



Reproductive Health Protection and the Abortion Prohibition in Indonesia



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Abstract

Reproductive health has an important role in human survival in maintaining the continuity of generations. The research method used is normative legal research. This study using the statutory approach. The results showed that the law has placed reproductive health as a very important part to be protected. Legal protection for reproductive health has been regulated in health law, the form of protection is guaranteeing the fulfillment of the reproductive health rights of every person and guaranteeing the health of mothers of reproductive age. Prohibition of abortion is a form of protection against reproductive health. Abortion is a crime. In Indonesia, abortion is permitted because of medical indications and because of rape victims.

Keywords

*abortion prohibition;
psychological violence;
reproductive age;
reproductive health;
reproductive protection;
sexual;*

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1 Introduction

Healthy living is an essential requirement for everyone, someone who is said to have a quality of happy life if he has quality health. The ideals of the Indonesian people in realizing the welfare mandated in Pancasila and the 1945 Constitution also include the element of health as a support for the realization of welfare both physically and mentally (mental health). Everyone has the right to live healthy, including the right to have reproductive health. The understanding of reproductive health as stated in the health law has a very broad scope, including health which includes a complete physical, mental and social condition, not only free from diseases related to reproductive function, not only free from disabilities related to the reproductive system, or not just free from disabilities or diseases related to the reproductive process in women and men (Bearinger et al., 2007).

One of the fundamental rights of a person related to reproduction has received legal protection, including the right to have children through marriage, the right to get pregnant and not get pregnant, and the right to determine how many children you want according to your family's future planning. However, cases of violence are still a problem for women, both domestic violence and violence experienced by women on the street still often occur and the number of cases is still very high, even we are often presented with news of violence against women through the media print and online media. Women who have the right not to become pregnant are deprived of their rights through violent rape (Askew & Berer, 2003; Lakshminarayanan, 2003). The right of women not to get pregnant must also be protected because it does not only concern physical health, but also mental and social health.

Violence experienced by women, whether physical, sexual, psychological, or economic violence, has a very large negative impact on women's reproductive health, even though the law has provided protection for women from the threat of violence, but in practice, it still occurs in everyday life and the number of cases is very large. Based on the research results, patterns of violence against women can have a negative impact on reproductive health, especially psychological violence, and sexual violence. From the results of research in Norway by Schei & Bakketeig (1989), women who have more loving husbands have quality reproductive health than women who have temperamental husbands who often commit violence, women who have bad husbands tend to have prolonged reproductive problems (Sutrisminah, 2012; Kongsri et al., 2011).

Poor women who are victims of rape, clearly experience sexual violence which adversely affects their reproductive health. Not only were they physically injured, but they also left a deep sense of trauma. If the cause of rape experienced by a woman results in an unexpected pregnancy from a crime of rape. Teens who have sex before marriage in many cases are the cause and reason for having an abortion (abortion). In addition to being life-threatening for women, abortion can also cause problems in the reproductive organs, such as infection of the cervix, abortion can pose health risks that may occur after abortion is performed.

Kate Hawkins, says; "No matter what is allowed or prohibited, women will have an abortion in various ways." This is dangerous so that the state needs to be present to provide solutions to the problem of abortion. Even in countries where abortion is strictly prohibited, there are still cases of abortion, even the practice of abortion is often carried out unsafe, in Africa 97% of abortions without trained medical assistance (Sutrisminah, 2012; Latini et al., 2004). This is very risky and dangerous for women.

In Indonesia, the number of cases of pregnancy outside of marriage that end in unsafe abortion is very large. Research results from the University of Indonesia Health Center, on average there are 2 million unsafe abortions that occur per year, is very worrying (Utomo et al., 2002; García-Moreno & Stöckl, 2009). Meanwhile, the World Health Organization has also predicted that 10-50% of abortion cases will end in maternal death due to abortion performed by trained medical personnel (Tutik, 2010). According to Muhadjir Darwin, the maternal mortality rate in Indonesia is very high, reaching around 11% due to abortion assistance without professional medical personnel (Tutik, 2010; Di Renzo et al., 2015). This condition is part of the reproductive health problem.

In the existing health law in Indonesia that prohibits the practice of abortion, the act of abortion is an illegal act that is subject to criminal sanctions for the perpetrator. However, in this law, there are exceptions, in which women victims of rape can have an abortion according to the provisions and mechanisms stipulated in the implementing regulations (Chandra-Mouli et al., 2015; Keygnaert et al., 2014). Whether the prohibition on abortion and the existence of exceptions to the prohibition on abortion can be a solution to reproductive health problems and at the same time protect reproductive health rights that are good for the quality of reproductive health so that the author needs to examine the content of policies in health laws that regulate and provide protection reproduction health.

Anything that disrupts reproductive health must be prevented, and if a reproductive health problem has occurred then there must be a solution, the state should be present to provide reproductive protection for the complex problems that exist in reproductive health. From this description, a formulation of the problem of how to protect reproductive health appears? And how is the prohibition on abortion regulated in the Indonesian legal system? Does the prohibition on abortion guarantee the fulfillment of basic human rights to obtain human rights to sustain life, the right to have children, or even the right not to get offspring?

2 Materials and Methods

In this study, the authors used a normative juridical research method, the object under study was legal material related to the object under study, namely "protection of reproductive health and prohibition of abortion". To be able to describe the results of the qualified research the author uses a statutory approach. This statutory approach is used to review and analyze all regulations related to reproductive health protection and the prohibition of abortion. The analysis used is in the form of argumentative techniques, namely arguing to answer research problems.

3 Results and Discussions

3.1 Human rights in obtaining reproductive health

Human Rights have been conceptualized as a set of rights to uplift human dignity by nature. There is a right for every human being that must be protected and respected, this right is a gift from God whose position cannot be exchanged even with an obligation. Respecting and upholding human rights is the obligation of every person, even obliged to be respected by legal instruments, the state, government, and everyone with the aim of uplifting human honor.

Efforts to uphold human honor through the protection of human rights have been stated in statutory regulations, the nature of protection of rights is juridical. Legal protection of rights must be carried out employing normative juridical protection and empirical juridical protection. The purpose of normative juridical protection is to ensure that there are norms that regulate and provide protection for the object being protected. Meanwhile, empirical juridical protection is to ensure that normative juridical protection can be implemented empirically in the form of implementing and enforcing the law in a *concreto* manner.

The concept of legal protection mentioned above can be classified into two forms, namely normative juridical protection and empirical juridical protection. This concept can be actualized to protect the protection of human rights. Normative juridical protection and empirical juridical protection become inseparable units. In human rights law, forms of protected human rights include 1) The right to life; 2) Right to have a family; 3) The right to obtain offspring; 4) The right to develop themselves; 5) Right to justice; 6) Right to personal freedom; 7) The right to feel safe; 8) The right to welfare; 9) The right to take part in government; 10) Women's rights, and 11) Children's rights. Of the eleven human rights, normative juridical protection has been obtained through the Human Rights Law and other laws that regulate the fulfillment of these rights. But what is equally important is the application of norms in the form of *inconcreto*.

Observing the various forms of human rights mentioned above, it seems that the right to reproductive health also comes from human rights components, such as the right to life; the right to feel safe; the right to

personal freedom; the right to education, and the right to live a life without discrimination.^f When viewed from the human rights law in force in Indonesia, the right to reproductive health comes from human rights components such as the right to life; the right to have a family; the right to have children; the right to personal freedom; the right to security; women's rights.

To analyze the use of the concept of normative juridical protection and empirical juridical protection, whether the reproductive health rights have received normative juridical protection, in the author's view, the reproductive health rights have received normative juridical protection through the formation of health laws and implementing regulations. Whether the right to reproductive health has also received empirical juridical protection, according to the author, the right to reproductive health has received empirical juridical protection if legal norms governing reproductive health have been applied to realize legal benefits, legal certainty, and legal justice.

Historically, with the birth of a health law based on human rights values, reproductive health has become one of the important components in health regulated in the health law. The right to reproductive health is a human right that is inherent in everyone. Reproductive health rights must be protected through normative juridical protection and empirical juridical protection. It can be concluded that in the constitution in Indonesia, reproductive health is a human right that must be protected. Even the regulation has been regulated in human rights law, health law, and government regulation number 61/2014 concerning reproductive health. However, the coverage of reproductive health is regulated in PP. 61/2014 includes only three components, namely: (1) Maternal health services; (2) indications of medical emergencies and rape as an exception to the prohibition of abortion; and (3) Assisted reproduction or pregnancy outside of natural means. Reproductive health in a broad sense includes the whole of all processes, all functions, and all reproductive systems in all stages of human life (Darwin, 1996; Putri et al., 2021; Bosmans et al., 2008). At least, the legal protection provided for reproductive health is a solution to reproductive health problems that often arise in society.

3.2 Reproductive health protection

Reproductive health protection is provided by law, including in the form of 1) Providing reproductive health services; 2) Regulations for Indication for Medical Emergency and Rape (Indication for Medical Emergency and Rape), 3) Arrangement and services for Assisted Reproduction or Pregnancy outside the Natural Way. The provision of reproductive health services to the community must be carried out safely and healthily. Reproductive health services must also be carried out according to standard norms, and must not conflict with religious values and the provisions of laws and regulations.

Providing reproductive health services to the community, manifested in the form of (1) Fulfillment of maternal health services; (2) Fulfillment of adolescent reproductive health services; (3) Fulfillment of health services before pregnancy, pregnancy, childbirth, and after delivery; (4) Fulfillment of pregnancy management services, contraception, and sexual health; (5) fulfillment of services for reproduction system health. Meanwhile, in certain conditions when the mother is pregnant, there are indications that a medical emergency may allow an abortion to be performed through a mechanism that has been regulated in the laws and regulations. An indication of a medical emergency shall be made if 1) in the pregnancy there is a medical indication caused by a certain disease that threatens the life and health of the mother; and/or (2) in the pregnancy, there are medical indications that it is caused by certain diseases that threaten the life and health of the fetus.

The mechanism for handling any indication of a medical emergency up to the conclusion must be carried out according to the procedures and standards determined, besides that it must be carried out by at least two Abortion Feasibility Team consisting of two health workers chaired by a doctor who truly has competence and authority. . So not all doctors can personally carry out treatment for indications of a medical emergency for abortion. In determining an indication of a medical emergency for reasons of abortion, the Abortion eligibility team must first examine procedures and standards stipulated by law. After the results of the examination for medical emergency indications, the abortion eligibility team must issue a piece of documentary evidence in the form of an abortion eligibility certificate.

^f Sexual and reproductive health and rights. Available at <http://www.ohchr.org/EN/Issues/Women/WRGS/Page>

At least from the above description, in carrying out an abortion with the criteria for an indication of a medical emergency, at least four conditions must be fulfilled, namely: (1) There is an indication of a medical emergency in a pregnant woman as regulated in statutory regulations; (2) must be implemented according to correct procedures and standards; (3) in determining the indication of a medical emergency, it must be carried out by the Abortion Feasibility Team; (4) After the Abortion Eligibility Team checks for indications of medical emergencies, the Abortion Eligibility Team issues an abortion eligibility certificate.

In administering an abortion, the following conditions must be met: abortion must be carried out with three principles, namely safe, quality, and responsible. The principle of safe can be interpreted as having no risk that can lead to the risk of complications or death. The principle of quality can be interpreted using quality subscribers according to adequate scientific competence. The principle of responsibility can be interpreted according to the correct purpose and authority that does not conflict with religious norms and statutory regulations. The elements that must be fulfilled in the practice of abortion that meets the three principles include: (1) it is performed by someone who is an expert in their field, that is, it is performed by a doctor according to predetermined procedures and standards; (2) carried out with adequate health service facilities, and these facilities must meet the requirements stipulated by the Minister; (3) Furthermore, it must be at the request or consent of the pregnant woman concerned. If a pregnant woman as a result of a rape victim cannot give consent, consent to abortion can be granted by the family; (4) with the husband's written permission; (5) must not be discriminatory; (6) not oriented towards material rewards.

Next is the regulation regarding who can have an abortion based on indications of a medical emergency. Those who are allowed to have an abortion based on indications of a medical emergency must be a doctor who has been trained by an accredited training provider. Furthermore, a doctor who is allowed to perform an abortion based on an indication of a medical emergency is not a doctor who is a member of the Abortion Eligibility Team (the abortion eligibility team). So it is clear, apart from doctors, midwives are not allowed to perform abortions.

From the description above, to perform an abortion for pregnant women with indications of a medical emergency, at least the following requirements must be fulfilled: (1) there is an indication of a medical emergency that could endanger the mother and the fetus; (2) Abortion of pregnant women with indications of a medical emergency must be carried out safely, with quality and responsibly; (3) there is an agreement from the pregnant woman or the family concerned; (4) The doctor who performs an abortion is not a doctor who provides a certificate of eligibility for abortion; (5) Abortion based on indications of a medical emergency can only be done after going through counseling; (6) The counseling includes pre-action counseling and ends with post-action counseling carried out by the counselor.

If an abortion with the criteria for an indication of a medical emergency is performed without fulfilling the required mechanism, then the abortion is illegal and is a criminal offense. However, it seems that there is still a lack of norms regulating the maximum limit of fetal age at the womb where abortion can be performed in a pregnant woman's condition due to indications of medical emergencies that can endanger both the mother and the fetus. The age limit is only given for abortion for pregnant women as a result of rape victims, namely the maximum age of the fetus is 40 (forty) days. Based on the results of research and religious studies at the age of the fetus for 40 days, there is no percentage of the incorporation of the spirit into the fetal body in the womb.

If the age restriction conditions for abortion in a fetus with the criteria for medical emergency indication are not regulated, it can be concluded that the regulation has not provided legal protection for the fetus in the womb. Because legal protection should be given not only to pregnant women but also to the fetus in the womb. Furthermore, reproductive health protection is also provided in the form of arrangements and services for people who experience obstacles in obtaining offspring, this service is often called in popular language as IVF, or in health laws, it is called Assisted Reproduction or Pregnancy Outside the Natural Way.

IVF reproduction can only be performed on husband and wife couples who experience infertility (infertility) in obtaining offspring and the couple is recorded in a legal marriage. Both of these factors must be met to be able to reproduce by IVF. The way to do IVF reproduction is by bringing together sperm and ovum cells from a husband-wife couple by bringing them together outside of the fertilization results into the womb of the wife concerned. Reproduction of IVF must be carried out following developments in science and technology (science and technology) and the process of IVF reproduction must not be contrary to religious

norms, besides that the IVF process must also be carried out by health professionals who have expertise in it (competent and authorized).

The following are the requirements that must be met by a married couple who will perform IVF reproduction: 1) a husband and wife have carried out the management or management of infertility appropriately; 2) in a married couple, there is a medical indication in the form of infertility; 3) husband and wife understand the procedure of artificial conception in general; 4) married couples are capable and competent in giving informed consent; 5) husband and wife can pay for the procedure performed during IVF reproduction; 6) husband and wife can pay for the cost of childbirth and provide proper care for the baby, and 7) married couples are considered mentally competent.

The seven requirements are internal requirements for anyone who wants to do IVF reproduction. In addition, there are external requirements for IVF reproduction, namely that it must be carried out in an adequate health service facility (meets requirements, procedures, standards, and has a license). In addition, IVF reproductive services must first be started with counseling. If the counseling process has been carried out, the next step is the approval of medical action from the husband and wife, including an agreement regarding further management of excess embryos.

The health law in Article 72 has defined reproductive rights for everyone, including the following: 1) reproductive rights of every person to be able to live a reproductive life and a sexual life free from coercion or violence; 2) reproductive rights of every person to be able to lead a normal, healthy and safe reproductive life and sexual life with a legal partner; 3) the reproductive rights of every person to determine their reproductive life and free from all forms of discrimination, coercion, and violence; 4) reproductive rights of each person to determine for themselves how often to reproduce healthily and not violating religious norms; 5) reproductive rights of everyone to obtain information, education, counseling regarding correct reproductive health.

Based on the description of reproductive rights, it can be concluded that the act of rape is an act that violates reproductive rights because it has injured a person's reproductive rights to live their reproductive and sexual life without coercion and violence, rape is an act of coercion and violence in reproductive and sexual life. Rape is also an act of injuring a person's reproductive rights to lead a sexual life that is not against religious norms, rape is an act that is against religious norms. So, there is a legal rule that prohibits abortion, but there are exceptions to that, one of which is the permission to carry out abortion for pregnant women as result of rape victims, this is understood as a legal effort to protect women, victims of rape, at least to restore their psychological trauma.

The law may impose an absolute prohibition on abortion, however, it must first reconstruct the concept of reproductive rights and protection of reproductive health, but with the imposition of an absolute prohibition of abortion, will it be able to solve the existing abortion problem? Here the law must play a role in realizing legal objectives, namely the aspects of legal effectiveness, legal certainty, and legal justice. Legal protection for reproductive health as regulated in Government Regulation Number 61 of 2014 is provided in the form of (1) providing guarantees for the fulfillment of reproductive health rights for everyone without discrimination, obtained through quality, safe, and accountable health services; and (2) providing insurance for maternal health services in reproductive age, with the aim that the quality of maternal health can influence the birth of a healthy and quality baby, and also to reduce the risk of maternal mortality during childbirth.

Furthermore, who is the subject responsible for protecting realizing reproductive health, of course, the easy answer is that all parties are responsible for providing reproductive health protection. However, Indonesian Government Regulation no. 16 of 2014 has mentioned the subjects who are responsible for protecting realizing reproductive health, namely the government and local governments. The form of government responsibility in realizing reproductive health: 1) formulating policies; 2) providing health facilities and infrastructure; 3) conduct development of reproductive health service management; 4) evaluating the management of reproductive health services; 5) conduct development of a reproductive health referral system; 6) to develop an integrated reproductive health information system; 7) conducting development of a reproductive health surveillance system; coordinating for human resources support in the health sector; 8) implementing funding for the implementation of reproductive health efforts.

From the elaboration of the concept of legal protection for reproductive health as regulated in Indonesian Government Regulation no. 61 of 2014, it can be explained that legal protection for reproductive health has a protected object, namely reproductive health. Reproductive health is part of human rights. The subject that protects reproductive health is the state, in this case, it is implemented by the government, both government

and local governments. Both objects that receive legal protection, subjects that provide legal protection with a series of efforts to guarantee protected rights, as well as the form of protection are outlined in legal instruments. By observing the elaboration of legal protection, which describes objects, subjects, and legal protection measures for reproductive health, it can be argued that legal protection is an effort to protect rights determined by the law and implemented by parties who have the power and/or authority to provide protection. The legal protections provided by the state to citizens concerning reproductive health rights have received protection from a public law perspective. The protection efforts undertaken by the state have been stated in statutory instruments, namely the provision of reproductive health services.

3.3 Abortion prohibition in the Indonesian legal system

In health law, abortion is an act that is prohibited and prohibited by law. Even the threat of criminal sanctions is very heavy for those who carry out abortions. However, although abortion is prohibited in Indonesia, Indonesian law still provides exceptions to the prohibition of abortion. Reiterated, the exception is for pregnant women with indications of a medical emergency and pregnant women because of victims of rape. Indication of a medical emergency must be detected from an early age of the pregnancy, at least equal to the age of the fetus in pregnancy due to rape, that is, the fetus is a maximum of 40 (forty) days old. More than 40 (forty) days of age, the law should prohibit abortion to protect the right to life of the fetus, so there is a right to life for the fetus to be born in the world.

Pregnancies with indications of a medical emergency should be detected from an early age to determine whether the indication of a medical emergency can threaten the life of the mother and/or fetus. However, if the age has exceeded the age of 40 days, then it is known that there is a defect in the fetus, with the reason that it will make it difficult for the baby to live outside the womb and then abortion is carried out for that, the author personally does not agree with the reasons for the abortion, because basically in this world there are provisions. God of destiny for mankind. Don't make the excuse of saving the future of the baby, but do it with murder. So there must be a clear limit on the maximum age limit for the fetus to be able to do an abortion on the grounds of an indication of a medical emergency.

Furthermore, if abortion is permitted due to pregnancy due to rape, in Article 72 paragraph (2) of the health law, what is meant by pregnancy due to rape in that article is pregnancy due to rape which can "cause psychological trauma to the victim of rape", if psychological trauma is caused the existence of rape victims can be handled properly, through the assistance of a psychologist and mentoring from a spiritual advisor who can return the psychological trauma to normalcy, and the rape victim can be patient in facing the test, it is better if abortion on the grounds of pregnancy because the victim of rape is not necessary.

If pregnant women who are victims of rape do not want to care for the child resulting from rape, the state must take the role of caring for and caring for the child who was rape like children born through normal reproductive and sexual life. So it is better if abortion is only done in conditions that are truly emergency. The process mechanism must be tightened through measurable standards so that the exception to the prohibition of abortion is not misused by certain parties.

The health law and its implementing regulations, it has stipulated a maximum limit on the age of pregnancy that can be performed for an abortion due to rape, that is, if the gestational age is at most 40 (forty) days from the first day of the last menstrual period. In this article, it can be emphasized that abortion which is performed on pregnancy due to rape has a gestational age limit, if the gestational age limit is violated by carrying out an abortion it can be categorized as an illegal abortion and is a criminal act.

Concerning the evidence of an indication of pregnancy due to rape, it has also been regulated, the first is to prove that the gestational age is gestational age, the gestational age must be following the time when the rape occurred, in the case of proving the gestational age it must be explained by a doctor's certificate. Second, pregnancy as a result of rape must also be proven through a statement from an investigator, a statement from a psychologist, and if necessary, additional information from another expert to prove the rape was suspected. Evidence of an indication of rape is considered important so that there is no abuse of the provisions that stipulate exceptions to the prohibition of abortion. And also to maintain health care in providing reproductive health services related to abortion.

The concept of the definition of pregnancy due to rape is pregnancy resulting from sexual intercourse without the consent of the woman and even tends to occur because of coercion. If an extramarital pregnancy

starts with a dating process, then to be able to get an abortion service the pregnant woman plays a role as if she was a victim of rape, that is no longer a reason to apply for abortion services. Similar to the conditions that must be met for an abortion with indications of a medical emergency, in carrying out an abortion for a pregnant woman as a result of rape some requirements must be fulfilled, be able to perform an abortion for a woman with an indication that the victim of rape must meet the following requirements: 1) a pregnant woman as a result of rape can cause psychological trauma for victims of rape; (2) there is a description of the age of the fetus; (3) there is an agreement from the pregnant woman or the family concerned; (4) The doctor who performs an abortion is not a doctor who provides a certificate of eligibility for abortion; (5) Abortion based on indications of a medical emergency can only be done after going through counseling; (6) The counseling includes pre-action counseling and ends with post-action counseling carried out by the counselor.

For pregnant women as a result of rape victims, the victim's family can also give consent to an abortion if the victim is unable to give consent. The principle of abortion must be carried out safely, so professional medical personnel are needed, doctors who perform abortions for pregnant women victims of rape must first have a training certificate organized by an accredited training organizer. So, not just doctors can perform an abortion that is permitted by law, if the doctor does not meet the accredited training requirements, the act of having an abortion must be considered illegal, and should be subject to criminal threats.

If an abortion with the criteria for indication of a rape victim's pregnancy is carried out without fulfilling the required mechanism, then the abortion is illegal and is a criminal act. As for the criminal threat for anyone who has an abortion illegally, the health law is punishable by a maximum imprisonment of 10 years and a maximum fine of IDR. 1,000,000,000.00 (one billion rupiah). In addition, criminal sanctions for perpetrators of illegal abortion have also been regulated in the Criminal Code (KUHP), including in Articles 299, 346, 357, 348, 349 of the Criminal Code. The threat of criminal sanctions by lawyers in the Criminal Code with a maximum imprisonment of 4 years and a maximum of 15 years. The criminal act of abortion in the Criminal Code is classified into 4 types of offenses, namely: 1) The abortion was carried out alone, (346 KUHP); 2) Abortion is performed by another person without the consent of the woman concerned, (347 KUHP); 3) Abortion committed by another person with the consent of the woman concerned, (348 KUHP); 4) The crime of abortion by other people with certain expertise, such as doctors, midwives, or medicines, whether it is done with the consent of the woman or not (349 KUHP).

From the article on the criminal threat in the abortion offense, it can be classified who can be convicted in a criminal case of abortion, including the following: (1) Every woman who aborts a pregnancy; (2) Anyone who abort or terminate a woman's womb without her consent; (3) Everyone who aborts or kills a woman with her consent. In the article that regulates criminal sanctions, it should be regulated in more detail following the mechanisms and procedures for carrying out an abortion related to indications of a medical emergency or against victims of rape. Even if a doctor performs an abortion against a victim of rape, if it does not follow the mechanisms and procedures stipulated by the laws and regulations, the doctor who performs the abortion should be considered to have carried out an abortion illegally, and there must be norms regulating the imposition of such sanctions in the article on criminal threats. Because these conditions are not regulated, it can be concluded that in the regulation of criminal sanctions for violations of standards and abortion mechanisms that are violated by doctors, they have not been regulated, it can be said that there is still a norm vacuum in the article regulating criminal sanctions for abortion perpetrators.

3.4 Correlation between the prohibition of abortion and reproductive health protection

Abortion has a very bad impact, on reproductive health. However, for women who are victims of rape, victims of rape experience many losses including physical, physical, sexual, and economic losses (Afifah, 2013; Laraeni et al., 2021). This is part of the reason for the exception to the prohibition of abortion for women who are victims of rape. The prohibition on abortion as regulated in Article 75 paragraph (1) of the Health Law, this prohibition has reasons, among others, there are risk factors for abortion, including (1) heavy bleeding; (2) Damage to the uterus; (3) can cause infection of the uterus; (4) can cause reproductive system disorders, such as pelvic inflammatory disease; (5) results in infertility; (6) results in ectopic pregnancies in subsequent pregnancies, especially when there is an infection due to improperly treated abortion; (7) increase miscarriage in the future (<https://www.aladokter.com/>)

The prohibition on abortion is a legal prohibition, a legal prohibition can be defined as something that is prohibited by law. In criminal law, criminal law is the whole of the regulations that determine what actions are prohibited and are included in a criminal act, and determine what penalties can be imposed on those who commit (<https://id.wikipedia.org/>). According to Duhaime's Law Dictionary, prohibitions have a definition, a legal restriction against the use of something or certain conduct (<http://www.duhaime.org>). In Article 75 paragraph (1), what is prohibited is having an abortion. The prohibition of abortion in article 75 paragraph (1) and accompanied by criminal sanctions, has the same objectives as the objectives of criminal law, criminal law is made with specific objectives, as are the three objectives of criminal law in general: (1) protecting the interests of individuals or individuals (Human Rights) ; (2) Make Criminals Fear and Deterrent; (3) Educating Someone (<https://hukamnas.com/>).

As the purpose of criminal law, the prohibition of abortion has one of the objectives of protecting the individual or individual interests related to human rights, the prohibition of abortion is a protection for women from all forms of risk caused by abortion and is an effort to protect reproductive health for women. However, in the Health Law in Indonesia, the prohibition on abortion does not apply absolutely, because there are exceptions to the prohibition on abortion, namely: (1) indications of medical emergencies detected at an early age of pregnancy; or (2) Pregnancy as a result of rape which can cause psychological trauma for the rape victim. The exception to the prohibition on abortion by the Health Law and its Implementing Regulations (Indonesian Government Regulation No.61 of 2014) is also considered a form of protection for reproductive health for women.

Following the definition of reproductive health regulated in PP. 61 of 2014, "reproductive health is a healthy condition physically, mentally, and socially as a whole, not only free from diseases or disabilities related to the reproductive system, function and process". Pregnancy due to rape victim can result in psychological trauma for the victim of rape. If it is related to the definition of reproductive health, the psychological trauma condition is a disturbed mental condition caused by a reproductive process that is unwanted by women and victims of rape. The prohibition of abortion is a form of protection for reproductive health. The exception to the prohibition of abortion for cases indicative of medical emergencies and rape victims is also a protection for reproductive health. Because the protection provided by law does not only concern physical reproductive health aspects but also non-physical matters such as mental and emotional reproductive health (psychological trauma).

4 Conclusion

The concept of reproductive health protection also determines the form of reproductive health protection. The law in Indonesia has placed reproductive health as a very important part to be protected, the birth of health law and its implementing regulations have become a legal umbrella in protecting reproductive health. The state is also present in providing reproductive health protection because health protection is related to human rights, namely the right to have offspring, the right to conceive, the right not to conceive, and the right to determine the number of children you want. The prohibition of abortion as regulated in the health law and the Criminal Code, abortion is a criminal offense. However, there are exceptions, where abortion is allowed because of medical indications and because of a victim of rape.

- Abortion with criteria for medical emergency indication
Abortion with the criteria for an indication of a medical emergency must meet at least four conditions, namely: (1) There is an indication of a medical emergency in a pregnant woman as stipulated in statutory regulations; (2) must be implemented according to standards; (3) in determining the indication of a medical emergency, it must be carried out by the Abortion Feasibility Team; (4) After the Abortion Eligibility Team checks for indications of medical emergencies, the Abortion Eligibility Team issues an abortion eligibility document. If an abortion with the criteria for an indication of a medical emergency is performed without fulfilling the required mechanism, then the abortion is illegal and is a criminal offense.
- Abortion of rape victims

The gestational age that can be used for abortion for pregnancies due to rape, that is, if the gestational age is not yet 40 (forty) days from the first day of the last menstrual period. An abortion that is performed on pregnancy due to rape has a gestational age limit, if the gestational age limit is violated by having an abortion it can be categorized as an illegal abortion and is a criminal act.

Illegal abortion is a crime (a criminal act), for the perpetrator is threatened with criminal threats. The prohibition on abortion has one of the objectives, namely to protect individual or individual interests related to human rights, the prohibition on abortion is a protection for women from all forms of risk caused by abortion and is an effort to protect reproductive health for women. Allowing abortion for two things, namely pregnant women with indications of a medical emergency and victims of rape according to the law also has aspects of legal protection for women to protect reproductive health rights. Therefore, the law regulates all mechanisms for carrying out an abortion that is permitted by law, so that legal protection can be provided by the law and at the same time prevent violations of the law against abortion carried out illegally. Further research (empirical legal research) is needed regarding the practice of abortion against women with indications of a medical emergency and/or pregnant women with an indication of whether or not victims of rape in the field are following applicable laws and regulations, as well as how the laws governing related to abortion, it is enforced against parties who carry out abortions legally or illegally.

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