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Abortion: A Review on Indonesia Regulations

Aborsi: Tinjauan atas Peraturan Indonesia

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Abstract

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.

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Introduction

The public was stirred up by the ratification of the first Abortion Prohibition Act in the United States, namely in the state of Alabama. A number of layers of society reacted to the ratification, various groups opposed but not many supported. Prohibition of Abortion and Abortion that is allowed actually has become a very long debate, even though in each country it has been regulated in the codification of their respective laws. Decision of the US Supreme Court in 1973 *Roe v. Wade* explicitly dropped the rights to give women rights based on the Federal Law that applies to having an abortion. [Butler and Walbert. \(1973\)](#) With the verdict following, several countries codified the right to perform abortions as well as in Texas and Georgia. [Butler and Walbert. \(1973\)](#) But some countries still strictly prohibit these abortions, such as in Andorra, Vatican and San Marino.

In the development of this decision there were 2 camps in the community that supported and refused, many movements were formed and a non-profit community was developing. The Pro-Life Movement which discusses the existence of babies in relation to the right to be born into the world and who have the opportunity to live, those who support this movement, movements while they are included in the decision to get children or abort children. [Bajrd and Rosenbaum \(1993\)](#) Both of these movements are approved by the culture, religion, moral teachings and habits of the surrounding community. More movement is done after many children have to end up in orphanages because parents are unable to care for and the death rate in illegal abortions.

Abortion in Indonesia is regulated in Article 75 paragraph (1) of Law No. 36 of 2009 concerning Health which basically regulates the prohibition of abortion with exceptions regulated in Article 75 paragraph (2).

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 abortions 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, Johnson, Horrocks, and DeFrain \(2011\)](#) 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 legitimize 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." 10

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 1 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 Provocatus can be justified as a medical treatment if it is the only way to help the mother's soul from death. (abortus provocatus therapeuticus) [Sofowwan \(2010\)](#). 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 experience pregnancy must continue the pregnancy that happened to her, 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 reproductive health.

Development of Abortion in Indonesia

Abortion in Indonesia at this time is still a debate in Indonesia [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 violates social values. The International Conference on Population and Development in 1994, discussing about unsafe abortion is a health problem that has received global attention. Entrepreneurs in developing countries have access to contraceptive methods and as a result experience unwanted pregnancies and limited knowledge and access to methods of preventing 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, Singh, and Audam \(1997\)](#)

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 Indonesian 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, information 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 family 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 children 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 custom 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 characteristics 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 parties 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 perpetrators 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 exceptions 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 criminal 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 constituendum*), 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 feitelyke kracht van de normen* which showed that the development of people's lives changed the provisions concerning abortion. [Soge \(2000\)](#)

Conclusion

The development of the life of the Indonesian people (*das sein*) which can change the legal arrangements regarding illegal abortion to be legal (*das sollen*), while paying attention 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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