



# Legalization of Abortion for Rape Victims In Law In Indonesia

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**Abstract.** Abortion is a very controversial issue from the past until now, where there are pros and cons to it. Where abortion is associated with the right of the fetus to survive and human rights. There are two reviews, namely abortion due to criminality and abortion for medical reasons as reviewed from Health Law No. 36 of 2009 which is a replacement for Health Law No. 23 of 1992 concerning health.<sup>1</sup>Of course, the public's views vary on this matter, where there are those who are pro and those who are against, but seeing that the public's view still does not agree if an abortion is carried out by a rape victim because the child being conceived is innocent and does not deserve to be killed, and in this case there is no indication of a medical emergency that endangers the woman's life. However, from the perspective of human rights for women who are victims of rape, she has the right to decide whether she wants to continue her pregnancy or not because she has a fetus in her womb not of her own will but because of coercion resulting from rape. Regarding the legalization of abortion, according to the public's view, it should not be done unless there is an indication of a medical emergency, because the fetus in the womb has the right to live and according to them if abortion is legalized it will shift the values and norms in society

**Keywords:** Abortion, Human Rights, Legalization.

## 1 Introduction

Abortion has been an issue for women for decades because it touches every aspect of life, be it moral, legal, political, and religious. These issues likely arise from conflicting beliefs about the fetus's right to survive and the woman's right to self-determination, in this case abortion. The development of the conflict that never reached a consensus has led to the emergence of pro-life advocates who seek support for life and pro-choice so that women in such situations can choose to determine their own attitude towards their own bodies for abortion.[1]

Moral and religious conflicts are by far the biggest issues that still complicate policy agreements to address abortion. As a result, illegal and unmedicated abortions continue to be a major and threatening problem. Ethical and social conflicts with religion and law make abortion a controversial issue. From a moral and social perspective, it is difficult for mothers to care for unwanted pregnancies, especially those resulting from rape. In addition, many women believe that they have the right to control their bodies. In terms of positive law in force in Indonesia, there is still a contradictory debate regarding the pros and cons of knowledge or understanding of the current laws, namely the Health Law, the Medical Practice

Law, the Criminal Code, the Law on the Elimination of Domestic Violence (KDRT) and the Human Rights Law.[2] This complex and dynamic situation has led to the emergence of illegal abortions, both those performed by formal and informal medical personnel in accordance with medical practice standards. Before the enactment of Law No. 4. Decree No. 36 of 2009 concerning Health and Regulation No. 23 of 1992 concerning Abortion. If the provisions of the Health Code include abortions performed in medical emergencies and the situation threatens the life of the mother and the baby who is disabled, making it difficult to live outside the womb.

## **2 Research methods**

This research method uses a normative research method by investigating the suitability of the hypothesis with the information that has been collected. All information comes from books, journals, related laws and government regulations, as well as several pages of other data providers which are then collected to be described and analyzed.

## **3 Discussion**

At present, abortion is a prohibited practice in Indonesia. This is in accordance with Article 346 of the Criminal Code which states "A woman who intentionally aborts or terminates her pregnancy or orders another person to do so, is subject to a maximum imprisonment of four years". This is actually influenced by the pro-life ideology adopted by the majority of the Indonesian population, so that the practice of abortion is considered a crime. Although in the general provisions of the Criminal Code the practice of abortion is a prohibited practice, there are exceptions given by the government to legalize abortion in certain conditions, which have been regulated in Law Number 36 of 2009 concerning Health, namely that the practice of abortion is permitted as long as it aims to prioritize the safety of the life of a pregnant woman who is threatened due to health problems in the mother's womb. There are other reasons that allow abortion, namely pregnancy due to rape.[3]

Law No. 36 of 2009 concerning health clearly states that abortion is a prohibited act. However, abortion can be justified to be carried out because there is an indication of a medical emergency to save the mother's life and abortion carried out by rape victims. Article 75 of the Health Law also states that a person who is going to have an abortion can only do so through pre- or post-abortion counseling or counseling. The counselor referred to here aims so that he does not make an emotional decision, which may later be regretted and it is certain that abortion is the last resort to be carried out. The abortion referred to in the Health Law must be a safe abortion and guarantee the safety of the mother and the recovery of her patient because it is carried out by experts who are indeed obstetricians and in a place that is in accordance with what is contained in government regulations. This is in accordance with the provisions of Article 77 of the Health Law No. 36 of 2009 which contains the understanding that the government is obliged to protect and

prevent women from abortions that are unsafe, of poor quality, irresponsible and contrary to religious norms and laws. Abortions that are carried out carelessly are very dangerous to the health and safety of pregnant women and can even result in death.[4]

The provisions of Health Law No. 23 of 1992 do not clearly and specifically regulate the provisions for abortion for rape victims. Therefore, it is still imperative that there is a view that abortion for rape is an abortion due to indications of a medical emergency. For example, medical problems are not only physical, but also psychological. The ambiguity and the absence of mention of abortion due to rape, causes scholars to tend to include this type of abortion as a criminal act, meaning that if the act is carried out, it can be punished. That is, many problems will arise, especially regarding the guarantee and legalization of abortions carried out by rape victims because our criminal law view is still based on the principle of legality. Clarity regarding the legalization of abortion for rape victims is finally clearly stated in Law No. 36 of 2009 concerning health. In Article 75 which regulates the provisions for abortion which include:

1. Everyone is prohibited from having an abortion
2. The prohibition as referred to in paragraph (1) may be excluded based on:
  - a. Indications of medical emergencies detected at an early stage of pregnancy, whether they threaten the life of the mother and/or fetus, suffer from serious genetic diseases and/or birth defects, or those that cannot be repaired, making it difficult for the baby to survive outside the womb.
  - b. Pregnancy resulting from rape can cause psychological trauma for the rape victim.[5]

Article 75 paragraph 2 number b clearly contains the legalization of abortion for rape victims. From this article it can be interpreted that a woman who becomes pregnant as a result of rape can perform abortion because there are indications that the victim will experience psychological trauma. However, the provisions of this article do not specifically regulate whether abortion for rape victims is included in abortion due to criminality or abortion for medical reasons.

Observing the laws that have long been in force in relation to the current situation, especially related to abortion for emergency reasons (coercion), in the end the resolution of the case is very dependent on law enforcers to uphold justice, especially for women who are clearly victims. The opinion of current legal experts should be a consideration in imposing criminal penalties, so it is not solely based on the wording of the law, but also considering the background of the act. This is also not easy in the process of proving it, because the rape must be proven first. Therefore, psychological reasons are not enough to be used as a reason for abortion if the act of rape cannot be proven or is not proven.

The view of the community that is pro-legalization of abortion is that women who become pregnant due to rape can have an abortion because basically the woman has an abortion because she is not ready to have a child and indeed in this case there is an element of coercion where the woman cannot fight the rape which causes pregnancy. With the presence of the child, it will add to the burden of the woman, both physically and psychologically, especially if the woman who was raped is a teenager who is mentally not ready to have children. And a child from rape will certainly

always traumatize the woman in the future and will continue to remember the incident psychologically. The view that agrees with this also argues that if the woman gives birth to her child, she can be ostracized in her environment, especially if the child does not have a father. Meanwhile, the community that is against abortion in rape victims believes that children born from rape are completely innocent, and it is unfair to have to be sacrificed. If the child is born and it turns out that the mother is psychologically unable to care for it, the child can be removed from the mother, for example, given to an orphanage or to a distant family who can care for the child. In addition, the public believes that with this legalization, it will open up opportunities for other abortions, such as abortions due to pregnancy outside of marriage or incest, which will open up opportunities for the legalization of abortion.

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