

HEALTH LEGAL VIEW ON ABORTUS PROVOCATEURS**Suriyadi¹**

ABSTRACT

Currently, the practice of abortion is increasingly prevalent and the number continues to increase from year to year. Abortion, for most people is seen as an act of murder because the fetus or baby in the mother's womb has the right to live, plus for some religions it is not permissible for a woman to abort her womb for any reason. Most of the reasons for abortion are non-medical, including not wanting to have children for fear of interfering with career, school, and other responsibilities, financially unable to raise children, and not wanting to raise children without the presence of a father. Another reason that is still happening until now (especially for women who are pregnant out of wedlock) is to maintain the honor of the family. Indonesian women use these reasons to convince themselves that abortion is legal and justified. Though the reasons

Keywords: Abortus Provocatus, Crime

introduction

Currently, abortion is a serious problem, seen from the high number of abortions, which is increasing from year to year. In Indonesia alone, the number of fetal murders per year has reached 3 million. The number is not small considering the high rate of pregnancy in Indonesia. On the other hand, abortion is considered by most people as an act of murder, because the fetus or baby in a mother's womb has the right to live a normal life, and in any religion it is not permissible for a pregnant woman to terminate her pregnancy for any reason. In addition, there are also many in the community, news that reveals cases of abortion. The news contained cases of abortion, both those who were caught by the perpetrators and those who only found wasted fetuses, including fetuses that were left alone after the abortion was completed, and there were also fetuses that were intentionally left in front of people's homes or in front of the baby care foundation.

Abortion will have a very serious impact on society, namely causing pain and death to the mother. As is known, the main causes of death for pregnant women and childbirth are bleeding and infection. Abortion is usually carried out by a pregnant woman, both married and unmarried for various reasons. The most common reasons for abortion are non-medical reasons including not wanting to have children for fear of interfering with career, school or other responsibilities, not having enough money to care for the child, and not wanting to give birth to a child without a father. Another reason that is often given is that they are still too young (especially those who are pregnant out of wedlock), and can be a disgrace to the family. These reasons are also given by women in Indonesia who try to convince themselves that killing the fetus in

their womb is permissible and justified. These reasons only show the indifference of a woman, who prioritizes her own interests without thinking about the life of the fetus she is carrying.

Abortion in certain cases can be justified if it is an abortion that is medically recommended by the treating doctor, for example because a pregnant woman suffers from a disease and to save the woman's life, the pregnancy must be aborted based on Law Number 36 of 2009 concerning Health Article 75 paragraph (2) point a. Generalized abortion becomes a crime if the abortion is carried out intentionally for reasons that are not justified by law. Abortion itself can occur either as a result of human actions (abortion provocatus) or due to natural causes, namely that it occurs naturally, in the sense that it is not due to human actions (spontaneous abortion).

Abortion is also often carried out by women who are victims of rape. The reason often given by women who are raped is that having a child as a result of rape will increase their inner pain because seeing the child will always remind them of the bad event. Not always events such as having too many children, pregnancies out of wedlock, and rape victims make a woman choose to abort her pregnancy. On the other hand, there are those who keep their pregnancy on the grounds that abortion is a sin, so they choose to keep the pregnancy.

Whatever reason is put forward to abort the pregnancy, it is not due to medical reasons, the mother and the person who helped to abort the pregnancy will be punished with a crime. This is because positive law in Indonesia prohibits abortion. On the other hand, if the pregnancy is not aborted, it will cause new problems, namely if he is born into a

poor family, he will not get a decent living, if he is born without a father, he will be ridiculed by the community so that he will live in shame.

This is because in eastern Indonesian culture, it is not possible to accept children born out of wedlock. This reason sometimes makes women who are pregnant out of wedlock desperate to abort their pregnancy. Children on the other hand actually have the right to live and this is regulated in Law Number 23 of 2002 concerning Child Protection Article 1 number 2 which states:

“Child protection is all activities to guarantee and protect children and their rights so that they can live, grow, develop, and participate optimally in accordance with human dignity and protection, and receive protection from violence and discrimination.

Article 1 number 12 which states: "Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, governments and the state".

The issue of abortion essentially cannot be separated from the religious values and norms that develop in Indonesian society, related to positive criminal law in Indonesia. The regulation of the issue of abortion is contained in Articles 346, 347, 348, 349 and 350 of the Criminal Code. According to the provisions contained in Articles 346, 347, and 348 of the Criminal Code, abortion criminalis includes the following acts:

1. Abortion (afdrijving van de vrucht).
2. Killing the womb (de dood van vrucht veroorzaken).

The law does not provide an explanation regarding the different meanings of abortion and killing the womb, as well as regarding the meaning of the womb itself. From a grammatical point of view, abort means to fall or to cause to fall, which is the same as falling or letting go. So to abort the womb means to make the womb fall out or cause it to fall. While killing is the same as causing death or taking one's life away.

So, killing the content means causing the content to die or eliminating the life of the womb. In abortion, namely the release of the womb from the uterus and the family of the womb from the body of the woman who is pregnant. Meanwhile, in the case of the murder of the womb, the act that is punished is causing the death of the womb.

Literature Review

Abortion in the layman's sense is an abortion, the release of the products of conception or fertilization prematurely. In Blaks's Law Dictionary, the word abortion which is translated into abortion in Indonesian means: “The spontaneous or artificially

induced expulsion of an embryo or fetus. As used in illegal context refers to induced abortion. Thus, according to Blaks's Law Dictionary, miscarriage with the release of an embryo or fetus is not solely due to natural occurrence, but also intentional or occurs due to human intervention (provocation).

In a medical sense, abortion is the termination of pregnancy with the death and expulsion of the fetus at the age of less than 20 weeks with a fetal weight of less than 500 grams, ie before the fetus can live outside the womb independently. Abortion or in the medical world is known as "abortion" , means the expulsion of the products of conception (the meeting of the egg and sperm cells) before the fetus can live outside the womb: From a medical point of view, there is no definite limit on when the uterus can be aborted. A woman's womb can be aborted at any time as long as there is a medical indication to abort it. For example, if it is known that the child to be born has severe defects or the mother suffers from heart disease, which will be very dangerous for the safety of her soul at the time of delivery. There are several terms to refer to the release of conception or fertilization before 20 weeks of gestation which is commonly called abortion, including: Abortion criminalis, namely abortion that is contrary to the law; Eugenic Abortion, namely abortion to get good offspring; Abortion induced/ provoked/ provocatus, namely intentional abortion; Natural Abortion, namely natural abortion; Spontaneous Abortion, which is an accidental abortion; and Abortion Therapeac, which is an abortion with the aim of maintaining the health of the mother.

Method

1. Type of Research

The method used in this research is normative juridical research. Normative juridical research is research that refers to and leads to legal norms and principles and is sourced from library materials, legislation. In essence, research is a scientific activity based on method.

2. Types and Sources of Data

The data that can be obtained in this writing is secondary data. Secondary data is data that researchers obtain from library research and documents that are the result of research, processing of other people that are already available in the form of books, papers, and other documents that are usually provided in libraries or private property. In this study, secondary data includes Primary Legal Materials and Tertiary Legal Materials.

3. Data Collection Techniques

The data collection technique used is literature study and document study, namely collecting data sought from books, laws and existing literature.tic,

namely abortion with the aim of maintaining the health of the mother.

Result

A. Health Law's View on Abortion Provocatus Based on Law Number 36 Year 2009

1. Definition of Abortion

The word abortion is a term from the English language "abortion" which etymologically means abortion or throwing a fetus. This term is also translated by Arabic doctors into *Isqatul Hamli* (abortion of an old womb). Meanwhile, early abortion is translated by Arabic doctors into the term *Washailul Ijhash* (Menstrual Regulation / MR), while according to medical terms, abortion means termination of pregnancy before gestation (28 weeks) or before the baby reaches 100 grams of weight.

From the above definition, it can be concluded that not all abortions are acts that are contrary to morals and humanity, in other words, not all abortions are crimes. Abortions that occur spontaneously due to physical abnormalities in women (the mother of the fetus) or due to internal biomedical diseases are called "miscarriages", which in this case there is no controversy in society or among *fuyah*, because they are considered to occur accidentally and occur outside of human will.

In contrast to intentional abortion or the result of human intervention, which is clearly an "abortion" act, that is, an act that intentionally causes the loss of the fetus. In this case, abortion causes controversy and various views about the "may" and "shouldn't" have an abortion.

2. Types of Abortion

1) Types of Abortion From Perspective

In medical terms, there are two types of abortion, namely spontaneous abortion (spontaneous abortion) and intentional abortion (*abortus provocatus*). For more details about the types of abortion from a medical perspective, the authors will describe as follows:

a. Spontaneous Abortion (spontaneous abortion)

Spontaneous abortion (spontaneous abortion) is an abortion that occurs naturally, either without a specific reason or due to certain causes, such as disease, toxoplasma virus, anemia, high fever, and so on or due to an accident. In *fiqh* terms it is called *al-ishath al-afwu* which means abortion is forgiven. Abortion that occurs like this does not have any legal effect. Spontaneous abortion in medical science is further divided into four parts, namely as follows:

1) Abortion *Imminens* (threatened abortion), namely the presence of symptoms that threaten to occur abortion. In such cases sometimes the pregnancy can still be saved.

2) Abortion *Incipiens* (invariable abortion), meaning that there are symptoms of an abortion, but the fruit of pregnancy is still in the womb. In such case the pregnancy can no longer be maintained.

3) Incomplete abortion, if part of the pregnancy has come out and the rest is still in the womb. Bleeding that occurs is usually quite a lot, but not fatal, for treatment it is necessary to empty the uterus as soon as possible.

4) Abortion *Completes*, ie expulsion of the entire fruit of pregnancy from the uterus. This condition usually does not require treatment.

b. Intentional abortion (*abortus provocatus*)

Intentional abortion (*abortus provocatus*) is an abortion that occurs intentionally for certain reasons, in *fiqh* terms it is called *al-isqath al-dharury* or *al-isqath al-ilajiy* this type of abortion has legal consequences whose type of punishment depends on factors the background. This type of abortion includes two variants that is:

1) Abortion *artificialis therapicus* is a type of abortion whose unemployment is carried out by medical personnel due to medical indications. Usually this type of abortion is done by removing the fetus from the uterus even though it is far from the time of birth. This type of abortion is carried out as an act of saving the life of a mother after a medical examination because if her pregnancy is questioned it will endanger and threaten the health or life safety of the mother.

2) *Provocatus Criminalis* abortion is a type of abortion that is carried out without any cause from medical action or in other words it is not a medical health problem, but is usually caused by a request from the patient. Because it is caused by several factors including the economy, maintaining beauty, fears of moral sanctions. This type of abortion is then related and associated with actions that are contrary to law and ethics.

2. Types of Abortion from a Jurisprudence Perspective

In *fiqh* literature, abortion can be classified into five types, which are as follows:

a. Abortion (*al-isqath al-dzaty*)

Spontaneous abortion (*al-isqath al-dzaty*) means that the fetus aborts naturally without any external influence, or falls by itself. Most spontaneous abortions are caused by chromosomal abnormalities, only a small number are caused by infections, uterine abnormalities and chromosomal abnormalities, only a small number are caused by infections, uterine abnormalities and hormonal disorders. Abnormalities of seeds or chromosomes do not allow the embryo to grow normally, even if pregnancy

continues, the fetus will be born with congenital defects.

b. Abortion Due to Emergency or Medical (al-isqath al-darury/al-ilajiy)

Abortion due to emergency or treatment (al-isqath al-darury/al-ilajiy), for example, abortion is carried out because there are physical indications that threaten the mother's life if the pregnancy is continued. In this case the lesser risk is sacrificing the fetus, so this type of abortion according to religion is permissible. The principles of jurisprudence that support are: "The lighter of the two dangers can be done to avoid risk". more dangerous."

c. Abortion Due to Mistake or Accidental (khata')

Abortion is carried out because of a mistake or unintentional (khata') for example, a police officer is hunting for criminals in a crowded place. For fear of losing track, the police tried to shoot the criminal, but the bullet strayed into the pregnant woman's body causing her to miscarry. The same thing can also happen, when a police officer wants to file a criminal case against someone who is pregnant, because he is afraid, is stressed, and his soul is shaken so that it causes a miscarriage. The police action was classified as unintentional (khata').

d. Intentional Abortion (syibh 'amd)

Abortion is carried out in a deliberate manner (syibn 'amd). For example, a husband attacks his pregnant wife, causing her to miscarry. Katakana resembles intentional because the attack is not aimed directly at the fetus, but at the mother. Then due to the attack, the fetus is separated from the mother's body or miscarried.

e. Intentional and Planned Abortion (al-'Amd)

Abortion is carried out intentionally and planned (al-amd), for example, a mother deliberately takes medicine with the intention that her womb will fall, or she deliberately orders other people (doctors, shamans, and so on) to abort her pregnancy. This kind of abortion is considered a sin and the perpetrator is punished with a criminal (jinayat) for violating the rights of human children.

A. Health Law's View on Abortion Provocatus

Based on Law Number 36 Year 2009

In its development, regulations regarding Provocative Abortion or Criminal Abortion can be found in Law Number 36 Year 2009 concerning Health. If Articles 299 and 346 – 349 of the Criminal Code do not stipulate the issue of provocative abortion (especially criminal law) it is only regulating and explanatory (explaining). This principle serves to explain the application of Articles 75-78 when confronted with the articles of the

Criminal Code that regulate the issue of Abortus Provocatus.

Looking at the formulation of Article 75 of Law Number 36 of 2009 concerning Health, it is clear that the law prohibits abortion except for the type of abortion provocatus therapeuticus (abortion carried out to save the life of the mother and/or fetus). In the medical world, abortion provocatus medicinalis can be done if the life of the mother is in danger of death and can also be done if the child to be born is estimated

have severe disabilities and are indicated to be unable to live outside the womb, for example, the fetus suffers from ectopia chordalis (fetus that will be born without a chest wall so that the heart can be seen), rickets (fetus who will be born with an open spine without being covered by skin), or anencephaly (fetus who will be born with an open spine without being covered by skin). will be born without a big brain).

The health law also regulates abortions performed by rape victims which are indicated to cause psychological trauma to the mother. If the old health law did not contain specifically regarding abortion for rape victims, it caused debate and interpretation in various circles. With the new health law, there is no longer any debate regarding the legal certainty because there is an article that specifically regulates it.

Based on the description above, it can be concluded that Article 75 of Law Number 36 Year 2009 concerning Health regulates provocateur abortion which is allowed in Indonesia, namely abortion provocatus or medical indications or medicinalis. When examined further, the two regulations are different from each other. The Criminal Code recognizes the prohibition of provocatus abortion without exception, including abortion provocatus medicinalis or abortion provocatus therapeutics. However, Law Number 36 Year 2009 concerning Health actually allows abortion provocatus medicinalis with therapeutics specifications.

Based on the Republic of Indonesia Health Law No. 36 of 2009, Article 75 that everyone is prohibited from having an abortion can be excluded based on an indication of a media emergency that is detected from an early age of pregnancy and this rule is strengthened by Article 77 which states that the government is obliged to protect and prevent women from having an abortion as referred to in Article 75 regarding abortion not qualified, unsafe, and irresponsible as well as contrary to religious norms and the provisions of laws and regulations.

In unwanted pregnancies, abortions are generally carried out by criminal abortions for several reasons, pregnancy out of wedlock, problems with the

economic burden, the mother herself no longer wants to have children due to incest, health reasons and so on.

What is meant by unsafe abortion is termination of pregnancy carried out by people who are not trained/competent and use inadequate facilities, causing many complications and even death. Unsafe abortion is the unwanted termination of pregnancy by untrained personnel, or failure to follow medical procedures or both (WHO definition).

Generally, unsafe abortions occur because of the unavailability of adequate health services. Especially if the abortion is categorized without medical indications, such as rape victims, pregnant out of wedlock, failure of contraception and others. The fear of the prospective mother and negative views from the family or society ultimately demands that the mother-to-be perform an abortion secretly without regard to the risks.

B. Factors Causing Abortus Provocatus

Teenagers generally really need more attention, especially now that teenagers' free association is very open, even these teenagers do not hesitate to do things that are actually prohibited by religion. For this reason, it is the important role of parents and educators to give attention and understanding to these teenagers.

Adolescence is actually a time when a person has difficulty choosing his own identity, a person often feels himself unstable and difficult to make a decision, this is commonly referred to as the unstable life of teenagers.

In fact, according to several studies, cases of pregnancy out of wedlock increased by 29.8% and most of these teenagers unfortunately used abortion facilities to abort their pregnancy. Abortion itself is usually carried out in the medical world for a strong reason, for example, there are indications of the death of the mother or child, or the existence of a disease that can threaten the patient's life, so an abortion process is carried out to save the mother, but unfortunately it is actually used by parties or unscrupulous persons. irresponsible, by having an abortion because of an "accident" among teenagers. In general, the factors that cause abortion are:

1. Economic Factor

Economic factors are usually very closely related to a person's behavior and behavior, and most likely it can also happen to someone who is going to have an abortion, for fear and being squeezed by a lack of economic conditions, so that person feels unsure about being able to raise the child he is carrying. so that this act of abortion took place, which is actually strictly prohibited by religion and also the State

2. Social Factor

This social factor is usually related to the cause of abortion where the person is pregnant out of wedlock, this abortion behavior is indeed seen as a disgraceful act, it also cannot be separated from the people who have indeed looked at it, even the case of teenagers who have free sex becomes judged. that abortion can be done as a way out of his actions. abortion is also included in a social deviation.

3. Shame With Family And Neighbors

Free sex behavior among teenagers is indeed very concerning, so that the occurrence of pregnancy out of wedlock becomes a difficult situation to be separated from these behaviors. People who are already pregnant will usually feel ashamed of their family and neighbors because they consider it a disgrace. which is difficult to remove, so the path taken is by abortion.

4. Fear of the fetus contracting disease

There is also a mother who suffers from a disease, or it could be from both partners who have the disease, for fear of the fetus being infected by the disease so they decide to have an abortion or abort the womb, even though this is not necessarily the right thing.

5. Fear of Dangering Health

Abortion is always seen as a wrong thing, but this activity can be carried out with the official permission of the doctor if there are things that cannot be resolved and must be done for the sake of the mother's health, for example, an interrupted pregnancy, so if not An abortion will be very life-threatening for the mother.

6. Diagnosis of Fetal Abnormalities

The presence of a diagnosis from a doctor that can interfere with fetal development when the baby is born can also be one of the factors that causes an abortion to be carried out, for example because the mother has a sexually transmitted disease, usually this disease arises from the lifestyle of changing partners.

7. Don't Want Children

Another factor of the frequency of adolescents having abortions is because they are afraid that their school will be disrupted, this is also because of free sex that often occurs among teenagers, causing them to become pregnant, because usually teenagers are pregnant and are afraid of being expelled from school so that it will interfere with their studies. .

8. Family Disgrace

Disgrace to the family is indeed the biggest factor among these abortion cases, because they feel ashamed and afraid to defame the family so that these teenagers do not hesitate to have an abortion. this will also greatly affect the psychological impact of free sex.

9. Forced Couple

Free sex life among teenagers is indeed very worrying, one of them is if it happens to an unofficial partner, if an accident or pregnancy occurs, it is not uncommon for the male partner to often ask his lover or partner to abort the pregnancy. So this is due to the element of coercion from the couple.

10. Not Ready to Be a Parent

Because of their very early age, it sometimes requires a woman who is still under age to have an abortion on the fetus she is carrying, this is also what makes them unable to become parents at a young age, so things that should be prohibited are actually done. That's why the role of parents in adolescent development is important

11. Rape Victim

Among several cases of abortion in adolescents, there is also one factor that is concerning, one of which is adolescent rape victims, because they do not know who should be responsible, so it is not surprising that in this case the teenager must have an abortion to save his future.

12. Has no money to take care of children

Although there is no reason whatsoever that justifies the behavior of abortion, there are still reasons why these teenagers make this wrong activity, one of which is because they do not have the money to give birth or to take care of their child, so that inevitably abortion was carried out.

13. Lack of a sense of responsibility

Adolescence is not a time to think about children or domestic life, so this is the reason why these abortionists carry out these wrong activities, one of which is the lack of a sense of responsibility from both partners, or it could be from the side of men who do not want to be responsible for their actions. From several factors that have been discussed above, it is necessary to pay more attention to the role of parents in conducting youth development. as parents to pay more attention to your children who are still teenagers, and provide sexual education from an early age, strengthening religious life will be very important so that later children understand right and wrong in life and also about the psychological impact of people who have abortions.

14. Hereditary Disease Factors

The fetus has been exposed to teratogenic substances, in which pregnant women who have had a prenatal care get the fact that the baby they are carrying is physically disabled, or the pregnant woman suffers from severe (chronic) heart disease, and because she wants to prevent the birth of a baby with defects. default.

13. Lack of a sense of responsibility

Adolescence is not a time to think about children or domestic life, so this is the reason why these abortionists carry out these wrong activities, one of

which is the lack of a sense of responsibility from both partners, or it could be from the side of men who do not want to be responsible for their actions. From several factors that have been discussed above, it is necessary to pay more attention to the role of parents in conducting youth development. as parents to pay more attention to your children who are still teenagers, and provide sexual education from an early age, strengthening religious life will be very important so that later children understand right and wrong in life and also about the psychological impact of people who have abortions.

14. Hereditary Disease Factors

The fetus has been exposed to teratogenic substances, in which pregnant women who have had a prenatal care get the fact that the baby they are carrying is physically disabled, or the pregnant woman suffers from severe (chronic) heart disease, and because she wants to prevent the birth of a baby with defects. default.

16. Age Factor

Where young couples who are still young who are still immature & psychologically mature because the woman is already pregnant, have to build a premature family. Or the father of the child who is conceived is not the desired man/husband for the marriage. Or also because they want to finish their education. Or feel too old/young to have children.

17. Maternal Disease Factor

Where in the course of pregnancy it turns out to be a trigger, such as pre-eclampsia or eclampsia that threatens the life of the mother. Or the mother is infected with HIV. Other factors such as commercial sex workers, unmarried couples with free sex life or couples whose one/both are already married/married (infidelity) who are already pregnant. or failed contraceptive methods. Another reason is because the husband wants an abortion.

C. Criminal Liability for the Crime of Abortus Provocatus

The articles in the Criminal Code clearly do not allow an abortion in Indonesia. The Criminal Code does not legalize without exception. Even abortion provocatus medicalis or abortion provocatus therapeuticus is prohibited, including provocatus abortion performed by rape victims. The difference between the article above and Article 341 and Article 342 of the Criminal Code lies in the grace period for an abortion. So in this article, if it is carried out, it is not an abortion but a murder of a child.

Positive law in Indonesia, the regulation of abortion is contained in two laws, namely the Criminal Code articles 299, 346, 347, 348, 349 and 535 which expressly prohibits abortion for any reason. 36 of 2009 concerning Health, articles 75,76,77,78 prohibit abortion but still allow abortion

for medical indications and psychological trauma with certain conditions.

The act of abortion according to the Indonesian Criminal Code is categorized as a criminal act or is categorized as a crime against life. The articles of the Criminal Code that regulate this are articles 229, 346, 347, 348, 349 and 535. Although there is no single article in the Criminal Code that allows a doctor perform an abortion on a medical indication, even if it is to save the mother's life, in practice the doctor who does it is not punished if he can provide a strong reason and the reason is accepted by the judge (Article 48).

Provisions regarding criminal abortion can be seen in Chapter XIV Book II of the Criminal Code on crimes against life (particularly Articles 346 – 349). The full formulation of these articles is as follows:

Article 299 :

1. Any person who intentionally treats a woman or orders her to be treated intentionally informs or gives rise to the hope that because of this treatment the pregnancy can be aborted, shall be punished by a maximum imprisonment of 4 years or a maximum fine of three thousand rupiahs.
2. If the guilty person does so for profit or makes the act a quest or habit or if he is a physician, midwife, or pharmacist, the penalty is increased by one third.
3. If the guilty person commits the crime in carrying out a search, his right to conduct a search may be revoked. Article 346: A woman who intentionally aborts or terminates her pregnancy or orders another person to do so, is threatened with a maximum imprisonment of 4 years.

Article 347 :

1. Whoever intentionally aborts or terminates the womb of a woman without her consent, shall be punished by a maximum imprisonment of 12 years.
2. If the act results in the death of the woman, the punishment is a maximum imprisonment of 15 years.

In this Criminal Code, no explanation is given regarding the meaning of the content itself and provides a clear meaning regarding abortion and killing (turning off) the womb. Thus, we know that the Criminal Code only regulates criminal provocatus abortion, where all types of abortion are prohibited and are not permitted by law for any reason.

The regulation of abortion provocatus in the Criminal Code which is a legacy of the Dutch era contradicts the legal basis and politics, namely "to protect the entire Indonesian nation and to promote public welfare based on Pancasila and the 1945

Constitution because it prohibits provocateur abortion without exception". This is considered very burdensome for the medical community who are forced to carry out provocative abortions to save the mother's life which has been an exception outside the law. An example is the enactment of Article 349 of the Criminal Code, if this article is applied absolutely, then doctors, midwives, nurses, and other medical personnel can be accused of violating the law and be threatened with imprisonment.

Even though they could have had a provocative abortion to save the mother's life. Therefore, there is a need for a new statutory regulation that contains aspects of high legal protection for medical personnel in carrying out their obligations. The need for new laws and regulations is fulfilled in Law Number 36 of 2009 concerning Health.

In its development, regulations regarding Provocative Abortion or Criminal Abortion can be found in Law Number 36 Year 2009 concerning Health. If Articles 299 and 346 – 349 of the Criminal Code do not stipulate the issue of provocative abortion (especially criminal law) it is only regulating and explanatory (explaining). This principle serves to explain the application of Articles 75-78 when confronted with the articles of the Criminal Code that regulate the issue of Abortus Provocatus.

Looking at the formulation of Article 75 of Law Number 36 of 2009 concerning Health, it is clear that the law prohibits abortion except for the type of abortion provocatus therapeuticus (abortion carried out to save the life of the mother and/or fetus). In the medical world, abortion provocatus medicinalis can be done if the mother's life is in danger of death and can also be done if the child to be born is estimated to have severe defects and is indicated to be unable to live outside the womb, for example: the fetus suffers from ectopia chordalis (fetus who will be born without a chest wall). so that the heart can be seen), rickets (fetus who will be born with an open spine without being covered by skin), and anencephaly (fetus will be born without a big brain). The health law also regulates abortions performed by rape victims which are indicated to cause psychological trauma to the mother. If the old health law did not contain specifically regarding abortion for rape victims, it caused debate and interpretation in various circles. With the new health law, there is no longer any debate regarding the legal certainty because there is an article that specifically regulates it.

Based on the description above, it can be concluded that Article 75 of Law Number 36 of 2009 concerning Health regulates provocateur abortion which is allowed in Indonesia, namely abortion provocatus or medical indications or medicinalis.

When examined further, the two regulations are different from each other.

The Criminal Code recognizes the prohibition of provocatus abortion without exception, including abortion provocatus medicinalis or abortion provocatus therapeutics. But Law No. 36 of 2009 on Health actually allows abortion provocatus medicinalis with therapeutics specifications. In the context of criminal law, there is a difference between the old legislation (KUHP) and the new legislation. Whereas the laws and regulations here apply the principle of "lex posteriori derogate legi priori".

This principle assumes that if a new regulation is promulgated without revoking the old regulation that regulates the same material and the two contradict each other, then the new regulation will defeat or cripple the old regulation. Thus Article 75 of Law Number 36 of 2009 concerning Health which regulates abortion provocatus medicinalis can still apply in Indonesia even though the rules are actually different from the formulation of criminalist provocatus abortion according to the Criminal Code.

The application of the principle of lex posteriori derogate legi priori is actually one of the government's efforts to develop criminal law in Indonesia. Many of the provisions of the Criminal Code which in special situations are no longer relevant to be applied at this time. To overcome the weakness of the Criminal Code, the government issued a health law in the hope of providing a conducive atmosphere for the dynamics of Indonesian society today.

The principle of lex posteriori derogate legi priori is a legal principle that develops in all fields of law. One thing that is an advantage of the provocative abortion articles of Law Number 36 Year 2009 concerning Health is the criminal provisions. Criminal threats given to perpetrators of abortion provocatus criminalis are much heavier than criminal threats similar to the Criminal Code. In Article 194 of Law Number 36 of 2009 concerning Health, the punishment is a maximum imprisonment of 10 (ten) years. Whereas in the Criminal Code, the punishment for which is a maximum of 4 (four) years in prison or a fine of a maximum of three thousand rupiahs (Article 299 of the Criminal Code), a maximum of 4 (four) years in prison (Article 346 of the Criminal Code), a maximum of 12 (twelve) years in prison (Article 347 of the Criminal Code), and a maximum of 5 (five) years and 6 (six) months in prison (Article 348 of the Criminal Code).

Conclusion

From the results of this study can be concluded as follows:

The provisions of Law Number 23 of 1992 concerning Health, confirms that it is permissible to

carry out an abortion as an effort to save the life of the mother and or her fetus, this type of abortion is legally justified and gets legal protection and with medical considerations.

Social factors are the main factors in the occurrence of the crime of abortion in society. Bad life associations between men and women often cause a woman to become pregnant out of wedlock, still at a young age and in a weak economic condition.

Criminal liability for the crime of abortion is regulated in the Criminal Code. Positive law in Indonesia, the regulation of abortion is contained in two laws, namely the Criminal Code articles 299, 346, 347, 348, 349 and 535 which expressly prohibits abortion for any reason. as well as in the Republic of Indonesia Law no. 36 of 2009 concerning Health, articles 75,76,77,78 prohibit abortion but still allow abortion for medical indications and psychological trauma with certain conditions.

References

- Hardiwidjaja. Tennie. Aborsi. Gagas Media. 2008.
- Poernomo. Bambang. Asas Asas Hukum Pidana. Yogyakarta: Ghalia Indonesia. 2017
- Chazawi, Adami. Kejahatan Terhadap Tubuh Dan Nyawa. Jakarta: Radja Grafindo Persada. 2017
- Santoso, Topo. Kriminologi. Jakarta: Sinar Grafindo. 2012
- Kitab Undang-undang Hukum Pidana Undang-undang Nomor 36 Tahun 2009 tentang Kesehatan Undang-undang Nomor 23 Tahun 2002 tentang Perlindungan Anak