Abortion: A Review on Indonesia Regulations

Aborsi: Tinjauan atas Peraturan Indonesia

Hariansi Panimba Sampebulu*
Faculty of Law, Universitas Airlangga, Surabaya, Indonesia

The position of women in legal construction in Indonesia today is still difficult to adjust to the circumstances that occur, especially in terms of equality issues. The abortion that has been a problem for so long time, being discussed because of the rules that are considered not in accordance with the existing rules, and the amount of pressure from various things. Law and Women are always placed in objects that are not neutral, especially in terms of discussing reproductive health. The government and legislation feel that they have a stake in integrating reproductive health owned by women. It is the position of women in the law that gives rise to many struggle movements and the diffusion of feminism in Indonesia. The rules of Article 31 paragraph 1 and 2 of Government Regulation Number 61 of 2014 which regulate safe abortion need to be more attention and safeguarded, so that a woman has the right to be based on herself.

Keywords: Abortion, Law and Women, Reproductive Health, Feminism

Posisi perempuan dalam konstruksi hukum di Indonesia saat ini masih sulit untuk menyesuaikan dengan keadaan yang terjadi, terutama dalam hal masalah kesetaraan. Aborsi yang telah menjadi masalah sejak lama, sedang dibahas karena aturan yang dianggap tidak sesuai dengan aturan yang ada, dan besarnya tekanan dari berbagai hal. Hukum dan Perempuan selalu ditempatkan pada hal yang tidak netral, terutama dalam hal membahas kesehatan reproduksi. Pemerintah dan undang-undang merasa bahwa mereka memiliki kepentingan dalam mengintegrasikan kesehatan reproduksi yang dimiliki oleh perempuan. Posisi perempuan dalam hukumlah yang memunculkan banyak gerakan perjuangan dan penyebaran feminisme di Indonesia. Aturan Pasal 31 ayat 1 dan 2 dari Peraturan Pemerintah Nomor 61 Tahun 2014 yang mengatur aborsi yang aman perlu lebih diperhatikan dan dijaga, sehingga seorang wanita memiliki hak untuk didasarkan pada dirinya sendiri.

Kata Kunci: Hukum dan Perempuan, Kesehatan Reproduksi, Feminisme, Aborsi
INTRODUCTION

The public was stirred up by the ratification of the first Abortion Prohibition Act in the United States, namely in the state of Alabama. A number of layers of society reacted to the ratification, various groups opposed but not many supported. Prohibition of Abortion and Abortion that is allowed actually has become a very long debate, even though in each country it has been regulated in the codification of their respective laws. Decision of the US Supreme Court in 1973 Roe v. Wade explicitly dropped the rights to give women rights based on the Federal Law that applies to having an abortion. Butler and Walbert. (1973) With the verdict following, several countries codified the right to perform abortions as well as in Texas and Georgia. Butler and Walbert. (1973) But some countries still strictly prohibit these abortions, such as in Andorra, Va tican and San Marinon.

In the development of this decision there were 2 camps in the community that supported and refused, many movements were formed and a non-profit community was developing. The Pro-Life Movement which discusses the existence of babies in relation to the right to be born into the world and who have the opportunity to live, those who support this movement, movements while they are included in the decision to get children or abort children. Bajrd and Rosenbaum (1993) Both of these movements are approved by the culture, religion, moral teachings and habits of the surrounding community. More movement is done after many children have to end up in orphanages because parents are unable to care for and the death rate in illegal abortions.

Abortion in Indonesia is regulated in Article 75 paragraph (1) of Law No. 36 of 2009 concerning Health which basically regulates the prohibition of abortion with exceptions regulated in Article 75 paragraph (2).

Although it has been regulated as above, Abortion in Indonesia can be done with doctors who are experts in their fields and prior to counseling to determine whether the request to have an abortion is in accordance with applicable rules. But in reality the number of Abortions in Indonesia increased from year to year, even the National Population and Family Planning Board (BKKBN) using data from the Indonesian Demographic and Health Survey (IDHS) in 200, recorded the national average maternal mortality rate (AKI ) reaching 228 per 100 thousand live births. Of these, deaths due to abortion were recorded at 30%. In 2013 the Australian Consortium for Country Indonesian Studies showed results of research in 10 major cities and 6 regencies in Indonesia, which accounted for 43% of abosses per 100 live births. The abortion was carried out by women in urban areas by 78% and women in rural areas as big as 40%. Kusumawati (2014)

With the development of the abortion ban that is rife in the world of international law and the consequences that have arisen even though it has been regulated regarding abortion in Indonesia has made the prohibition of abortion and condemnation to those who have both abortions and those who assist abortion awaited development. Although all legal codification that occurs in the outside world must always be in accordance with the prevailing norms in Indonesian society, so that it needs to be clarified dealing with the prevailing rules and regulations which may apply later and the legal norms that apply in Indonesia.

The regulation of abortion in Indonesia is contained in two laws, namely the Criminal Code article 299, 346, 347, 348, 349 and 535 which expressly prohibits abortion for any reason and in the RI Law No. 36 of 2009 concerning Health Article 75.76,77,78 prohibits abortion but still allows abortion for medical indications and psychological trauma with certain conditions. In the Criminal Code the abortion action is categorized as a crime against life, even by the WHO (World Health Organization) made a category of things referred to as unsafe abortion (Unsafe Abortion) is termination of pregnancy carried out by people who are not trained / competent and use facilities that are not adequate, giving rise to many complications and even death.

Own abortion according to Skogrand et al. (2011) is an action to end a pregnancy by spending the results of conception before the fetus can live outside the womb. This action must be done intentionally to be categorized as abortion, either with the help of obstetricians, medicines, traditional ingredients, acupuncture, to massage on certain body parts. Unsafe abortion is the termination of an unwanted pregnancy carried out by untrained personnel, or not following a health procedure or both.

Five years since the Health Law was issued which regulations abortion, the government made new rules in Article 31 paragraph 1 and 2 Government Regulation number 61 of 2014. Even, in Article 34, an abortion can be done due to rape.

Government Regulation Number 61 of 2014 concerning Reproductive Health also regulates the gestational age allowed to have an abortion. According to Article 31 of the regulation, the act of abortion due to rape can only be done if the gestational age is no longer than 40 days from the first day of the last menstruation.
Prohibitions that were previously carried out by the Indonesian government then made a rule that the act of abortion could be carried out on the condition that it seemed to provide a solution to the Indonesian people, especially women. This can happen because of the many activists from all fields who fight for this, an abortion if the state prohibits it should provide a solution for the community of women who experience unwanted pregnancies, to refer to unmarried women (teenagers) who want to continue her pregnancy. Darwin (2015) The solution that is hoped for cannot be found in Indonesian society because the culture inherent in this country which is more of an eastern culture makes those who experience this still consider this as a taboo so that those who are pregnant will be excluded from their surrounding environment. With the growing law and the more open minded society, a solution must be found for this, many of us today, a haven for those who are pregnant at an early age but there is no place to go. The act of abortion is not always the answer for those who experience many of those who continue to choose to continue the pregnancy. In some areas in Bali, they even provide shelter for those who are pregnant and do not have families, even in shelters such as in Healthy Houses in Bali, a place for maternity is provided and the cost is free. The birth process is assisted by Ms. Robin Lim as the owner who is also a certified midwife who is the initiator and manager of this Healthy Home. Even in the delivery process is packaged in a pleasant concept so that the process of childbirth is no longer a painful thing but is a pleasant thing. Oktaviandita (2018)

WOMEN AND LAW IN INDONESIA

The principles in the CEDAW Convention (Convention on the Elimination of All Forms of Discrimination Against Women) have been ratified through Law No. 7 of 1984 as a reference in reviewing the position of women in the prevailing laws and regulations in Indonesia. In fact, in drafting a legislation the value of neutrality and objectivity is difficult to present if it has been associated with legal science. This is the basis of the CEDAW Convention which is also a strengthening of the struggle in upholding the emancipation of women in Indonesia. Although the legal theory of feminism originates from western world literature, this feminism theory can develop in Indonesia which has eastern culture because the problem of discrimination does not only occur in the global world but even in the local world. Discrimination is actually born from the culture adopted by the community, as in Indonesia which adheres to the values and concepts of patriarchy where in this concept women and men are placed in unequal power relations, this happens open only because of the sexuality of women themselves. History notes that the placement of women in colonial history because women are considered to be from ethnic, racial, skin color, class, and minority groups is happening continuously in various places in the world. Irinato (2008)

Various legal logic develops in this regard, but adherents of Legal Positivism assume that legal certainty will only be achieved if the law is right (its object) can mwwmoterr and then legitimizes existing rights and turns social rights into legal rights. Therefore, the law must be made by sovereign rulers, legal research must be separated from research on the relationship between law and social realities, some of which arise from social inequality that occurs in society. Law must be regarded as a closed system and has its own internal logic, so that legal decisions can be made deductively without the need to consider morality and politics. Weisberg (1993) Feminist approaches are political in relation to efforts to prioritize the political agenda in the form of extermination of women as disclosed by Patricia Smith as follows:

"... a feminist can believe and some do, that law can be conceptually determined by either reference to objective morality or preexisting legal standard but that as it currently stands, it is unjust and discriminatory because it is patriarchal." 10

Feminists believe that law can be applied in a conceptual manner by paying attention to and referring to subjective morality or legal standards that have existed in the community for a long time, but in reality the current law is unfair because it is patriarchal and found in the hierarchy. Even in the world of law where the concept departs from the goal of being fair cannot be separated from the hierarchical order, it is difficult to find an equal relationship, there is an arrangement in which one is more powerful than the other, although in our history women have constitutional rights granted by this country in full.

Women in Indonesia get their rights from the struggle that has been carried out since the 19th century which essentially fought for the independence of the nation, including increasing the position, role and progress of Indonesian women. On December 28, 1928 the Indonesian Women's Congress I was held with the theme "The Unity of the Indonesian Movement" which eventually became an inseparable part of the various national women's movements in Indonesia. The struggle was then expressed through the enforcement of equal rights with men in the 1945 Constitution and its amendment KOWANI (1986) . The international organization is increasingly aggressively regulating instruments related to the position of women, as it is said that the calm Convention on Women's Political Rights in 1953 which was ratified by Indonesia with Law No. 68 of 1956. Indonesia ratified the Women's Convention with Law No. 7 of 1984 concerning Ratification of the Convention concerning the Elimination of All Forms of Discrimination Against Women (Convention on the Elimination of All Forms of Discrimination Against Women) with a reservation against 1 paragraph 1. The ratification contained in article 7 (2) of Law No. 39 of 1999 concerning Human Rights, determines that "Provisions of international law which have been accepted by the Republic of Indonesia concerning Human Rights become national law.

The legalization of the legalization of abortion that was recently signed in Alabama was debated because of the Pro Life movement that agreed because it considered abortion to be
Abortion: A Review on Indonesia Regulations

Sambebulu

Abortion is a serious health concern due to the large number of illegal abortions, which result in the deaths of many women. The Indonesian government has taken action to regulate abortion, with the 2014 Health Act providing a legal framework for abortion. However, the implementation of this law has been limited due to various factors, including socioeconomic conditions and cultural beliefs.

Development of Abortion in Indonesia

Abortion in Indonesia is still a debated issue, with differing views on whether it is a right or a privilege of individuals. The law of abortion in ius constitutum establishes rights and obligations, but because of the influence of "development of people's lives" on "legal regulation of abortion," it is based on Roecoe Pound's theory that Law is a tool/instrument of social engineering (1918) and based on the assessment and selection in connection with the implementation of criminal law politics which means holding elections to achieve the results of criminal law which is best in the sense of fulfilling the requirements of justice and usefulness needed. So that the legal regulations regarding abortion in the future (ius constitutendum), there will be three choices, namely following the development of society, changing the development of society or managing the development of society. From various studies, it was found that legal arrangements regarding abortion, namely de normatieve kracht van de feiten, de feitelijke kracht van de normen which showed that the development of people's lives changed the provisions concerning abortion.

Conclusion

The development of the life of the Indonesian people (das sein) which can change the legal arrangements regarding illegal abortion to be legal (das sollen), while paying attention to the criminal sanctions for illegal abortion perpetrators regulated in Article 194 of the Health Law. The law of abortion in ius constitutum establishes rights and obligations, but because of the influence of "development of people's lives" on "legal regulation of abortion," it is based on Roecoe Pound's theory that Law is a tool/instrument of social engineering (1918) and based on the assessment and selection in connection with the implementation of criminal law politics which means holding elections to achieve the results of criminal law which is best in the sense of fulfilling the requirements of justice and usefulness needed. So that the legal regulations regarding abortion in the future (ius constitutendum), there will be three choices, namely following the development of society, changing the development of society or managing the development of society. From various studies, it was found that legal arrangements regarding abortion, namely de normatieve kracht van de feiten, de feitelijke kracht van de normen which showed that the development of people's lives changed the provisions concerning abortion.
tion to certain requirements, namely safe abortion to prevent
women from having unsafe abortions which often results in
maternal deaths. Given the endorsement of the abortion ban
that is increasingly ratified in various countries, Indonesia
has become a country that can adopt rules like the one just
passed by Alabama. The reason for controlling the abortion
that occurs without seeing the pregnancy’s background occurs,
as if removing the position of a woman to decide something
about her own body. Countries that become women’s places
instead use their authority to regulate one’s body by prohibit-
ing an abortion and not giving assistance if someone wants to
continue their pregnancy.

FUNDING
Universitas Airlangga for Master Thesis Programme

ACKNOWLEDGEMENTS

We hereby thank you to everyone that supported this research

REFERENCES

Bajrd, R. M. and Rosenbaum, S. E. (1993). The Ethics of Abortion Revised Edition
(England: Prometheus Books), 9.
Berer, M. (1993). Making abortion safe and legal. The ethics and dynamics of change.
Reproductive Health Matters 1, 5–10. doi:https://doi.org/10.1016/0968-8080(93)
90002-b.
Butler, J. D. and Walbert., D. F. (1973). Abortion, Medicine, and The Law, Third Ed.
107.
Chusna, A. (2016). Aborsi dan Hak Atas Pelayanan Kesehatan: Sebuah Tinjauan
Teologis, Yuridis, dan Medis. Justicia Islamica 9. doi: https://doi.org/10.21154/
justicia.v9i1.339.
Darwin, M. (2015). Orientasi Kebijakan Kependudukan :Tinjauan ke Depan. In
Kebijakan Kependudukan Indonesia, Yogyakarta: Pusat Penelitian kependudukan
UGM., ed. and others. 4–5.
Irinato, S. (2008). Perempuan dan Hak, menuju Hukum yang Berperspektif Kese-
taraan dan Keadilan., 2 edn. (Jakarta: Yayasan Obor Indonesia), 3.
KOWANI (1986). Sejarah Setengah Abad Kesatuan Pergerakan Wanita Indonesia,
(Jakarta: Balai Pustaka).
Kusumawati, U. D. (2014). Tercatat Angka Aborsi Meningkat di Perkotaan. CNN
Indonesia. https://perma.cc/XM4E-9JBC.
Makinwa-Adebusoye, P., Singh, S., and Audam, S. (1997). Nigerian Health Pro-
fessionals Perceptions About Abortion Practice. International Family Planning
Perspectives 23, 155. doi: https://doi.org/10.2307/2950839.
Mardiastuti, A. (2019). Setop KB, Koster Tegaskan Hak Warga Bali Punya Wayan-
Made-Nyoman-Ketut. detikNews. https://perma.cc/D2Z9-C5Df.
Oktaviandita, F. S. (2018). Robin Lim, Bidan Ekspatriat yang Gratisikan Biaya Per-
salinan Para Perempuan Bali. IDN Times. https://perma.cc/4NFW-P95M.
Skogrand, L., Johnson, A. C., Horrocks, A. M., and DeFrain, J. (2011). Financial
Management Practices of Couples Questionnaire. doi: https://doi.org/10.1037/
t41853–000.
Sofoevan, M. S. (2010). Aborsi dalam Perseptif Etik Kedokteran (Yogyakarta: Lab-
oratorium/UPF Kebidanan dan Penyakit Kandungan FK/UGM/RSUP Dr. Sard-
jito), 7.
Weisberg, D. K. (1993). Feminis Legal Theory (Philadelphia: Temple University
Press), 455.

Conflict of Interest Statement: The author declare that the research was conducted
in the absence of any commercial or financial relationships that could be construed
as a potential conflict of interest.

Copyright © 2019 Sampebulu. This is an open-access article distributed under the
terms of the Creative Commons Attribution License (CC BY). The use, distribution
or reproduction in other forums is permitted, provided the original author(s) and the
copyright owner(s) are credited and that the original publication in this journal is cited,
in accordance with accepted academic practice. No use, distribution or reproduction
is permitted which does not comply with these terms.