

ABORTION CRIMINAL ACT COMMITTED BY CHILDREN IN CONFLICT FROM A POSITIVE LEGAL PERSPECTIVE (Analysis of Rantau District Court Decision No. 1/Pid.Sus-Anak/2022/PN Rta)

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ABSTRACT

Abortion is legally prohibited, but in reality abortion is still widely carried out by women for various reasons, both medical and non-medical. The problem in this thesis is how to regulate the legal act of abortion committed by children in conflict with the law, how is the criminal responsibility for children in conflict with the law as perpetrators of the crime of abortion, how is the judge's legal consideration in the crime of abortion committed by children in conflict with the law in decision Number 1 / Pid.Sus-Anak / 2022 / PN Rta. The legal regulation of the crime of abortion committed by children in conflict with the law is Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection as stipulated as Law Number 17 of 2016 concerning the Stipulation of PERPU Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection which applies as *lex specialis*.

1. Introduction

In this increasingly advanced era and increasingly sophisticated technology, humans sometimes forget their surroundings, including the life that is truly governed by God, nature, and the country in which they live. Many people, especially teenagers, have forgotten how to maintain relationships with the opposite sex. We often see teenagers, the future of the nation, engaging in highly inappropriate behavior, such as openly engaging in immoral acts in public, engaging in unhealthy dating practices, and even engaging in marital relations with unmarried partners.

Pregnancy is a highly coveted experience for the majority of women worldwide. However, in some cases, pregnancy is unexpected and a source of shame for those who experience it. This is certainly not without reason. Several factors contribute to the desire to terminate a pregnancy, and among these factors, pregnancy outside of marriage is a key factor.

The issue of abortion is no longer a secret. This is because abortion has become commonplace. It can occur anywhere and can be performed by a wide range of



people, from teenagers to adults. In teenagers, it often occurs due to promiscuity, while in adults, it occurs because they don't want to be burdened with responsibility.

Abortion, under Indonesian law, is legally permitted if it is performed for medical reasons or considerations or a medical emergency, as stipulated in Article 75 paragraph (2) of Law Number 36 of 2009 concerning Health, which states: "The prohibition referred to in paragraph (1) may be exempted based on indications of a medical emergency detected early in pregnancy, whether it threatens the life of the mother and/or fetus, suffers from a serious genetic disease and/or congenital defect, or is irreversible, making it difficult for the baby to survive outside the womb, or a pregnancy resulting from rape that can cause psychological trauma for the rape victim."

Medical personnel have the right to perform an abortion if, for medical reasons or a medical emergency, it is necessary to save the life of the pregnant woman. Unwanted pregnancies are generally referred to as criminal abortions (abortions intentionally performed without medical indications). Abortions are usually performed using certain instruments or medications for several reasons, including: pregnancy outside of marriage, financial burdens, the mother's desire to have more children due to incest, health reasons, and so on.

Factors contributing to the crime of abortion include pregnancy outside of marriage, shame or fear of family members finding out, not wanting to disrupt school, betrayal by a partner, unwillingness to have children, having too many children, considerations about the man who impregnated her, and financial hardship.

Another factor that can lead to abortion is intentionally taking birth control pills during pregnancy. The deliberate use of medication to induce an abortion is considered illegal and criminal. Just like other criminal acts, deliberate abortion can be subject to legal sanctions in the form of imprisonment in accordance with Article 346 of the Criminal Code which states: "A woman who deliberately aborts or kills her pregnancy or orders another person to do so, is threatened with a maximum prison sentence of four years."

2. Research Method

In terms of its type, this research is a normative legal research. Normative legal research is research conducted through the examination of library materials (secondary data) or library legal research. In terms of its objectives, this research falls into the normative legal research category. Normative research encompasses legal principles, legal systematics, positive legal inventories, and the philosophical





basis (dogma or doctrine) of positive law. In this research, the focus of the study is the crime of abortion.

In terms of its nature, this research is prescriptive, namely, research that aims to study the objectives of law, values of justice, legal validity, legal concepts, and legal norms. Descriptive research aims to provide a description of a problem based on existing circumstances or facts.

The method used in this research is tailored to the research problem and discussion. In accordance with the research problem and objectives, this study utilized several approaches, including: a statute approach, a case approach (e.g., Decision Number 88/Pid.Sus/2018/PN.Tka), and a conceptual approach.

Data collection techniques in this study were conducted through library research, namely by conducting document studies or literature reviews by exploring various legal materials relevant to the research discussion. Data collection techniques in library research are commonly conducted through document studies or literature reviews. Document studies for legal research include the study of legal materials, including primary, secondary, and tertiary legal materials.

3. Research Results And Discussion

The age limit for children determines the classification of individuals as children. The term "age limit for children" refers to the maximum age grouping that demonstrates a child's legal capacity, enabling the child to transition to adulthood or become a legal subject who can be independently responsible for their actions and legal actions.

Children, as part of the younger generation, are a potential human resource and the successors of the nation's ideals. They play a strategic role and possess special characteristics and traits that require guidance and protection to ensure complete, harmonious, and balanced physical, mental, and social growth.

Children, as the next generation, are often hailed as the nation's heirs, the young shoots of the nation's hope, and in every era have a responsibility to continue the nation's struggle to achieve national ideals as mandated by the 1945 Constitution.

The concept of juvenile delinquency, according to Romli Atmasasmita in Wagiaty Soetodjo, uses the term "Juvenile Delinquency" as any act or behavior by a child under 18 years of age who is unmarried that violates applicable legal norms and could endanger the child's personal development. Delinquency, in this context, is an act containing elements of reprehensible conduct that is considered a violation of the law, and at a minimum, such act can disrupt the peace of others or the surrounding community.





Children, as part of the younger generation, are the successors of the nation's ideals and human resources for national development. Efforts to protect children face various problems and challenges that can directly and indirectly influence their behavior and conduct.

Changes in the lifestyles and lifestyles of some communities have brought about fundamental social changes in community life, which undoubtedly impact children's values and behavior. Furthermore, children who receive little or no affection, care, guidance, and coaching in developing attitudes, behavior, adjustment, and supervision from parents, guardians, or foster parents are easily drawn into unhealthy social and environmental influences that can be detrimental to their personal development.

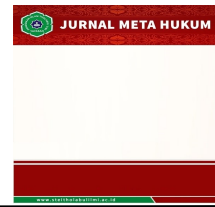
Addressing and addressing delinquent behavior requires considering the various underlying factors. Although children are able to determine their own actions based on their thoughts, feelings, and desires, their surrounding circumstances can influence their behavior. For this reason, guidance and guidance from parents and the surrounding community is needed.

If there is a lack of identification between parents and children, they will live in their own worlds with little in common. Parents often don't know what their children are doing, and children don't know about their parents' activities. Therefore, a well-defined foundation is needed to create harmony in family life and create a generation with potential. Parents must be role models for their children; this is crucial for a child's sense of belonging. The moral code applied at home should not deviate from the moral code at school or in the community, so that children can understand and not seek the truth in their own way.

Abortion, in some medical conditions, is the only option medical personnel can take to save the life of a mother experiencing serious health problems or complications during pregnancy. Due to coercion by the perpetrator, a rape victim suffers physically, mentally, and socially. Pregnancy resulting from rape exacerbates the mental state of the victim, who has already experienced severe trauma from the rape.

Severe mental trauma can also negatively impact the development of the fetus. Most rape victims experience rejection of their pregnancy and desire an abortion. Law Number 36 of 2009 concerning Health is, in principle, in line with existing criminal regulations, prohibiting abortion. The state must protect its citizens, particularly women who undergo abortions based on indications of medical emergencies and the consequences of rape, as well as the medical personnel who perform them. Law Number 36 of 2009 concerning Health provides exceptions for abortions based on indications of medical emergencies and pregnancies resulting from rape.





The reasons outlined above mean that abortions can only be performed on a case-by-case basis, as stipulated in Article 75 paragraph (2). An abortion cannot be performed for reasons of shame, taboo, economic reasons, failure of family planning or contraception, or other reasons. The law only allows for abortions for the aforementioned reasons.

Based on Article 75, abortions cannot be performed immediately even if the reasons are met. Article 75 paragraph (3) states that abortion as referred to in paragraph (2) may only be performed after pre-procedure counseling and/or advice, culminating in post-procedure counseling conducted by a competent and authorized counselor. This article emphasizes that prior to an abortion, consultation must be conducted both before and after the procedure, by a competent and authorized counselor.

The pros and cons of abortion continue to debate year after year. Some groups disagree with abortion, while others are pro-abortion. The Catholic Church, for example, states that abortion at any stage of development is prohibited. Another group of medical experts argues that a fetus becomes a living being after three months in the womb and therefore, abortions under three months are justified. However, another group of doctors, who value human life from the moment the egg is fertilized by sperm, opposes abortion.

Legal protection for female rape victims who undergo abortions received attention with the enactment of Law Number 36 of 2009 concerning Health, and as a replacement for Law Number 23 of 1992. The issuance of the revised health law, regarding the legalization of abortion for rape victims has been clearly stated in Article 75 paragraph 2 of Law Number 36 of 2009 concerning health. However, this law has caused controversy in various levels of society because the articles regulating abortion in medical practice contain various reactions.

Based on this description, one issue that requires further study is the legal protection provided for abortion (abortus induced), particularly for rape victims, under the Criminal Code (KUHP), which serves as the *lex generale*, and Law Number 36 of 2009 concerning Health, which serves as the *lex special*.

Legal protection means protecting everyone's right to receive equal treatment and protection under the law. Therefore, for every legal violation they are accused of and the consequences they suffer, they are entitled to the necessary legal protection in accordance with legal principles. However, it is important to note that in cases of rape, victims have been neglected by the law. This is evident in the numerous cases involving female victims that have not been resolved fairly and satisfactorily.

Another requirement for an abortion to be performed is that it be performed by a qualified and authorized health professional who holds a certificate issued by the



minister. This provision prohibits abortions from being performed by unlicensed individuals, such as traditional birth attendants. In addition to the maximum age and the abortion being performed by an authorized person, there are other requirements that must be met for an abortion to be performed, namely the consent between the pregnant woman and her husband. The husband's consent is relative when the woman is a victim of rape; in cases of rape, only the woman's consent is required for an abortion to be performed. The author argues that in cases of rape, additional permission from the family, especially the parents, is necessary for an abortion to be performed, as the woman may be unconscious. In such circumstances, family consent is crucial for immediate action to be taken to save the woman's life.

The explanation of Article 77 of Law Number 36 of 2009 concerning Health provides the following explanation: "Subsequent, unsafe, and irresponsible abortion practices are abortions performed under duress and without the woman's consent, by unprofessional health workers, without adhering to applicable professional and service standards, in a discriminatory manner, or prioritizing material rewards over medical indications." Further abortion regulations are contained in Article 78. Article 78 stipulates the government's obligation to protect and prevent women from abortions that are substandard, unsafe, and irresponsible, and that violate religious norms and statutory provisions. The official explanation of this article defines substandard, unsafe, and irresponsible abortion practices as abortions performed by coercion and without the woman's consent, performed by unprofessional health workers, without adhering to applicable professional and service standards, or in a discriminatory manner, or prioritizing material rewards over medical indications. These types of abortion practices are currently widespread in society. The mandate of this article clearly states that the government is obligated to prevent abortions that are substandard and contrary to religious norms, in this case abortions performed without a medical indication.

The explanations of Articles 75 and 76 above demonstrate that abortions cannot be performed indiscriminately; they must be justified and meet the requirements set out in the law. Sanctions for violating these provisions can be imposed with punishment, because basically every legal regulation is certainly followed by legal sanctions, so that legal regulations not only regulate but also enforce them for members of society who violate these regulations. Violations of the abortion provisions in this law will be subject to sanctions stipulated in Article 194 which states: "Any person who intentionally performs an abortion not in accordance with the provisions as referred to in Article 75 paragraph (2) shall be punished





with a maximum imprisonment of 10 (ten) years and a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."

Judging from the formulation of Article 194 of Law Number 36 of 2009 concerning Health, the health law not only recognizes imprisonment but also fines, this is different from the threat of punishment for the crime of abortion regulated in the Criminal Code which only recognizes the threat of imprisonment. The threat of a fine for violators of this provision reaches a maximum of Rp. 1,000,000,000.00 (one billion rupiah).

The policies to be implemented will primarily encompass law enforcement activities aimed at improving order and legal certainty in society. To this end, the coordination system and the harmonization of the duties of law enforcement agencies will be strengthened. This will be achieved, among other things, by streamlining the functions, duties, powers, and authorities of law enforcement institutions according to their respective professional scopes and based on a sound cooperative system.

According to Wayne Lafavre, as cited in Soerjono Soekanto, law enforcement as a process is essentially the application of discretion, involving decision-making that is not strictly regulated by legal principles but rather contains an element of personal judgment. Thus, discretion essentially lies between law and morality (ethics in the narrow sense).

Criminal liability is the responsibility of an individual for the criminal acts they commit, and for which that individual is held accountable is the criminal act they have committed. Criminal liability arises from the commission of a crime. Criminal liability is essentially a mechanism established by criminal law to respond to violations of an agreement to reject a particular act.

Not everyone who commits a crime can be punished, depending on whether the person or defendant committed the crime was at fault or not. Because to impose a penalty on someone who commits a crime, it is not enough just to commit the crime; there must also be an element of fault. Regarding the definition of fault or criminal responsibility, it is independent of the criminal act. In the case of a criminal act, the object is the act, while in the case of criminal responsibility, the object is the person who committed the crime.

The basis of criminal acts is the principle of legality (Article 1 paragraph (1)) of the Criminal Code (KUHP). The contents of this article state that "no act can be punished except under pre-existing laws and regulations," while the basis for punishing the perpetrator is the principle of no punishment without fault (*geen straf zonder schuld*).

4. Conclusion





The legal provisions governing the crime of abortion committed by children in conflict with the law are Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection and Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, as amended by Law Number 17 of 2016 concerning the Stipulation of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child Protection, which serves as *lex specialis*. The defendant's actions are subject to criminal sanctions as stipulated in Article 77A in conjunction with Article 45A, which is Law Number 35 of 2014 in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code.

Criminal liability for children in conflict with the law as perpetrators of the crime of abortion is that Child 1 and Child 2 have been legally and convincingly proven guilty of committing the crime of "jointly intentionally carrying out an abortion on a child who is still in the womb, thereby imposing a sentence on Child 1, therefore, with a prison sentence in the Special Child Development Institution (LPKA) for 1 (one) year and 5 (five) months and job training at the Lathiiful Khabiir Community Learning Center (PKBM) in Tapin Regency for 3 (three) months and Child 2 therefore with a prison sentence in the Class II Martapura Women's Correctional Institution (LPP) for 1 (one) year and 3 (three) months and job training at the Lathiiful Khabiir Community Learning Center (PKBM) in Tapin Regency for 3 (three) months.

The judge's legal consideration in the crime of abortion committed by children in conflict with the law in decision Number 1/Pid.Sus-Anak/2022/PN Rta is that the defendant's actions have fulfilled all the elements of the Public Prosecutor's indictment. The defendant's actions have fulfilled all the elements of the indictment so that the Panel concludes that the defendant has been legally and convincingly proven to have committed the crime of which he was accused.

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