

CRIMINAL LEGAL POLICY ON ABORTION DUE TO RAPE FROM THE PERSPECTIVE OF LAW NO. 36 OF 2009 CONCERNING HEALTH

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ABSTRACT

Abortion in the laws in force in Indonesia is legally justified if it is carried out for medical reasons or considerations or medical emergencies. Islamic law basically does not permit abortion, but considering the psychological impact suffered by women who are victims of rape is so severe, then with considerations based on the rules of fiqh. The results of the study and discussion show that the application of sanctions for criminal acts of abortion carried out by doctors according to the ethics of the medical profession does not result in formal sanctions for the perpetrators so that the perpetrators are only given demands by the Medical Ethics Honorary Council, namely by providing a proposal to the Ministry of Health to take administrative action, as a preventive measure against the possibility of repeating the same violation in the future or against the increasing intensity of the violation. Criminal legal protection for rape victims who commit induced abortion is the provision of legal protection by not punishing the perpetrators of rape victims who commit abortion in accordance with the Health Law and Government Regulations, providing safety and security guarantees for rape victims who commit abortion, providing psychological assistance to rape victims who commit abortion and providing medical services to rape victims who commit abortion

1. Introduction

In many countries around the world, the issue of abortion is a prominent and divisive issue, often divided by ethical and legal controversies. Abortion and related issues are prominent topics in national politics in many countries, often involving pro-life and pro-choice movements around the world. Abortion is tantamount to murder or depriving a person of their right to life. It is a violation of the law and carries strict penalties.

Under Indonesian law, abortion is legally permitted if performed for medical reasons or medical emergencies. Medical personnel have the right to perform abortions if, based on medical considerations or medical emergencies, they are necessary to save the life of the pregnant woman. Unwanted pregnancies are generally referred to as criminal abortions, which are caused by several reasons, including: pregnancy outside of marriage, economic burdens, the mother's own refusal 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, unwillingness to disrupt school, betrayal by a partner, unwillingness to have children, having too many children, considerations regarding the man who impregnated her, and economic hardship.

Abortion, or more commonly referred to as miscarriage, is a social phenomenon that is increasingly concerning. This concern is not without reason, as abortion has had numerous negative effects, both for the perpetrator and for society at large. In some countries, abortion remains a controversial issue and subject to much debate, as to whether abortion is a crime or a right that must be protected by law.

Abortions performed by medical personnel are based on considerations stipulated in the Criminal Code and the Health Law. Medical personnel are permitted to perform legal abortions on pregnant women for medical reasons, provided they obtain written consent and a written statement from the pregnant woman, her husband, and/or family.

Medical practices greatly influence legal protection measures for women regarding the function of their reproductive organs or the occurrence of violations of women's reproductive rights in terms of fetal life and the right to health information, as well as the right to receive health services without discrimination, so that in practice there are often irresponsible abortions that are contrary to ethical issues and human rights.

2. Research Method

This paper employs normative legal research. Normative legal research refers to legal norms, specifically library or secondary sources. Normative legal research refers to legal norms that are relevant to or related to existing laws and regulations, court decisions, and other legal norms.

This research is descriptive in nature. Descriptive research aims to provide the most accurate data possible. In this case, it will describe the criminal law policy on abortion due to rape related to Law Number 36 of 2009 concerning Health. This descriptive research begins with collecting data related to the discussion, then compiling, classifying, analyzing, and interpreting the data to obtain a clear picture of the phenomenon under study.

This research employed a library research method. In this case, we will review several sources of literature, including scientific books, laws and regulations, and other documentation such as magazines, as well as other theoretical sources

related to criminal law policy on abortion due to rape, as related to Law Number 36 of 2009 concerning Health.

The collected data will be thoroughly analyzed using qualitative analysis or described in sentences. Qualitative analysis is based on the paradigm of the dynamic relationship between theories, concepts, and data, which provides feedback or constant modification of theories and concepts based on the collected data.

3. Results And Discussion

Results

Pregnancy is a natural process that occurs when sperm meets an ovum, or in other words, when an egg is fertilized by sperm. This natural process is a joy in itself if it is planned in advance, meaning it is not a result of negligence, coercion, or even rape.

A woman's pregnancy resulting from forced intercourse or rape will bring shame to the woman. Rape often occurs not only between a man and a woman who are not related by blood (mahram) and therefore can enter into a forced marriage, but also between those who are related by mahram, such as a father raping his biological daughter, or an uncle raping his niece, leaving no way to enter into a marital relationship. Therefore, it is not uncommon for women who become pregnant out of wedlock or are victims of rape to undergo abortions secretly, seeking the help of a shaman or an unskilled individual. These unsafe abortions often result in death.

The fact that abortion is an interesting issue to discuss is that, despite being prohibited by law, abortions continue to be performed. Although abortion is prohibited by law, the practice of abortion in Indonesia, whether by doctors, midwives, or traditional healers, is relatively high and has been increasing year after year. As of 2015, an estimated 750,000-1,000,000 abortions were performed annually in Indonesia. Meanwhile, the WHO estimates that 4.2 million abortions are performed annually in Southeast Asia, with Indonesia contributing between 750,000 and 1,500,000 cases. Of these, 2,500 result in death.

Unwanted pregnancies, like rape, are extremely burdensome for women, both medically and psychologically, as rape is the forced sexual intercourse of a woman without her consent. Wise solutions must be found for cases like these. Rape victims who become pregnant and are forced to have an abortion should receive legal protection, as rape is a violation of women's fundamental human and reproductive rights. Pregnancy resulting from rape can lead to post-traumatic stress disorder. The victim's role is crucial in overcoming or resolving

rape cases. This requires the victim's courage to report the incident to the police, as victims often face threats of further rape from the perpetrator, which leaves them fearful and traumatized.

Rape can result in physical injury, and the worst case scenario is an unwanted pregnancy, which becomes a burden for both the victim and her family as they face the future of their lives, as they must raise and care for the child they have lost. Other potential impacts include acute stress or severe depression, which can sometimes lead to mental deterioration, as victims feel abnormal, dirty, sinful, and worthless.

As a woman (victim), she naturally desires pregnancy at some point in her reproductive life. However, a pregnancy resulting from rape is not desired by either the victim or her family, even though the fetus is innocent and has a right to life. It is difficult for rape victims to endure and maintain the pregnancy, as it not only serves as a constant reminder of the crime, but also makes it difficult to foster affection for the child. This lack of acceptance from the victim and her family is a direct consequence of the aforementioned situation.

Likewise, if the choice is to continue the pregnancy resulting from the rape, the family and community should be prepared to accept the unborn child, so as not to be stigmatized as illegitimate.

Legal protection for perpetrators of abortion (induced abortion) means protecting the right of every person to receive equal treatment and protection under the law. Therefore, for every legal violation she is accused of and the consequences she suffers, she also has the right to receive necessary legal protection in accordance with legal principles.

4. Discussion

Abortion due to rape is considered an exception, similar to medical reasons. Therefore, the criteria for this exception must be absolutely clear and firm to prevent misuse by irresponsible individuals, resulting in widespread abortions. Law Number 36 of 2006 permits abortions for pregnancies resulting from rape, provided they are performed by competent personnel and comply with religious and applicable statutory provisions.

The threat of criminal sanctions for perpetrators of induced abortions is formulated in the Criminal Code (KUHP) as a criminal sanction for those who perform abortions. The KUHP does not consider the background or reason for the abortion. A induced abortion is a choice that must be made and carried out by a female victim of rape, whether at her own request or with the assistance of another person, with or without her consent. Therefore, using the provisions of

the KUHP, female victims of rape cannot escape the clutches of the law. Therefore, the KUHP does not provide legal protection for female victims of rape who undergo induced abortions.

Law No. 36 of 2009 concerning Health provides legal protection for rape victims who undergo induced abortions. This means that induced abortions are permitted. As stated in Article 75 paragraph (2) of Law No. 36 of 2009, one exception to abortion is pregnancy resulting from rape, which can cause psychological trauma for the rape victim.

The psychological distress experienced by women who become pregnant due to rape can be considered a medical indication for abortion, provided they meet the requirements stipulated in Law No. 36 of 2009, which serves as the legal basis for legalizing abortions for rape victims. This includes competent health workers authorized by law to perform abortions.

Rape is an event that can result in long-lasting psychological and physical trauma for rape victims. The birth of an unwanted child as a result of rape creates a difficult situation for the woman who experienced rape and the family emotionally involved in the incident. This situation, of course, creates an unfair situation for the fetus's future after birth, as a child should be raised with the tender and loving care of their parents and family.

One reason abortion is prohibited by law is because it conflicts with social and religious morals. In this context, the actual moral violation is the rape, not the abortion itself. Abortion is simply the result of the rape, resulting in pregnancy. In this case, the woman is the victim and vulnerable to criminal acts (rape).

Regarding abortion, Law Number 36 of 2009 concerning Health and the explanatory section of Government Regulation Number 61 of 2014 concerning Reproductive Health are in principle in line with existing criminal regulations, prohibiting abortion. However, in reality, abortion in some medical conditions is the only option medical personnel must take to save the life of a mother experiencing serious health problems or complications during pregnancy.

Unlike rape, which is caused by coercion, a rape victim will suffer physically, mentally, and socially. Pregnancy resulting from rape will affect 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. Therefore, most rape victims experience rejection of their pregnancy and desire an abortion.

Rape is a highly traumatic event for women who are victims. Many rape victims take a long time to overcome this traumatic experience, and some may never return to their normal lives. If the rape results in pregnancy, the traumatic experience is further compounded.⁵⁴

Abortion is also regulated by Government Regulation Number 61 of 2014 concerning Reproductive Health. This Government Regulation essentially furthers the mandate of Law Number 36 of 2009 concerning Health. The provisions regarding abortion for rape victims in Government Regulation Number 61 of 2014 concerning Reproductive Health are contained in Articles 29, 31, and 34.

Severe mental trauma can also negatively impact the development of the fetus the victim is carrying. Most rape victims experience rejection of the 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, in this case women who undergo abortions based on indications of medical emergencies and due to rape, as well as protect the medical personnel who perform them. Law Number 36 of 2009 concerning Health opens exceptions for abortions based on indications of medical emergencies and pregnancy resulting from rape.

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

Protection of doctors in cases of legalization of abortion due to rape, then basically doctors are entitled to legal protection as regulated in Article 27 paragraph (1) and Article 28 of Law No. 36 of 2009 concerning Health, which then becomes a justification and guideline for doctors in accordance with the requirements in Government Regulation No. 61 of 2014 concerning Reproductive Health to carry out abortion practices due to rape. In Article 28 paragraph (1) of Law No. 36 of 2009 concerning Health states that: For legal purposes, health workers are required to conduct health examinations at the request of law enforcement with costs borne by the State.

The permission for abortion as an exception to the abortion ban can only be carried out after pre-treatment counseling and/or counseling, culminating in post-treatment counseling as stipulated in Article 37 of Government Regulation Number 61 of 2014. The procedure is performed by a competent and authorized counselor, after fulfilling the following requirements: before the pregnancy reaches 40 days from the first day of the last menstrual period, except in cases of medical emergencies, at the request or consent of the pregnant woman, and with the husband's permission, except in cases of rape.

Exceptions to the abortion ban are permitted provided they meet the following requirements: the procedure is performed by a doctor who has received training

from an accredited training provider, the health service facility meets the requirements set by the Minister of Health, the abortion service is conducted according to standards, is non-discriminatory, and does not prioritize material rewards as stipulated in Article 36 of Government Regulation Number 61 of 2014.

The provisions regarding the exceptions to the abortion ban stipulated in Government Regulation Number 61 of 2014 concerning Reproductive Health are in accordance with the Indonesian Ulema Council (MUI) Fatwa Number 4 of 2005 concerning Abortion. According to the MUI fatwa, abortion is haram from the time the blastocyst implants into the mother's uterine wall, unless there is an excuse, whether it is an emergency or a necessity.

5. Conclusion

Factors that lead rape victims to have abortions, from a medical perspective and Islamic law, include not wanting to have a child without a father, experiencing psychological trauma, being too young and a family disgrace, and moral compulsion. This compulsion arises because the pregnant woman is unable to accept social sanctions imposed by society for an out-of-wedlock pregnancy, even if it is due to rape.

Legal protection for rape victims who undergo abortions includes providing legal protection by not punishing the perpetrators of the abortion, in accordance with the Health Law and Government Regulations, guaranteeing the safety and security of rape victims who do not commit abortion, providing psychological support to rape victims who undergo abortions, and providing medical services to rape victims who undergo abortions.

The criminal law policy regarding abortion due to rape, related to medical ethics, can be clearly and firmly stated that a doctor's action in performing an abortion violates the oath and medical code of ethics. The exception is if the pregnancy is life-threatening, in which case an abortion can only be performed if there is no other way to save the mother's life. This is done after meeting certain requirements, such as consultation from at least two experts. Furthermore, it must be performed in a healthcare facility with adequate personnel and equipment. Permissible emergencies include contraceptive failure, rape, incest, severe mental illness, fetal disorders (Down syndrome) or congenital defects, HIV/AIDS infection, or physical, mental, or economic indisposition. Therefore, in the case of an abortion for a rape victim, it does not violate the oath or the medical code of ethics due to the emergency.



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