



LEGAL ANALYSIS ON ABORTUS PROVOCATUS IN THE LEGAL SCOPE OF INDONESIAN CRIMINAL CODE

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| Article | Abstract |
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| <p>Keywords: <i>Rape; Victim; Abortion; Abortus Provocatus.</i></p> <p>Article History Received: July 17, 2023; Reviewed: July 20, 2023; Accepted: July 27, 2023; Published: Aug 10, 2023</p> | <p>The debate regarding the abortion of prospective children by victims of rape or what is known as Abortus provocatus is a controversial matter as if this word is taboo to be combined, apart from that in Indonesia itself this is a very taboo thing and is even considered very reprehensible to do, where Indonesia itself has regulated regulations regarding this matter, but in the words regulated there is a dualism, namely between defending the rights of the prospective baby and overriding the rights of the prospective mother, in Article 31 paragraph (1) PP 61/2014 that abortion can only be carried out based on indications of a medical emergency. It can be seen that this regulation only allows women to abort their future babies for certain reasons and circumstances, but is this fair? For this reason, we are reviewing these legal regulations to provide further interpretation and new analysis regarding how these regulations should apply and whether these regulations regulate the rights of both parties, especially in Indonesian law itself. This analysis uses a descriptive approach to provide a systematic explanation or view regarding abortions carried out by rape survivors. Even though there are pros and cons in this case, the government has ratified the regulation Article 31 paragraph (1) PP 61/2014 that abortion can only be carried out based on indications of a medical emergency and pregnancy due to rape. which prohibits rape survivors from aborting their baby or future babies.</p> |

1. INTRODUCTION

The term abortion or Abortus provocatus comes from the Latin word meaning intentional abortion. Provocatus abortion is one of several types of abortion. In the Kamus Besar Bahasa Indonesia or KBBI, abortion means premature birth or abortion. Abortion Provocatus is the premature termination or discharge of a pregnancy from the womb. In other words, "discharge" means the intended expulsion of the fetus by human intervention,

whether by mechanical, medicinal, or other means.¹ In medicine, abortion is the premature expulsion of the products of fertilization (fetus, amniotic sac, and placenta) from the uterus. Charles C. Ryrie says that abortion involves "the expulsion of the human fetus before it can survive outside the womb." There are at least two general categories. First, spontaneous abortion, which is an abortion that occurs naturally, without any external force, and is commonly referred to as a miscarriage. Second, is abortion, where the child is deliberately removed from the mother's womb by an outside force.²

In Indonesia, the National Population and Family Planning Agency (BKKBN) records two million abortions each year, not to mention cases that are not registered by BKKBN itself. This induced preterm labor means forcing a helpless fetus to leave the womb prematurely, even though it is clear that it cannot survive outside the womb. There are three types of abortion: therapeutic abortion, eugenic abortion, and elective abortion. Therapeutic abortions are abortions performed to save the life of the mother; eugenic abortions, which are abortions performed because of damage to the fetus in the womb; and elective abortions, which are abortions performed out of selfishness or personal convenience because the mother and fetus are in good health.³ Dr. Koop said that the blood cells and heart of a 2.5-week-old fetus begin to develop; At 3 weeks, the formation of the brain, spinal cord and the entire nervous system begins; After 3.5 weeks, the heart begins to beat; At 4.5 weeks, the brain already has three parts, eyes, ears, respiratory system, digestive tract, gallbladder. By the eighth week you can read the brain activity and all the important organ formations are in place except the limbs. By the ninth and tenth weeks, the fetus is already capable of reflex actions, such as spraying and swallowing, and by the tenth week, the fetus is able to respond to external stimuli.⁴

Based on these facts, it is very difficult to argue that a fetus is not a human being and this is not a good reason to legalize abortion. Law professor James S. Witherspoon argues that the US Supreme Court erred in its analysis of *Roe v Wade*, stating that fetuses are not human. However, abortion advocates believe that the fetus is a mere fragment and that it is not a human being, despite the physiological fact that the fetus does not belong to the mother's body, as its genotype is different from that of the mother.⁵

The background: Indonesia, while generally considered a progressive and diverse

¹ Kusmaryanto, CB. (2005). *Tolak Aborsi, Budaya Kehidupan Versus Budaya Kematian*. Yogyakarta: Kanisius. [67]

² Enny Dewi, "Aborsi : Masalah Keputusan Rohani", *Consilium* 16, (2022), [38]

³ *Ibid.*, [39]

⁴ *Ibid.*, [42]

⁵ *Ibid.*, [42]

nation, continues to struggle with issues related to reproductive rights and gender-based violence. The issue of abortion has been a point of contention between religious and medical experts and has resulted in legal limitations on the procedure. However, recent cases of rape and sexual violence have raised questions about the legal framework surrounding abortion in the case of rape victims.

Abortus provocatus, taken from the Latin words of 'induced abortion' is the termination of a pregnancy through artificial means or with the intention of oneself or another person.⁶ In the context of Indonesian criminal law, this is a crime punishable with imprisonment.⁷ While there are provisions in place for abortions in the case of medical emergencies or when the life of the mother is at risk⁸, there is no legal provision for abortions in the case of rape victims. For example, there is a case where a 12 years old girl was raped by her close relatives for years and is undergoing intensive treatment because she is infected with HIV⁹ and a case where 15 years old girl was raped by her brother and sentenced with six months in prison for an abortion.¹⁰ This can both be dangerous to the health of the mother and worsen by the development and birth of the baby, also the fact that it will affect the mental health of the victims. However, in recent years, there have been cases where rape victims have been granted permission to undergo abortions on the grounds of personal and religious freedom.¹¹ While these cases have set a precedent in the legal space, they are not without controversy. In this article, we will explore the existing legal framework surrounding abortion in the context of rape victims, the moral and ethical implications of restricting access to abortion in these cases, and the potential impact of these decisions on women's rights and gender-based violence in Indonesia.¹²

⁶ Bayu Anggara. Harmonisasi Pengaturan Aborsi di Indonesia (Harmonization of Abortion Regulations in Indonesia). *Saraswati Law Journal*, Vol. 3, no. 1, 2021, [121]

⁷ Article 75 Paragraph 1 of Government Regulation Number (PP) 61 of 2014 concerning Reproductive Health.

⁸ Article 429 Section 3 of Law Number 17 of 2023 concerning Health

⁹ Police Report Number STTLP/2716/VIII/2022/SPKT/POLRESTABES MEDAN/North Sumatra Regional Police

¹⁰ Case Number 5/Pid.Sus-Anak/2018/PN of Muara Bulian District Court

¹¹ Provision of Article 463 Law Number 1 of 2023 of the new Indonesian Criminal Code

¹² Article 75 Paragraph 2 of Government Regulation Number (PP) 61 of 2014 concerning Reproductive Health.

2. RESEARCH METHODOLOGY

This analytical article employs a normative approach to jurisprudence. This means that the study was based on secondary data, namely primary legal materials and positive legal precedents related to the identified issues. This type of desk research, known as descriptive analysis, is used in this article to learn about the laws that govern contracts, or positive law, and the methods used by the general public to implement positive law.¹³

Besides, this analysis explains an analysis of what should be done, or about the best policy (normative) because in decision-making, both by the private sector and the government, the question of what should be done and what should not be done. In decision-making, whether by the private sector or the government, the questions that can be asked are not only asking for explanation questions that can be asked, not only asked for explanations of symptoms and forecasts that can be made but also about "What should be done". This is where the normative approach becomes important.¹⁴

Descriptive research is defined as research whose goal is to solve current problems (real problems) or practical problems by gathering data, analyzing, interpreting, and confirming it. Consequently, this study can provide insights into the complications surrounding spontaneous abortion, particularly those related to rape victims that are altered by with relation to rape victims governed by the abortus provocateurs law, in particular, this research can give an overview of criminal law.¹⁵

3. DISCUSSION

3.1 Analysis of Abortion Case Committed by The Rape Victim in Indonesian Legal Scope

As a state of law, Indonesia must be able to prioritize rights and obligations based on legal norms that have been regulated for those who violate the provisions then the sanctions obtained. Every offense and crime has been regulated both inside and outside the Criminal Code. In some cases of law violations, it is even possible to be free from criminal sanctions, one of which is abortion. Abortion or what could be called an abortion is a problem that has a very big impact felt by someone who has an abortion, both in terms of health, morals and religion. Abortion is the act of aborting a woman's womb, regardless of its form or method, which results in the birth of a baby or fetus from the woman's womb before it is

¹³ Bambang Sunggono, *Metode Penelitian Hukum*, Jakarta, PT Raja Grafindo Persada, 2002, [36]

¹⁴ Philipus M. Hadjon, *Pengkajian Ilmu Hukum, Makalah, Penataran dan Lokakarya Sehari Menggagas Usulan dan Laporan Penelitian Hukum Normatif*, Fakultas Hukum Brawijaya, Malang 22 Februari, 1997, [2-3]

¹⁵ Zainuddin Ali, *Metode Penelitian Hukum*, (Jakarta: Sinar Grafika) [105] (2016). Soerjono Soekanto, *Pengantar Penelitian Hukum*, (Jakarta: Universitas Indonesia Press). [21] (2014).

time to be born according to nature.¹⁶

In Article No. 36 of 2009 concerning health, abortion is a prohibited act¹⁷. Abortion is permitted as long as it is necessary to save the lives of the mother and fetus. This is called abortion medicinalis and is regulated in the Oslo Declaration, with the provisions that there must be medical indications and the decision must be made by two doctors who are competent in their field. In general, abortion or abortion is divided into two types of abortion, namely spontaneous abortion which is an unintentional miscarriage, and abortion provocatus which is a type of intentional abortion.¹⁸

1) Spontaneous abortion

Even though abortion is synonymous with intentional abortion or as a result of human intervention (provocation), spontaneous abortion is not preceded by mechanical factors or the administration of certain drugs that can trigger an abortion. Spontaneous abortion occurs naturally and is most often caused by problems with the fetus.'

2.) Abortion provocatus

People know the term abortion as the process of aborting a fetus that is carried out intentionally. In medical terms, an abortion carried out intentionally is called abortion provocatus or also known as termination of pregnancy. abortion provocatus is also divided into two, namely; abortion provocatus medicinalis and abortion provocatus criminalis.

In general, the regulation of abortion is contained in articles 299, 346, 347, 348 and 349 of the Criminal Code. This article clearly and straightforwardly explains the prohibition for any reason to carry out abortion, including abortion performed in an emergency (forced) that is the result of rape. Therefore, if abortus provocatus is a choice that must be taken and done by the victim of rape, either at the request or through the help of others with the consent or without the consent of the person concerned, then according to the provisions of the criminal code, the victim of rape and the perpetrator of rape cannot be free from the existing laws so that the Criminal Code does not provide legal protection to women where the Criminal Code states that women who deliberately abort or terminate the pregnancy or order someone to do so will be punished with a maximum imprisonment of four years.

¹⁶ Adami Chazawi, 2004, *Kejahatan Terhadap Tubuh dan Nyawa*, PT RajaGrafindo Persada, Jakarta, [113]

¹⁷ Article No. 36 of 2009 Concerning Human Right <https://leap.unep.org/en/countries/id/national-legislation/act-republic-indonesia-no-36-2009-health> Access on 24 February 2024

¹⁸ Mutia Isti Rahayu, *5 Jenis Aborsi Sesuai Usia Kandungan hingga Efek Sampingnya*, PT Media Kesehatan Indonesia (2019)

Indications of rape in Government Regulation no. 61 of 2014 article 34:

- 1.) Pregnancy resulting from rape as referred to in Article 31 paragraph (1) letter b is a pregnancy resulting from sexual intercourse without the consent of the woman following the provisions of statutory regulations;
- 2.) Pregnancy resulting from rape as intended in paragraph (1) is proven by:
 - a) Gestational age according to the rape incident, as stated by a doctor's certificate; and
 - b) Information from researchers, psychologists, and/or other experts regarding the alleged rape.¹⁹

The implementation of abortion already exists in Article No. 36 of 2009 and was further emphasized in Government Regulation No. 61 of 2014 Article 35.

- 1.) Abortion based on medical emergency indications and pregnancy resulting from rape must be carried out with safe, quality, and responsible.
- 2.) Safe, quality, and responsible abortion practices The responsibilities as intended in paragraph (1) include:
 - a) carried out by a doctor under standards;
 - b) carried out in health service facilities that meet the requirements determined by the Minister;
 - c) at the request or consent of the pregnant woman concerned;
 - d) with the husband's permission, except for rape victims;
 - e) non-discriminatory; and
 - f) does not prioritize material rewards.
- 3.) In the event that the pregnant woman as referred to in paragraph (2) letter c is unable to give consent, consent to the abortion can be given by the family concerned.
- 4.) In the event that the husband cannot be contacted, permission as intended in paragraph (2) letter d is given by the family concerned.²⁰

¹⁹Government Regulation No. 61 of 2014 article 34 Concerning Pregnancy Due to Rape <https://pshk.or.id/publikasi/lrwd-edition-25-august-2014> Access on 23 February 2024

²⁰Government Regulation No. 61 of 2014 article 35 Concerning Reproduction Health <https://pshk.or.id/publikasi/lrwd-edition-25-august-2014> Access on 23 February 2024

Provisions for abortion due to rape in Government Regulation no. 61 of 2014 article 37;

- 1) Abortion based on medical emergency indications and pregnancy resulting from rape can only be carried out after going through counseling.
- 2) Counseling as referred to in paragraph (1) includes pre-action counseling and ends with post-action counseling carried out by the counselor.
- 3) Pre-action counseling as intended in paragraph (2) is carried out with the aim of:
 - a) exploring the needs of women who wish to have an abortion;
 - b) convey and explain to women who wish to have an abortion that abortion can or cannot be carried out based on the results of clinical examinations and supporting examinations;
 - c) explain the stages of the abortion procedure to be carried out and the possible side effects or complications;
 - d) assist women who wish to have an abortion to make their own decision to have an abortion or cancel their desire to have an abortion after receiving information about abortion; and
 - e) assess the patient's readiness to undergo an abortion.
- 4) Post-action counseling as intended in paragraph (2) is carried out with the aim of:
 - a) observe and evaluate the patient's condition after the abortion procedure;
 - b) help patients understand their physical condition or condition after undergoing an abortion;
 - c) explain the need for a return visit for further examination and counseling or referral if necessary; and
 - d) explains the importance of using contraception to prevent pregnancy.²¹

The prohibition of abortion is not absolute in Indonesia based on the law where abortion can be said to be an act of treatment and regardless of criminal liability. Criminal liability is whether or not a person can be convicted. For certain indications, abortion is justified and

²¹ Government Regulation No. 61 of 2014 article 37

cannot be prosecuted in court if it is done so that the life and health of the pregnant mother can be helped. Although the Criminal Code prohibits abortus provocatus without exception, including abortus provocatus medicinalis or abortus provocatus therapeutics.

But the Health Law is actually a savior for those who want to do abortion with certain indications, this is because there is a criminal law context when there is a difference between general legislation (Criminal Code) with special legislation, namely the principle of *lex specialis derogat lex generalis*. So that in this case the Health Act which regulates abortus provocatus medicinalis can still apply in Indonesia even though there are significant differences regarding the formulation of abortion regulated in the Criminal Code.

The Health Act cannot revoke the formulation of abortion in the Criminal Code but special rules will certainly be able to override or paralyze it. Abortion will be illegal because the child in the womb has the right to be given equal protection by the law where it has the right to live, maintain and improve its degree of life. Abortion then becomes legal when it has fulfilled what is stipulated in Article 75 Paragraph 2, the exceptions are if:

- 1.) There are indications of medical emergencies that can threaten the life of the mother and/or child, the presence of severe hereditary diseases and / or congenital defects, as well as things that can make it difficult for the child born to live after birth; and
- 2.) Pregnancy due to rape which causes psychological trauma to the rape victim.²²

The reasons for legal and illegal abortions are generally due to not wanting to continue the pregnancy until childbirth which consists of health reasons, social reasons, economic reasons or even an emergency or force majeure. Rape abortion is the act of terminating a pregnancy that occurs because the victim of sexual violence is psychologically traumatized. Rape-induced abortion is one of the exceptions to the prohibition of abortion in Indonesia's health law. However, abortion due to rape must meet several conditions, including:

- 1.) A maximum gestational age of 40 days from the first day of the last menstrual period;
- 2.) The existence of a doctor's certificate stating the gestational age in accordance with the incident of rape, a police certificate stating that the victim has reported the rape;
- 3.) Written consent from the victim or legal guardian.

²²Government Regulation No. 36 Article 75 Paragraph 2 Concerning The Prevention of Abortion <https://jdih.kemenkeu.go.id/fulltext/2009/36tahun2009uu.htm> Access on 23 February 2024

4.) Pre- and post-abortion counseling by a competent and authorized counselor.

Abortion due to rape must be performed by a doctor who has a certificate of competence in abortion and in a health facility licensed to perform abortions. Abortion resulting from, must also be performed in a manner that is safe, effective, and in accordance with medical standards. Abortion due to rape is a victim right guaranteed by law. Victims are also entitled to protection, assistance, and recovery from the state, community, and family. She is also entitled to justice and compensation from the perpetrator of the rape.

3.2 Legal Analysis from The Case of The Rape Victim and The Contradiction With Indonesian Legal Scope and The Contradiction of the Society Perspective.

Several cases of rape against children that have occurred in Indonesia in recent years are dominated by cases of rape against children in the family environment as we state above as the example of the case that is occur on the 12 year old and the 15 year old . In which both of the victim are still minors that should get protection from everything that can harm them, especially from the family as the closest person and the first person where children get protection, should be the forefront of any threats, pressure, violence, and things that can harm them not as a scary place and future destroyer. Cases of rape against children within the family environment will be different from cases of rape against children outside the family environment.

Legal protection of children, including child victims of rape in the family environment, has been stated in the 1945 Constitution, namely Article 28B paragraph (2) of the 1945 Constitution, which reads: "Every child has the right to survival, growth, and development and the right to protection from violence and discrimination." In addition, it is emphasized in Article 28D paragraph (1) of the 1945 Constitution, which reads: "Every person has the right to recognition, guarantees, protection, and certainty of a just law and equal treatment before the law." In addition, Article 58 paragraph (1) of Law No. 39/1999 on Human Rights (Human Rights Law) states that every child has the right to legal protection from all forms of physical or mental violence, neglect, ill-treatment, and sexual abuse while in the care of their parents or guardians, or other parties or those responsible for the care of the child.

Paragraph (2) of the article stipulates that in the event that a parent, guardian, or caregiver of a child commits any form of physical or mental abuse, neglect, ill-treatment, and sexual abuse including rape, and or murder of a child who should be protected, then an aggravated sentence shall be imposed. In addition, Article 65 of the Human Rights Law states that every child has the right to obtain protection from sexual exploitation and abuse, kidnapping, child trafficking, and from various forms of abuse of narcotics, psychotropic

substances, and other additives. In this case, the perpetrator, who is a victim of rape, committed this criminal act, namely abortion, by force in order to continue her survival.²³

This also happen because in Indonesia itself people still thinking the victim is the one to blame for the rape and not the criminal, its sure that the criminal get their criminal sanction by the government but the child or the woman that is rape by the criminal receive more social sanction rather than the criminal this is expose the dualism in Indonesia society. In which if she did the abortion, she is a killer if she keep the baby there is no measurement that the social sanction will be end not haunting the victim for the rest of her life, even if she keep the baby the child also receive a social sanction Indonesia usually called an illegitimate child and still blaming the mother for it even if it's against her willing. Beside in several case in Indonesia when the family knows their daughter was rape, they didn't want to take risk of raising the child and forcing the woman to abort her own child without her willing, in this case the woman had no choice, but in the end the woman is arrested because she is the killer not a victim by any means.

Even in the case that we take as a sample the 12 year old child had to keep the baby even though she is suffering serious disease HIV/AIDS and the child is the child born from her womb is a child of incest which if he is born he will not be in a normal condition which also fulfils one of the regulations, namely the victim of rape can abort the baby if the birth of the baby is dangerous for the baby, but we couldn't forget that here the victim is a 12-year-old child where many incidents of the victim dying while giving birth to the child. There will also be questions about whether the above statement fulfills the requirement to carry out an abortion in accordance with Article 75, but unfortunately in this case the child prefers to give birth to the baby even though it threatens the lives of both parties just because of the fear of public opinion.

When viewed based on the Criminal Code (KUHP) in Articles 346 to 348 of the Criminal Code, abortion is included in the crime. So if someone performs an abortion that is expressly prohibited by the Criminal Code as a rule that is *Lex Generalis* can be charged with Articles 346, 347, or 348 of the Criminal Code. Abortion is regulated in the old Criminal Code, which is still in force at the time of publication, and Law 1/2023 on the new Criminal Code, which takes effect 3 years from the date of enactment,[2] 2026. The provisions are as follows:

²³ Hana Aulia Putri. *Perlindungan Hukum Terhadap Hak Anak Korban Pemerkosaan Dalam Lingkungan Keluarga*. Yogyakarta 2021 [14-20]

- a) Article 346 of the Criminal Code; Any woman who with deliberate intent causes a miscarriage or puts to death her pregnancy or causes another person to do so, shall be punished by a maximum imprisonment of four years.
- b) Article 463 of Law 1/2023;
 - 1) Any woman who commits abortion shall be punished by a maximum imprisonment of four years.
 - 2) The provision as referred to in paragraph (1) shall not apply in the event that the woman is a victim of a criminal act of rape or other criminal act of sexual violence causing pregnancy whose gestational age does not exceed 14 weeks or has indications of medical emergency.²⁴

But the regulation above doesn't specify the right of the victim but rather forcing the victim to keep the baby even though they are only a child who can't even feed the selves and still depend on their parents, but in the reality, it's also contradicting with the implementation of the human right that the child should receive in this case.

3.3 Legal Analysis from The Scope of the Norms and The Ethic

This analysis discusses the application of criminal law in the context of abortion, with a focus on the norms and ethics that form the basis of its implementation. We will explore how criminal law is applied in abortion cases and how norms and ethics influence the interpretation and application of the law. This discussion includes the role of professional ethics, societal standards, and the law in shaping abortion policy and practice. Responding to the case of a 15-year-old teenager who was suspected of having had an abortion. The application of criminal law in this case must be carried out fairly and wisely. Every decision must be based on an objective and unbiased assessment, taking into account all aspects involved, including the individual's background, the reasons underlying the action, and the possible impact on the individual and society.

Meanwhile, in the Indonesian Medical Code of Ethics published by IDI, it is stated in the explanatory section of article 10 that: A doctor may not perform abortion provocatus and euthanasia. Abortion provocatus can be justified as a medical measure, if it is the only way to save the mother from the danger of death. So, medical ethics itself no longer allows Indonesian doctors to perform abortions except for medical indications and the KODEKI

²⁴Cintyahapsari Lanthikartika. Deskriminalisasi Aborsi (abortus provocatus) oleh korban perkosaan Vol.10 Bali. 2022 [427-430]

formulation that applies in Indonesia.²⁵

3.4 Legal Analysis of Abortion Case Committed by Incest Compulsion and The Criminal Law Legal Scope

Rape committed by people who are still related by blood (incest) as the sample of the case that we mentioned above that involving the victim of the 12 year old that is rape by her own Uncle and other family relatives for several years and causing her to pregnant also causing HIV and AIDS for the 12 year old, In this case the Victim have experienced heavy pressure and burdens, it is unethical if the burden of women victims of rape is added to the presence of children who are not expected by the victim, beside the existence of the child is adding the burdens of the 12 year old child in this we must also considered that the born baby will be also carrying the same the disease as the 12 year old girl making it an exception to the abortion. According to the Indonesian Regulation No. 36 of 2009 concerning Health, Article 75, especially paragraph (2), provides room for abortion for victims of rape. The article states that a pregnancy resulting from rape which can cause psychological trauma to the rape victim can be subjected to an abortion. However, this article does not define whether the rape constitutes incestuous rape or not, which needs to be paid attention to, the article provides a limitation that the rape can cause psychological trauma for the victim of rape. The reasons for psychological pressure and trauma due to rape should be taken into consideration to determine that abortion due to rape is an exception, so it should be legal.²⁶

It has become public opinion or can be said as the public knowing that one of the reasons abortions is prohibited by law is because it is against public morals and/or religious morals, especially Indonesia is a country that uphold the norms and the religious norms that already state by the religion, but when connected with this opinion, actually what is against morals is that the rapist is not the person who had the abortion. In criminal law theory, Moejatno divides forced power into 2, namely forced power in the narrow sense or overmatch and forced power due to an emergency or noodtoestand which consists of 3 possibilities, namely:

- 1) People are caught between two interests in the event of a conflict between two interests,
- 2) People are caught between interests and obligations,

²⁵ Achdiat, *Dinamika Etika & Hukum Kedokteran dalam Tantangan Zaman*. Bandung: C.M, 2007. [165]

²⁶ Ekotama, Suryono. (2001). *Abortus Provokatus Bagi Korban Perkosaan Perspektif Viktimologi, Kriminologi dan Hukum Pidana*. Yogyakarta: Universitas Atmajaya. [32]

3) People are caught between two obligations.

In connection with this theory, Suryoo Ekotama argues that “in the case of provocative abortion, there is a conflict between 2 (two) rights, the rights of pregnant women are against the rights of the fetus. Thus, to determine whether a woman who performs an abortion provoke for her womb can be punished or cannot be judged from which interest is more important. The right of the fetus to survive or the right of women to continue running without psychological and social pressure”.²⁷

4. CONCLUSION

Under certain circumstances, abortion can be justified and cannot be prosecuted in court if it is done to preserve the life and health of the pregnant woman. Although the Criminal Code prohibits without exception abortion provocatus, including abortus provocatus medicis or therapeutic abortus provocatus. However, the implementation of abortion already exists in Article 36 the Year 2009 further confirmed in Government Regulation No. 61 Year 2014 Article 35. However, it must meet the indications of rape in Government Regulation No. 61 Year 2014 article 34, and there must meet the provisions of abortion due to rape in Government Regulation No. 61 Year 2014 article 37. The Health Law cannot revoke the formulation of abortion in the Criminal Code but special rules will certainly be able to override or disable it.

²⁷ Hamdani, Njowito. (1992). Ilmu Kedokteran Kehakiman, Second Edition. Jakarta: Gramedia Pustaka Utama. [115]

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Article 429 Section 3 of Law Number 17 of 2023 concerning Health.