulation of abortion", it is based on 
Roecoe Pound's theory that Law is a tool/instrument of social 
engineering 18 and based on the assessment and selection in 
connection with the implementation of criminal law politics 
which means holding elections to achieve the results of crimi-
nal law which is best in the sense of fulfilling the requirements 
of justice and usefulness needed. So that the legal regulations 
regarding abortion in the future (ius constitutum ), there 
will be three choices, namely following the development of 
society, changing the development of society or managing the 
development of society. From various studies, it was found that 
legal arrangements regarding abortion, namely de normatieve 
kracht van de feiten, de feitelijke kracht van de normen which 
showed that the development of people's lives changed the pro-
visions concerning abortion. Soge (2000)

CONCLUSION

The development of the life of the Indonesian people (das 
sein) which can change the legal arrangements regarding ille-
gal abortion to be legal (das sollen ), while paying atten-
tion to certain requirements, namely safe abortion to prevent women from having unsafe abortions which often results in maternal deaths. Given the endorsement of the abortion ban that is increasingly ratified in various countries, Indonesia has become a country that can adopt rules like the one just passed by Alabama. The reason for controlling the abortion that occurs without seeing the pregnancy's background occurs, as if removing the position of a woman to decide something about her own body. Countries that become women's places instead use their authority to regulate one's body by prohibiting an abortion and not giving assistance if someone wants to continue their pregnancy.

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**REFERENCES**


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