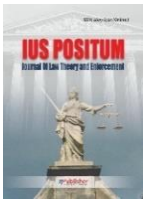

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Socio-Juridic Analysis of Abortion According to Article 75 of Law No. 36/2009 Concerning on Health and Law No. 35/2014 Concerning on Child Protection

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ABSTRACT

Children are often become victims of sexual crimes that cause the pregnancy. Not infrequently abortion is chosen as a way in overcoming Unwanted Pregnancy (KTD). The Criminal Code prohibits abortion. In Law No. 36/2009 concerning Health in Article 75 allows for abortion but Article 76 indicates that when the abortion is not in accordance with the requirements in Article 76, then a child who is a rape victim who has an abortion can be subject to a criminal offense under Article 194 of the Health Law. The type of this research is normative legal research. Normative legal research is research that focuses on positive legal norms. Abortion in certain cases can be justified when it is an abortion that is medically recommended by the treating doctor, for example because the pregnant woman suffers from an illness and to save the woman's life, the pregnancy must be aborted.

Keywords: *Abortion, Health, Child Protection*

INTRODUCTION

Law No. 35/2014 concerning Child Protection defines a child as someone who has not yet reached 18 (eighteen) years of age, including those still in the womb.[1]

Children often become victims of sexual crimes that result in pregnancy due to their vulnerability. As a result, abortion is commonly chosen as a way to handle Unwanted Pregnancy (KTD). However, the Indonesian Criminal Code prohibits abortion. Law No. 36/2009 concerning Health allows abortion under Article 75, but Article 76 states that abortions not meeting its requirements may result in penalties under Article 194 of the Health Law. Abortion itself is the termination of a fetus before 20 weeks of gestational age.

According to the Law of the Republic of Indonesia No. 35/2014, which amends Law No. 23/2002 on Child Protection, point b states that every child has the right to survive, grow, and develop while being protected from violence and discrimination, as mandated by the 1945 Constitution of the Republic of Indonesia.

The amendments to Law No. 23/2002 provide legal certainty regarding the protection of children under 18 years old (unmarried) and also extend protection to unborn children. Child protection encompasses all efforts to guarantee and safeguard children's rights, ensuring they can live, grow, and develop optimally in accordance with human dignity. Unfortunately, children's rights to grow and develop are often violated even before birth. The issue of abortion has become a serious concern due to its increasing numbers each year.

In Indonesia, the fetal mortality rate has reached 3 (three) million per year, a significant number considering the high pregnancy rate. Abortion is widely considered murder since a fetus has the right to life, and all religions prohibit pregnancy termination for any reason.

Abortion is typically carried out by both married and unmarried women for various reasons. Common non-medical reasons include fear that having a child will interfere with a career, education, or other responsibilities, financial constraints, or unwillingness to give birth without a father. Additionally, young mothers, especially those pregnant before marriage, may face social stigma, making abortion a means to avoid disgrace.[2]

In certain cases, abortion is legally justified when medically recommended by a doctor, such as when the mother suffers from a life-threatening illness. Article 75 Paragraph (1) of Law No. 36/2009 states that abortion is prohibited, but Paragraph (2) provides exceptions if:

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[1] Jajang Arifin, "Perlindungan Hukum Bagi Anak Korban Perkosaan Yang Melakukan Aborsi," *ADIL: Jurnal Hukum* 13, no. 2 (January 18, 2023): 19–27, https://academicjournal.yarsi.ac.id/index.php/Jurnal-ADIL/article/view/3090.

[2] Abrori, *Di Simpang Jalan Aborsi: Sebuah Studi Kasus Terhadap Remaja Yang Mengalami Kehamilan Tak Diinginkan* (Semarang: Gigih Pustaka Mandiri, 2014).

1. A medical emergency is detected early in pregnancy, threatening the life of either the mother or fetus due to severe genetic diseases and/or congenital defects that make survival outside the womb unlikely.
2. The pregnancy results from rape, which may cause psychological trauma to the victim.

From an Islamic perspective, abortion is classified into two types: spontaneous abortion (Isqath al-Afwu), which is beyond human control, and intentional abortion (Abortus Provocatus). Intentional abortion is further divided into medical abortion (Artificialis Therapicus) and non-medical abortion (Al-Isqath al-Ikhtiyary).[3] Islamic scholars agree that abortion after the soul is breathed into the fetus (after 120 days of pregnancy) is forbidden (haram), except under specific circumstances permitted by Sharia.

According to Law No. 36/2009, Article 75 Paragraph (2), abortion must be preceded by pre-action counseling and followed by post-action counseling from authorized professionals. Further regulations regarding medical emergencies and rape cases are outlined in Government Regulations. Article 76 allows abortion under the following conditions:

1. It is performed before 6 (six) weeks of pregnancy, counted from the first day of the last menstruation, except in medical emergencies.
2. It is conducted by certified health professionals authorized by the Minister of Health.
3. It is performed with the consent of the pregnant woman.
4. It has the husband's permission, except in rape cases.
5. It is carried out in a qualified healthcare facility.

Abortion should not be seen as the only solution for high childbearing rates, premarital pregnancies, and rape cases. Victims of rape who undergo abortion outside the requirements of Article 76 of the Health Law may face criminal penalties under Article 194. Considering that children are the nation's future, special legal protection should be provided to rape victims who choose abortion, ensuring they are not penalized, even if their actions do not fully comply with Article 76. Meanwhile, some women continue their pregnancies due to their belief that abortion is a grave sin.

LITERATURE REVIEW

Definition of Abortion

There are various opinions on abortion. According to Facts About Abortion, Info Kit on Women's Health, abortion is defined as the termination of pregnancy after the implantation of a fertilized egg (ovum) in the uterus, but before the fetus

[3] Maria Ulfah Anshor, *Aborsi Dalam Perspektif Fiqh Kontemporer* (Fakultas Kedokteran, Universitas Indonesia, 2002).

reaches 20 weeks of gestation. Another opinion states that abortion occurs as a deliberate act to terminate a pregnancy due to an unwanted baby, distinguishing it from fetal miscarriage.

In the medical field, abortion−derived from the Latin term abortus−refers to the expulsion of conception products (the union of egg and sperm cells) before the fetus can survive outside the womb. It is the process of ending fetal life before it has the chance to develop.

According to Dr. Agus Abadi from the UPF/Lab of Obstetrics and Gynecology at RSUD Dr. Soetomo, abortion is the cessation of pregnancy before 20 weeks of gestation or when the fetal weight is less than 500 grams.[4]

The World Health Organization (WHO) has updated the definition of abortion as the termination of pregnancy before 28 weeks or when the fetus weighs less than 1,000 grams. Abortion also refers to the premature removal of an embryo or fetus. The term abortion provocatus has recently become a widely discussed topic.[5]

Abortion is an intentional termination of pregnancy.[6] According to Black's Law Dictionary, abortion is the spontaneous or artificially induced expulsion of an embryo or fetus. In a legal context, it often refers to induced abortion.

Generally, the expelled fetus is no longer alive. Legally, abortion provocatus criminalis refers to any termination of pregnancy before birth, regardless of gestational age or whether the fetus is born dead or alive.

Based on these definitions, researchers conclude that abortion is the expulsion of a fetus before birth. This means there is an intentional act that results in the fetus or baby not surviving.

Kind of Abortion

Spontaneous abortion is an abortion that occurs without mechanical or medical intervention, caused by natural factors. Rustam Mochtar, as cited in Muhdiono, categorizes spontaneous abortion into several types. Complete abortion: All products of conception are expelled, leaving the uterus empty. Incomplete abortion: A miscarriage occurring before 20 weeks of gestation where the deceased fetus is not completely expelled, leading to continued bleeding. Imminent abortion: A condition where fetal expulsion can still be prevented with hormonal and anti-spasmodic medications. Missed abortion: The fetus has died but remains in the uterus for two months or more without being expelled. Habitual abortion (recurrent miscarriage): The patient experiences three or more consecutive miscarriages. Infectious abortion and septic abortion: Abortion

[4] Ade Maman Suherman, *Pengantar Perbandingan Sistem Hukum*, 1st ed. (Jakarta: Rajagrafindo Persada, 2004).
[5] A.S.Hornby, E.C.Parnwell, and Siswoyo, *Kamus Inggris-Indonesia* (Jakarta: PT Intermasa, 1992).
[6] Nelly Yusra, "Aborsi Dalam Perspektif Hukum Islam," *Marwah: Jurnal Perempuan, Agama dan Gender* 11, no. 1 (2012).

accompanied by a genital infection, often occurring in early pregnancy (one to three months). This may result from diseases such as high fever, kidney disease, syphilis, or genetic disorders. In some cases, the fetus may be expelled intact.[7]

Provoked abortion (induced abortion) is an intentional termination of pregnancy using drugs or medical instruments. It is classified into two types. Abortus provocatus medicinalis: A medically indicated abortion performed by a doctor when the pregnancy endangers the mother's life. Abortus provocatus criminalis: An illegal abortion not based on medical indications.[8]

There are several methods of criminal abortion, which may be performed by the mother herself or with external assistance, including general violence, such as excessive physical activity (e.g., running). Local violence, such as massaging the lower abdomen, using medical instruments like curette forceps, non-medical tools like wires, or chemicals like zinc chloride solution. Use of abortive drugs, such as emetics and emmenagogues (menstrual-stimulating drugs). Use of uterine muscle stimulants, such as quinine.

Based on gestational age, medically induced abortion is divided into three types. First-trimester abortion (up to 12 weeks): In the 7th week, uterine removal is done using a sharp curette to ensure no remaining ovum tissue. If the pregnancy exceeds 6-7 weeks, a blunt curette is used. After most of the conception tissue is separated, it is removed and followed by careful scraping with a sharp curette. A tampon is placed in the uterus and vagina and removed the next day. Second-trimester abortion (12-16 weeks): A combination of dilation, curettage, and suction is performed. This method carries risks of injury and bleeding. Second-trimester abortion (up to 16 weeks): Conducted by inducing uterine contractions so that the fetus and placenta are expelled spontaneously, often using local anesthesia.[9]

The primary reasons for abortion today are more sociological than medical. These sociological reasons are legally prohibited and classified as criminal acts, known as abortion provocateur criminalis, which carry legal penalties. Common reasons for abortion include health reasons: When pregnancy presents vital indications that threaten the mother's life or non-vital medical indications that could deteriorate the mother's physical and psychological health. In some cases, abortion is considered to prevent the birth of babies with severe disabilities, though this reason is often debated in medical ethics.

Social reasons: Unintended pregnancies may result from having multiple children, promiscuity, rape, incest, or infidelity. Women facing unwanted pregnancies may seek abortion through medical professionals or illegal practitioners, despite the risks involved. Research shows the strongest motivations

[7] Rustam Mochtar, *Sinopsis Obstetri* (EGC, 1998).
[8] Dwi Nur Amar Ma'ruf Asse, "Eksistensi KUHP Dan UU No. 36 Tahun 2009 Terhadap Tindak Pidana Aborsi Di Makassar" (Universitas Islam Negeri Alauddin Makassar, 2010).
[9] Muyassarot Ussolichah, "Abortus Provokatus Dalam Perspektif Yuridis," *Musawa* 2, no. 2 (2003): 161–175.

for abortion include continuing education, fear of parental disapproval, lack of mental and economic readiness for marriage and parenthood, social stigma of premarital pregnancy, lack of affection for the partner, impulsive sexual encounters, and uncertainty regarding the paternity of a child conceived through rape, particularly when the perpetrator is unknown.

Economic reasons: Increasing employment opportunities for women influence abortion rates. Industrial economic development leads to more young women entering the workforce, delaying marriage while remaining sexually active. Media and entertainment also contribute to casual sexual behavior. Many employment contracts prohibit pregnancy within the first two years of work, leading some women to choose abortion to avoid job termination. Economic instability also drives married women to terminate pregnancies due to failed contraception, low income, or an inability to support additional children.

Emergency (Forced) reasons: Pregnancy resulting from rape, where sexual intercourse was forced upon a woman against her will.

The Impacts of Abortion

Women who experience unwanted pregnancies often choose abortion as a solution. However, this is dangerous and can have long-term negative effects. Abortion may also be necessary in cases of problematic pregnancies that require immediate termination.

Abortion has several health impacts. One of the risks is cervical damage, which occurs when the cervix is torn due to the use of abortion instruments. Infection is another possible complication, often caused by non-sterile medical equipment or fetal tissue left inside the uterus. Severe bleeding is also common, as the cervix may tear and open excessively, leading to life-threatening consequences if not treated promptly. In extreme cases, excessive blood loss and infection can result in death. Additionally, abortion increases the risk of cancer, particularly cervical cancer, as well as breast, ovarian, and liver cancer.

Abortion can also affect future pregnancies, with the most frequent risk being premature birth. Moreover, the psychological impact of abortion should not be overlooked. Many women experience feelings of guilt, depression, trauma, and deep regret, which can lead to suicide attempts and a loss of self-esteem.

The Perspective of Islamic Law on Abortion

Abortion is the termination of a fetus before birth, either through drugs or other means. Many who undergo abortion are individuals involved in promiscuity or those who become pregnant without a marriage contract.

Quraish Shihab, in his book Women, stated that a person who becomes pregnant outside of a legal marriage and then aborts the pregnancy commits a double sin. According to him, scholars (ulamaa) primarily discuss cases of abortion among legally married women for specific reasons.

From the Hanafi perspective, abortion is only permitted before four months of pregnancy. However, this does not mean that abortion is free from sin, but rather that the sin is not as severe as that of taking a human life. Acceptable reasons for abortion include cases where the mother feels physically unable to continue the pregnancy until childbirth due to illness or other factors.

Meanwhile, the Maliki perspective strictly prohibits abortion. In fact, this school of thought forbids abortion even if the fetus is less than 40 days old from the union of sperm and ovum.

In contrast, the Shafi'i perspective holds differing opinions on whether abortion is permissible within the first 40 days after fertilization.

On the other hand, the Hanbali perspective allows abortion as long as the pregnancy has not reached 40 days and is carried out using justified medical methods. Despite these differing views, all scholars agree that abortion after four months of pregnancy is strictly forbidden. If performed, the person responsible is considered guilty and must pay a *diyah* (compensation) amounting to one-twentieth of the diyah for murder.

However, scholars also agree that abortion is permissible when an expert doctor determines that the fetus poses a threat to the mother's life. Some scholars even consider abortion in such cases to be obligatory.

Positive Perspective on Legal Abortion

Basically, abortion is an immoral phenomenon that has a widespread impact on Indonesian society, affecting both parents and teenagers. It is considered a "covert" phenomenon because its practice is often concealed, either by the perpetrators or by society itself. This secrecy is influenced by formal law as well as social, cultural, and religious values, along with political developments. From a legal perspective, abortion is regulated under:

Criminal Code (KUHP) Understanding the legal framework surrounding abortion as a criminal act (abortus provokatus criminalis) requires an examination of relevant articles in the Criminal Code (KUHP).[10] The criminalization of abortion is outlined in Articles 346, 347, and 349, as follows:

Article 346: A woman who intentionally aborts or terminates her pregnancy or asks another person to do so faces a maximum imprisonment of four years. Article 347: (1) Anyone who intentionally aborts or kills a woman's fetus without her consent faces a maximum imprisonment of twelve years. (2) If the act results in the woman's death, the offender faces a maximum imprisonment of fifteen years. Article 349: If a doctor, midwife, or pharmacist assists in committing an abortion as defined in Articles 346, 347, or 348, the penalty may be increased by one-third, and their right to practice may be revoked.

[10] P.A.F. Lamintang, *Dasar-Dasar Hukum Pidana Indonesia* (Bandung: PT. Citra Aditya Bakti, 2013).

Abortion is only punishable when the fetus is proven to be alive during the abortion attempt. The law does not assume that a fetus in the womb is alive or has the potential to survive. A punishable abortion requires that the fetus was alive at the time of the attempt, regardless of whether the fetus ultimately survives or dies as a result. The law does not differentiate between cases where fetal growth is stunted and cases where the fetus is forcibly removed from the mother's body before term. Intent to abort is presumed if the fetus was alive during the process and the perpetrator was aware of this fact. The judge's decision must be based on clear evidence showing that the pregnant woman intended to cause the death of the child.

These provisions criminalize all individuals involved in abortion, including doctors, midwives, and traditional healers, with increased penalties. However, these regulations are now considered outdated as they conflict with Indonesian legal policies that aim to protect and ensure the well-being of the nation.

The Legal Dilemma and the Development of Health Law Article 349 of the Criminal Code creates a legal dilemma when applied rigidly. Medical professionals such as doctors, midwives, and nurses can be imprisoned even when performing abortions to protect the mother's life. In response, the government introduced Law No. 23/1992 on Health, which allowed for medical abortions under therapeutic conditions. This law was later replaced by Law No. 36/2009 on Health, which explicitly regulates abortion in Articles 75, 76, and 194:

Article 75 Paragraph 1: "Everyone is prohibited from having an abortion." Paragraph 2: The prohibition in Paragraph 1 does not apply in cases of: Medical emergencies detected in early pregnancy that threaten the life of the mother and/or fetus, including severe genetic diseases or congenital defects that make survival outside the womb impossible. Pregnancy resulting from rape, which can cause psychological trauma to the victim. Paragraph 3: Abortion under these exceptions must be preceded and followed by counseling from authorized professionals. Paragraph 4: Further details on medical and rape-related exceptions are regulated by government policies.

Article 76

Abortion under the exceptions in Article 75 can only be conducted if: It is performed before six weeks of pregnancy (except in medical emergencies). It is carried out by certified healthcare professionals. The pregnant woman gives consent. The husband consents (except in rape cases). The procedure takes place in approved healthcare facilities.

Article 194

Anyone who performs an abortion outside the provisions of Article 75(2) faces a maximum imprisonment of 10 years and a fine of IDR 1,000,000,000 (one billion rupiah).

Articles 75 and 76 of Law No. 36 of 2009 reaffirm that abortion is generally prohibited (Article 75(1)). However, exceptions exist for: Medical emergencies that threaten the life of the mother and/or fetus, including severe genetic or congenital conditions that make survival outside the womb impossible. Pregnancy due to rape, which can cause severe psychological trauma to the victim (Article 75(2)). Beyond legal frameworks, abortion is closely linked to the socio-cultural and religious values upheld in Indonesian society. In this context, abortion is often viewed as a social disgrace rather than an individual's personal choice.

A Sociological Perspective on Abortion

From society's perspective, abortion is an act that goes against the norms and ethics of Eastern culture. Strong religious beliefs lead some people to view abortion perpetrators negatively. In today's society, many illegal abortions occur, yet people tend to ignore them and leave the matter to abortionists. Clearly, this is no longer just an individual issue but a significant social one, as it not only affects women's health but also has serious implications for the country's demographic situation and the psychological atmosphere in both society and families.

Traditional abortion remains a major point of contention, but under certain conditions, even conservatives acknowledge that abortion may be necessary or even inevitable. Society must approach this issue carefully, balancing between supporting or completely rejecting abortion while ensuring that women have options and opportunities. It is crucial to consider statistical data that demonstrates why abortion cannot be outright prohibited, especially in well-developed countries.

It should be emphasized that abortion is not just a women's issue−it is a societal issue. At the same time, abortion can create challenges within families, which are integral parts of society. It is essential for a woman to receive support from her closest relatives, including her husband and parents. Moreover, no woman should be forced to have an abortion.

Thus, the role of the family in decision-making is just as important as societal influence or personal beliefs. Most women are willing to consider abortion under specific circumstances. This indicates that abortion must be legalized but strictly regulated to ensure it does not endanger women's health or, in certain cases, the lives of children when abortion could have been avoided.

RESEARCH METHODOLOGY

This research is normative legal research, which focuses on positive legal norms by using secondary data as the main data and primary data as supporting data. The supporting legal materials include primary, secondary, and tertiary legal materials. Primary legal materials consist of the 1945 Constitution, Law No. 39/1999 on Human Rights, Law No. 36/2009 concerning Basic Health, Law No. 11/2012 concerning the Juvenile Criminal Justice System, Law No. 31/2014

concerning the Protection of Witnesses and Victims, and Law No. 35/2014 concerning Child Protection. Secondary legal materials include legal facts, doctrines, legal principles, and legal opinions found in literature, journals, research results, documents, newspapers, the internet, and scientific magazines. Tertiary legal materials come from dictionaries and encyclopedias. Data from these legal materials were analyzed using a qualitative descriptive methodology.

RESULT AND DISCUSSION

Socio-Juridical Analysis of Articles 75 and 76 of Law No. 36/2009 on Health

The Indonesian Medical Code of Ethics, as stated by the Indonesian Doctors Association, explains in Article 10 that doctors are prohibited from performing abortion provocatus and euthanasia. However, it also states that abortion provocatus can be justified as a medical treatment (abortion provocatus therapeuticus) if it is the only way to save the mother's life.

The formulation of Article 10 of the Kodeki and its explanation is inspired by Article 75 of Law No. 36/2009 concerning Health, which states:

Everyone is prohibited from having an abortion.

Exceptions to Paragraph (1) are permitted based on:

1. Medical emergencies detected early in pregnancy that threaten the life of the mother and/or fetus, including severe genetic diseases or congenital defects that cannot be treated and make survival outside the womb impossible.
2. Pregnancy resulting from rape that causes psychological trauma to the victim.
3. The procedure must include pre-action counseling and end with post-action counseling by a competent and authorized counselor.
4. Further provisions regarding medical emergency indications and rape cases are regulated in a Government Regulation.

Additionally, Article 76 of Law No. 36/2009 outlines the terms and conditions for abortion procedures.

The Doctor's Vow and the Medical Code of Ethics clearly state that performing an abortion contradicts ethical and professional obligations. However, an exception exists when the pregnancy threatens the mother's life, leading to a miscarriage as a side effect.

From a moral and ethical standpoint, abortion is not justified as an end in itself. It is only permissible when no other option is available to save the mother's life and must meet specific conditions, including the consideration of at least two experts. The procedure must also be conducted in adequate health facilities with proper personnel and equipment. Furthermore, the provisions of Articles 75 and 76 have become a Minister of Health Regulation (Permenkes), and severe criminal sanctions apply to those who violate these provisions.

It is undeniable that most abortions are performed by doctors and medical personnel, making it a complex issue that affects various aspects of society. However, it is inappropriate for doctors to take "shortcuts" by disregarding medical ethics and legal regulations. Pregnancy termination is a serious issue and should only be permitted when the woman faces an insurmountable danger.

For example, if a fetus is diagnosed with severe defects or if the mother has a life-threatening condition, such as heart disease, an abortion may be considered solely due to medical necessity. In medical practice, the primary concern is usually the mother's well-being, as her life is deemed more valuable than that of the fetus she carries.[11]

According to Budi Santoso, a specialist in obstetrics and gynecology, a balanced perspective is necessary when addressing abortion. Medically, abortion is allowed only when essential to save the life of the mother or fetus, a principle outlined in the Oslo Declaration. This decision must be based on medical indications and confirmed by two competent doctors.

The Guidelines for Obstetrics and Gynecology Ethics (POGI) state that "safe abortion is done only as an emergency exit." This refers to cases where abortion is the last resort for ensuring the safety of the mother and fetus. Emergency situations include contraceptive failure, rape, incest, severe mental disorders, fetal abnormalities (such as Down syndrome or congenital disabilities), HIV/AIDS, and conditions affecting physical, mental, or economic well-being. Even when abortion is medically justified, the patient must fulfill certain conditions outlined in Article 76.

The Health Act mandates that abortion procedures must be safe and ensure both the mother's safety and recovery. Only qualified obstetricians, following government regulations, are permitted to perform such procedures. This aligns with Article 77 of Law No. 36/2009, which requires the government to protect women from unsafe, low-quality, irresponsible abortions that contradict religious norms and legal provisions.

Unsafe abortions pose significant risks to maternal health and safety, often leading to severe complications or even death. Continuous bleeding and infections following an unsafe abortion are among the leading causes of maternal mortality.

Socio-Jurisdictional Analysis of Article 1(1) and Article 12 of Law No. 35/2014 on Child Protection

Efforts to protect children must be implemented as early as possible, from the fetal stage until the age of 18. Based on the concept of child protection, this law mandates the obligation to provide child protection in accordance with the principles of non-discrimination, the needs of children, the right to life, survival, development, and respect for children's opinions.

[11] Mochtar, *Sinopsis Obstetri*.

In implementing guidance, development, and child protection, community involvement is essential. This includes contributions from child protection institutions, religious institutions, non-governmental organizations, community organizations, social organizations, the business sector, mass media, and educational institutions. The definitions of children, child protection, and children's rights are outlined in Article 1, points 1, 2, and 12 of Law No. 35/2014, which amends Law No. 23/2002 concerning Child Protection.

Article 1, point 1, states: "*A child is someone who has not yet reached the age of 18 (eighteen) years, including those still in the womb.*"

Article 1, point 2, stipulates: "*Child protection encompasses all activities aimed at guaranteeing and safeguarding children and their rights so they can live, grow, develop, and participate optimally in accordance with human dignity, while also being protected from violence and discrimination.*"

Article 1, point 12, defines children's rights as "*Part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the government, and the state.*"

From the general explanation and definitions above, it is evident that the rights of children, including fetuses, are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, the government, and the state. This ensures that children can live, grow, develop, and participate optimally in accordance with human dignity while receiving protection from violence and discrimination.

Article 2 stipulates that the implementation of child protection is based on Pancasila and the 1945 Constitution of the Republic of Indonesia, as well as the fundamental principles of the Convention on the Rights of the Child. These principles include non-discrimination, the needs of children, the right to life, survival, development, and respect for children's opinions.

There is a discrepancy between Article 75 of Law No. 36/2009 concerning Health, which addresses child abortion, and Article 1, point 1, and Article 12 of Law No. 35/2014 concerning Child Protection. This inconsistency arises in the interpretation of the age limit of a fetus in the womb.

On one hand, Article 75 of Law No. 36/2009 concerning Health allows abortion under specific conditions, such as medical indications, medical emergencies, disabilities, or risks that pose a severe threat to the mother, as well as for victims of rape. According to this law, abortion is permitted if the fetus has not exceeded a weight of 500 grams or 12 weeks of gestation. On the other hand, Article 1, point 1, and Article 12 of Law No. 35/2014 concerning Child Protection explicitly define a child as anyone under 18 years old and extend protection to children with special needs (disabled). According to child protection laws,

abortion is prohibited under any circumstances and is deemed morally, socially, and religiously unacceptable, as it is considered an act of taking a child's life.

Therefore, the government should issue a Perpu (Government Regulation in Lieu of Law) as an alternative legal framework to regulate abortion procedures. This would prevent multiple interpretations and ensure clarity in the legal provisions regarding abortion.

CONCLUSION

Doctors who perform abortions under Article 75 of Law No. 36/2009 concerning Health do not violate Law No. 35/2014 concerning Child Protection. Abortions are permitted in cases involving medical indications, such as a fetus with a genetic illness or when the mother's life is at risk due to conditions like heart disease or high blood pressure. Additionally, abortion is allowed for victims of rape.

However, socio-juridical abortion under Law No. 35/2014 concerning Child Protection remains highly contradictory. Regardless of the reason, abortion is considered a violation of a child's natural right to grow and develop as part of the next generation. Article 1, Number 1, in conjunction with Article 12 of Law No. 35/2014−an amendment to Law No. 23/2002 concerning Child Protection−states:

"*Child protection includes all activities aimed at guaranteeing and protecting children and their rights so they can live, grow, develop, and participate optimally in accordance with human dignity, while being safeguarded from violence and discrimination.*"

Furthermore, Article 1, Number 12, declares:

"*Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, governments, and the state.*"

There is a discrepancy between Law No. 36/2009 concerning Health, particularly regarding abortion, and Law No. 35/2014 concerning Child Protection. Neither law explicitly defines when a fetus is considered alive. Therefore, future revisions should include a clear provision specifying the gestational age at which a fetus is legally recognized as living.

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