DIALECTIC OF THE MEANING OF ABORTUS PROVOCATEUR ON THE CRIME OF RAPE VICTIMS

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Abstract

The legalization of abortion for rape victims creates a dialectic in substance as well as the application of the theories and principles that surround it. The author tries to see the meaning from two different sides, namely from the interests of protecting rape victims and the interests of the children conceived by rape victims. The method used by the author is a normative juridical approach. The meaning contained in abortion provocatus from the point of view of a rape victim is actually a protection for the victim. This protection is certainly protection from the effects or impacts of the actions of the perpetrators of rape. Meanwhile, the meaning contained in abortion provocatus from the point of view of Human Rights (HAM) clearly leads to the fulfillment of the right to life of the fetus mentioned in the previous description, which is called a child who is still in the womb. The author provides suggestions as solutions to problems that may arise, including: (1) the need for synchronization and harmonization of existing regulations, in this case between regulations on health and regulations on human rights; (2) legislators must prioritize higher interests in the event of a similar situation. The human rights interests of children who are in the womb according to the author must be prioritized.

Keywords: Abortion, Dialectic, Meaning

A. Introduction

Indonesia is a state of law. The editorial is what is stated in the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (3) states that "Indonesia is a state of law". The implication is that all aspects of the life of the Indonesian nation must be based on law. This ideal originated from the mandate of reform around 1997-1998, the idea emerged to make changes to the 1945 Constitution of the Republic of Indonesia. Many implications emerged along with the changes that occurred in the 1945 Constitution of the Republic of Indonesia, from the emergence of new institutions and their authorities, more accommodated a meaning of a democracy and so on.
Legal development does not run by itself, but must always be planned as well as possible.\(^1\) Legal development must also be integrated with development directions in other fields, so that harmony can be realized. Whatever the direction of the planned legal development, of course, it must start with the outlines of ideas in the 1945 Constitution.\(^2\) This legal development must also include the recognition of basic rights as human beings. In the 1945 Constitution, provisions on Human Rights are regulated in Article 28 A to Article 28 J of the 1945 Constitution.

The provisions regarding the protection of basic rights possessed by every human being must be able to be translated into more applicable regulations. Likewise related to the regulation of abortion which should also be seen in its entirety and in depth. If we examine further the provisions for this abortion are in the Criminal Code. There are several articles that are classified as abortion criminalis, namely Articles 346, 347, 348, 349 and 350 of the Criminal Code. Article 346 of the Criminal Code states: "A woman who intentionally aborts or terminates her pregnancy or orders another person to do so, is threatened with a maximum imprisonment of four years."

In principle, Article 346 of the Criminal Code is one of the provisions which states that charges can be imposed on legal subjects who have abortions or people who intentionally assist in carrying out abortions. The articles listed in the Criminal Code above also indicate a rejection of abortion. Articles 346, 347 and 348 of the Criminal Code refer to the entire time of pregnancy, so that legally there is no difference between a pregnancy that is only two weeks old and one that is already four months old. However, in practice it seems that there is a difference in legal protection for pregnancies that are only two weeks old and those who are four months old (especially if it is related to the implementation of family planning programs in Indonesia).\(^3\)

This harsh criticism of abortion comes from the medical community who in medical practice often find cases where they have to provide help to a woman who is pregnant. If it is felt that there is a medical emergency that must be carried out, the medical community assumes that this reason can be the basis for an abortion. In Article 75 of Law No. 36 of 2009 concerning Health it is stated that:

1. "Everyone is prohibited from having an abortion.
2. The prohibition as referred to in paragraph (1) may be excluded based on:
   a. an indication of a medical emergency detected at an early age of pregnancy, whether it threatens the life of the mother and/or fetus, who suffers from severe genetic disease and/or congenital defects, or which cannot be repaired making it difficult for the baby to live outside the womb; or
   b. pregnancy due to rape which can cause psychological trauma for rape victims.
3. The action as referred to in paragraph (2) can only be carried out after going through pre-action counseling and/or advice and ending with post-action counseling carried out by a competent and authorized counselor.
4. Further provisions regarding indications of medical emergencies and rape, as referred to in paragraphs (2) and (3) shall be regulated by a Government Regulation."

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1 Benuf, Kornelius, and Muhamad Azhar. “Metodologi Penelitian Hukum Sebagai Instrumen Mengurai Permasalahan Hukum Kontemporer.” *Gema Keadilan* 7, no. 1 (2020): 23. https://doi.org/https://doi.org/10.14710/gk.7.1.20-33.
2 Gamal Abdul Nasir, “Kekosongan Hukum & Percepatan Perkembangan Masyarakat,” *Jurnal Hukum Replik* 5, No. 2 (2017): 172. https://Doi.Org/10.31000/Jhr.V5I2.925.
3 Endyk M. Asror, Gunawan Djajaputra, And Endang Pandamndari, Tinjauan Yuridis Pertanggungjawaban Pelaku Di Indonesia Terkait Tindakpidanaborsi’Synotic Law: Jurnal Ilmu Hukum,” *Synotic Law* 1, No. 1 (2022): 31–44. https://Doi.Org/10.56110/Sl.V1i1.2
The provisions of Article 75 paragraph (2) provide an explanation regarding the exception to the prohibition against the act of abortion being carried out. The exception is based on two reasons, namely an indication of a medical emergency and pregnancy due to rape which can cause psychological trauma to the rape victim. In line with the provisions of the article, in Article 31 paragraph (1) PP no. 61 of 2014 concerning Reproductive Health also provides the same direction. The article states that: “Abortion can only be carried out based on:
a. indication of a medical emergency; or
b. pregnancy as a result of rape.”

It is clear that the last two regulations above provide exceptions regarding the permissibility of abortion. It is the concern of the author that the second reason, which is “based on pregnancy due to rape”, should be studied in more depth. Moreover, it concerns the interests that lie behind it and our responsibilities as humans. Based on this, the author tries to provide his view regarding the meaning of the act of abortion which we can see from two different perspectives, namely the protection of rape victims on the one hand and the potential child conceived by rape victims.

Based on the above background, the author is interested in raising this topic. The formulation of the problem is What is the meaning of abortion in the crime of rape in the perspective of victim protection What is the meaning of abortion in the crime of rape in the perspective of human rights?

Novelty the article tries to correlate the provisions of the article above with the interest in the protection of rape victims. It is clearly stated that it is said to meet the criteria for reproductive health if it is physically, mentally and socially healthy as a whole. A person is said to be reproductively healthy if he is physically, mentally and socially balanced. So it is not only related to their reproductive organs, but the physical, mental and social balance of rape victims must always be maintained. If we correlate it with the condition of the rape victim, the victim physically suffers injuries to his vital organs due to the actions committed by the perpetrator. If we go to the mental, surely the mental of the victim will be disturbed because the rape incident is an event that is not wanted by everyone. Finally, socially, there will be victims who will feel ashamed of their surroundings.

The type of research used in compiling this paper is normative or doctrinal legal research. Normative legal research prioritizes library research. In the study of normative law, law is seen as a norm, whether it is positive (ius constitutum) or not yet positive (ius constitutendum). In normative legal research, the data source is only secondary data, which consists of primary legal materials, secondary legal materials and tertiary legal materials. Secondary legal materials are used to help understand various legal concepts in primary legal materials, analysis of primary legal materials is assisted by secondary legal materials obtained from various sources, including journals, books, papers, and other scientific works. The approach used is normative juridical, by approaching the law and through a legal hermeneutic approach, by interpreting the relevant legal provisions. The data collection technique is done by literature study.

B. Discussion
1. The Meaning of Abortion in the Crime of Rape from the Perspective of Victim Protection

An unwanted pregnancy can lead to two choices, namely to keep the baby even though the pregnancy does not go according to plan and may even have a negative impact on the parents or the choice to abort the pregnancy. As a result of unwanted pregnancies, the decision often leads to an abortion. The debate about abortion or in other terms that we know as abortion has

4 Rini, “Ketika Aborsi Menjadi Pilihan: Analisis Pengambilan Keputusan Dalam Melakukan Aborsi,” Jurnal IKAIGHT-HUMANIORA 6, No. 1 (2021): 77–87, Https://Journals.Upi-Yai.Ac.Id/Index.Php/Ikraith-Humaniora/Article/Download/1487/1213.
actually been around for a long time. Abortion implies that the womb is aborted before the time for birth, the womb is removed from the mother's womb. This issue is full of polemics and debates. There are parties who agree with this abortion, but many also oppose the legalization of abortion for rape victims. The diversity of views on the legality of abortion is the reality of normative discourse launched by various groups to answer the problems that arise in society.\(^5\)

The medical definition means that abortion is the termination of a pregnancy before viability, before the fetus is able to live alone outside the womb, whose gestational age is estimated to be under 20 weeks (WHO). This definition clearly implies that the act of abortion is carried out on a fetus that cannot live outside the womb.\(^6\) Abortion or better known in legal terms as \textit{Abortus Provocatus} which is written in Latin has the meaning and meaning of intentional abortion or the intention of oneself or others.\(^7\) Based on the abortion process, abortion is divided into several types, including:

1. \textit{Spontaneous} abortion or spontaneous abortion / natural. This abortion occurs naturally, without any action
2. \textit{Abortion provocatus} or abortion that is done intentionally. This type of abortion is divided into two, namely abortion carried out for medical indications because there is a problem or complication (\textit{abortion provocatus therapeuticus}) and abortion carried out intentionally because they do not want the presence of the fetus (\textit{abortion provocatus criminalis}).\(^8\)

There is a difference between the act of abortus provocatus therapeuticus which does not contain a criminal nature and the act of abortus provocatus criminalis, which has a criminal nature.\(^9\) The issue of abortion cannot be viewed simply, from a religious point of view, abortion is expressly stated as a prohibited practice. Not much different from a religious perspective, abortion from a moral point of view is also considered an immoral act, since substantially abortion is nothing more than a form of killing an innocent fetus.\(^10\)

Abortion is one of the most dangerous health issues and has the most impact on the mortality rate in Indonesia.\(^11\) Abortion for pregnant women is indeed a very complicated problem. Abortion is not without risk if it really becomes an option for women who are rape victims. In addition to health at stake, of course, the consideration of life is at stake. However, abortion is an option for victims who are pregnant due to rape. 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.\(^12\) This abortion provision has been accommodated through Law no. 39 of 2009 concerning Health. Abortion is considered as one of the means to

\(^5\) Mufliha Wijayati, “Aborsi Akibat Kehamilan Yang Tidak Diinginkan (KTD): Kontestasi Antara Pro-Live Dan Pro-Choice,” \textit{ANALISIS: Jurnal Studi Keislaman} 15, No. 1 (2015): 51–52. :\textit{Https://Doi.Org/10.24042/Ajsk.V15i1.712}

\(^6\) Rita Serena Kalibonso In Mufliha Wijayati, \textit{ABORTION DUE TO UNWANTED PREGNANCY (KTD): The Contest Between Pro-Live And Pro-Choice}, \textit{ANALYSIS: Journal Of Islamic Studies}, Volume 15, Number 1, June 2015. Pg. 46

\(^7\) Anggara Bayu, “Harmonisasi Pengaturan Aborsi Di Indonesia,” \textit{Jurnal Hukum Saraswati} 03 (2021): 83–104. :\textit{Https://Doi.Org/10.36733/HhsnVs2/}

\(^8\) Flick In Stanislaus Atulim. \textit{MORALITY PERSPECTIVE IN ABORTION CASE}, \textit{JOURNAL OF Yudisial Vol/IV/No-03/December/2011}. Pg. 313-314

\(^9\) Gracia Novena Maridjian, “Aborsi Dalam Penerapan Hukum Pidana Di Indonesia,” \textit{Lex Crimen} 8, No. 6 (2019): 114–21.

\(^10\) Rina Shahriyani Shahrullah Et Al., “Analisis Yuridis Pengaturan Abortus Provokatus Terhadap Korban Pemerkosaan Di Indonesia,” \textit{Jurnal Hukum Samadra Keadilan} 15, No. 2 (2020): 251–63. :\textit{Https://Doi.Org/10.33059/Jhsk.V15I2.2613.}

\(^11\) Handoko, R. Tektona, Q. Zahro. “Jurnal Supremasi ,,” \textit{Jasa, Pengawasan Keuangan, Layanan Teknologi, Berbasis 10}, No. 24 (2020): 12–22.

\(^12\) Rumelda Silalahi And Rasmita Luciana, “Pandangan Hukum Kesehatan Terhadap Abortus Provocatus Berdasarkan Undang-Undang Nomor 36 Tahun 2009,” \textit{Jurnal Darma Agung} 27, No. 3 (2019): 1082, \textit{Https://Doi.Org/10.46930/Ojsuda.V27i3.367}.
fulfill women's reproductive health. When we look at Article 71 paragraph (1) of Law no. 36 of 2009 concerning Health, we can know the definition of reproductive health. The article states that: "Reproductive health is a state of complete physical, mental and social health, not merely free from disease or disability related to the reproductive system, function, and process in men and women."

Some of the reasons, background why the pregnancy that occurs must then be aborted, among others. Nani Soewando's Medical Reasons details the following medical reasons: to save the life of the mother/woman, to maintain the health of the mother/woman, to prevent severe disturbances and remain to the health of women, to prevent harm to the physical or mental health of the woman or one of the children in the family, to prevent harm to the soul or women's health, and to prevent birth with severe physical or mental distress. The legalization of abortion of rape victims aims to protect the future of rape victims.

The author tries to correlate the provisions of the article above with the interest in the protection of rape victims. It is clearly stated that it is said to meet the criteria for reproductive health if it is physically, mentally and socially healthy as a whole. A person is said to be reproductively healthy if he is physically, mentally and socially balanced. So it is not only related to their reproductive organs, but the physical, mental and social balance of rape victims must always be maintained. If we correlate it with the condition of the rape victim, the victim physically suffers injuries to his vital organs due to the actions committed by the perpetrator. If we go to the mental, surely the mental of the victim will be disturbed because the rape incident is an event that is not wanted by everyone. Finally, socially, there will be victims who will feel ashamed of their surroundings.

Rape victims take a long time to overcome traumatic experiences, some even never return again to the normal state they were before. According to Wirdjono Prodjodikoro, what is meant by Rape is a man, who forces a woman who is not his wife to have sex with him, so that in such a way that he cannot do, then he is forced to do the copulation. The concept of sexual violence contained in the Declaration on the Elimination of Violence against Women, several characteristics are mentioned, namely: The act of sexual violence is directed at the woman, so that the victim is a woman; Attacking the rights possessed by women; and Causing physical and mental harm.

Everyone has the same rights regarding their reproductive health. As for the rights possessed by a person related to reproductive health, we can see Article 72 of Law no. 36 of 2009 concerning Health. The article states that:

a. live a reproductive life and sexual life that is healthy, safe, and free from coercion and/or violence with a legal partner.

b. determine their reproductive life and are free from discrimination, coercion, and/or violence that respect noble values that do not degrade human dignity in accordance with religious norms.

13 Munarif, “Alma* Ha< Dir Analisis Perbandingan Hukum Aborsi Menurut Hukum Islam Dengan Hukum Pidana Indonesia Comparison Analysis Of Abortion Law According To Islamic Law And Indonesian Criminal Law,” *Jurnal Ilmu Hukum Dan Ekonomi Islam* 4, No. 1 (2022): 73–86, [Www.Lbh-Apiik.Or.Id/Fact](http://Www.Lbh-Apiik.Or.Id/Fact).

14 Linda Fidawaty, “Aborsi Dalam Perspektif Hak Asasi Manusia Dan Hukum Islam (Analisis Terhadap Peraturan Pemerintah No. 61 Tahun 2014 Tentang Kesehatan Reproduksi),” *Al-'Adalah* 14, No. 1 (2018): 107, [https://Doi.Org/10.24042/Adalah.V14i1.2930](https://Doi.Org/10.24042/Adalah.V14i1.2930).

15 Cindy Oeliga Yensi Afita, “Pengaturan Aborsi Dalam Perspektif Perundang-Undangan Indoenesia,” *Rio Law Journal* 1, No. 1 (2020), [https://Doi.Org/10.36355/Rlj.V1i1.329](https://Doi.Org/10.36355/Rlj.V1i1.329).

16 Siti Rochayati, “Legalitas Tindakan Abortus Provocatus Perkosaan,” *Legalitas Tindakan Abortus Provocatus Perkosaan* 16 (2018): 75–85.

17 Kesna Elia Pasaribu. *CRIMINAL ACT OF RAPE BY A WOMAN AGAINST A MAN IN INDONESIA. Novum:Journal Of Law Vol 9 No 1* (2022)
c. determine for themselves when and how often they want to reproduce medically healthy and not against religious norms.
d. obtain correct and accountable information, education, and counseling regarding reproductive health.

The provisions contained in Article 72 paragraph (1) of Law no. 36 of 2009 concerning Health confirms that a person has the right to live his reproductive life in a healthy, safe and free from coercion. Rape victims certainly do not want the rape incident they experienced. The possibility of infectious diseases transmitted by the perpetrators of rape is also the suffering of the victims. It is clear that the reproductive rights of the victims are taken away by force by the perpetrators of rape. Rape victims have the possibility of experiencing post-rape stress which can be divided into two, namely immediate stress and long-term stress. Stress that occurs immediately is a post-rape reaction such as physical pain, guilt, fear, anxiety, shame, anger, and helplessness. Long-term stress is a certain psychological symptom that is felt by the victim as a trauma that causes the victim to have a lack of self-confidence, a negative self-concept, shutting himself off from relationships, and also somatic reactions such as palpitations and excessive sweating. If after the rape incident there is no support given to the victim, then the victim may experience post traumatic stress disorder (PTSD), namely emotional disturbances in the form of nightmares, difficulty sleeping, loss of appetite, depression, fear and stress due to the events experienced. victim and has been going on for more than 30 days. Support from all parties is needed to prevent PTSD.18

The provisions of Article 72 paragraph (2) of Law no. 36 of 2009 concerning Health explains that a person has the freedom to determine their reproductive life and respect for their dignity. Incidents of rape experienced by victims who were carried out by force and by means of violence have degraded the dignity of the victims. Acts committed by perpetrators of rape certainly violate religious norms and noble values of Indonesian society.

The provisions of Article 72 paragraph (3) of Law no. 36 of 2009 concerning Health emphasizes that a person has the right to determine his own intensity in reproducing in a healthy manner and according to religious norms. In principle, the perpetrators of rape have taken away the rights of the victims in determining the intensity of their reproduction.

Being a victim of violence and sexual harassment will have many negative impacts on the victim. Some of the most common impacts are:
1. Psychological Impact.
   From the results of the study, as many as 79% of victims of violence and sexual harassment will experience deep trauma, besides the stress experienced by the victim can interfere with brain function and development.
2. Physical Impact.
   Sexual abuse and harassment of children is a major factor in the transmission of Sexually Transmitted Diseases (STDs).
3. Impact of Body Injury.
   Child sexual abuse and abuse can cause internal injuries and bleeding. In severe cases, internal organ damage may occur. And in some cases it can lead to death. This is influenced by the age of the victim and the level of power of the perpetrator when committing the crime.
4. Social Impact.

18Ekandari, RAPE, IMPACT, AND ALTERNATIVE HEALING, JOURNAL OF PSYCHOLOGY 2001 UGM, NO. 1. Hlm. 1-2
Victims of violence and sexual harassment are often ostracized in social life, something that we should avoid because victims certainly need motivation and moral support to get back up to live their lives.\textsuperscript{19}

The meaning contained in \textit{abortion provocatus} from the point of view of a rape victim is actually a protection for the victim. This protection is certainly protection from the effects or impacts of the actions of the perpetrators of rape. This abortion itself has an impact or a person's risk after carrying out this abortion, where the rise of abortions carried out by underage teenagers caused by premarital sex can affect the physical, psychological and social risks where the physical risk is felt by a person. those who have had an abortion are experiencing bleeding, changes in body shape and also a lack of body immunity, while the psychological risk experienced is a sense of trauma and there are some people who feel guilty for having an abortion and the most influential is the emergence of shame resulting from the surrounding environment if the people around them know about the act of abortion it will change people's views of the person who commits the crime of abortion.\textsuperscript{20}

2. The Meaning of Abortion in the Crime of Rape from a Human Rights Perspective

Abortion in Arabic is called "ijhadh", which has several synonyms namely; isqath (drop), iqla' (throw), tharah (throw) and imsah (remove). \textsuperscript{21}Abortion (ijhadh or isqath) according to the language is aborting the fetus before the completion of its creation, or before the completion of the pregnancy. Both before the soul was blown and already, and both the fetus was male and female. So it is not called ijhadh unless the fetus is removed before the time of birth and in a dead state.\textsuperscript{22}

Apart from the formal law that regulates it, abortion is a phenomenon that is closely related to the socio-cultural values of religion that live in society. In the context of Indonesian society, abortion tends to be a social disgrace rather than a manifestation of the free will of each individual. Abortion is a problem that is full of social, cultural, religious, and political values.\textsuperscript{23}

Abortion is considered an act that is not in line with the norms and morals of Eastern culture, because Eastern cultures still have strong religious beliefs.\textsuperscript{24} Pros and cons always arise when discussing this one topic. In the case of abortion, the rights between the two parties are mutually exclusive so that after all, a choice must be made, whether to prioritize the rights of the mother or the rights of the fetus? Does the mother have the right to decide to terminate the pregnancy in her body when she doesn't want to? On the other hand, does the fetus (prospective individual) have to be respected for its right to life, which means that the mother does not have any right to end the life of the fetus she is carrying? Which rights should be promoted? Maternal rights or fetal rights? Is the fetus a part of the mother's body and therefore its autonomy is attached to the mother's autonomy, or is the fetus another individual that must have its own autonomy outside of the mother's autonomy? These choices have the same basis of justification, namely individual rights, but end up with two opposite choices. There is no third option that can mediate these two choices.

\textsuperscript{19}Mia Amalia, \textit{CRIME OF SEXUAL VIOLENCE (RAPE) AGAINST CHILDREN IMPACT AND HANDLING IN THE JURISDICTION OF CIANJUR REGENCY}, Justitia Pulpit Journal Vol. II No. 01 Issue January-June 2016 . Hlm. 656

\textsuperscript{20}Ida Bagus Wirya Dharma, “Legalitas Abortus Provocatus Sebagai Akibat Tindakan Pemerksosaan,” \textit{Kertha Wicaksana} 16, No. 1 (2022): 45–50, \url{https://doi.org/10.22225/Kw.16.1.2022.45-50}.

\textsuperscript{21}Nining Nining, “Hukum Aborsi Dalam Perspektif Islam,” \textit{Jurnal Hukum Replik} 6, No. 2 (2018): 203, \url{https://doi.org/10.31000/jhr.v6i2.1445}.

\textsuperscript{22}Ibid.

\textsuperscript{23}Tanti Kirana Utami, \textit{DOCTOR'S RESPONSIBILITY IN PERFORMING ABORTION WITHOUT PERMISSION OF THE CONTAINING MOTHER OR FAMILY IN A POSITIVE LEGAL PERSPECTIVE IN INDONESIA}, Journal Of The Justitia Pulpit Vol. I No. 02 July-December 2015 Edition. Pg. 505.

\textsuperscript{24}Rochayati, “Leg. Tindakan Abort. Provocat. Pemerksaan.” Jurnal Ilmu Hukum Vol.16 No 1. 2018
One must be chosen at the expense of the other. If the mother's autonomy is a priority, the right to life of the fetus must be sacrificed, but if the right to life of the fetus is put forward, the autonomy of the mother in making choices must be sacrificed. To overcome this, John Locke postulated that in order to avoid such conflicts of interest or the uncertainty of living for these rights in this world, human beings have taken part in a social contract or a voluntary bond, by which they exercise their rights. which cannot be revoked is handed over to the state authorities.

Evidence of states' responsibility for the protection of human rights, namely the discovery of human rights concepts in international instruments, especially on human rights, which are then implemented into the national laws and regulations of each country. The emergence of Government Regulation no. 61 of 2014 concerning Reproductive Health confirms that abortions performed by rape victims are accepted. Although in fact there is still controversy in the community, the existence of this government regulation clarifies what is contained in Article 75 paragraph (1) of Law no. 36 of 2009 concerning Health. Government Regulation No. 61 of 2014 concerning Reproductive Health is the implementation of Article 75 paragraph (1) of the Health Law. Abortion is actually prohibited, but there are exceptions if there are indications of a medical emergency and pregnancy due to rape which can cause psychological trauma to the rape victim.

Rape is a big problem that causes deep trauma for victims, especially if they have to bear children as a result of the heinous acts committed by the perpetrators. Allowing abortion for rape victims has the aim of protecting the future of rape victims. The reason is to avoid the psychological trauma and social burden of women who are victims of rape. Women who are rape victims also have the freedom to determine something for themselves, especially regarding an unwanted pregnancy that will have a social and psychological impact. This is done based on the future interests of rape victims.

In looking at the legal position of abortion in Indonesia, it is very necessary to look again at what is the purpose of the abortion act. Every Human Being has Human Rights attached to the essence and existence of man as a creature of God Almighty. On the one hand, the interests of protection against rape victims get a comparison of interests that are no less important, namely the interests of the fetus in the womb of women who are rape victims. The fetus which is the prospective child has an interest in the form of the right to life which is the most basic human right of a human being. Referring to Article 28A which states that: "Everyone has the right to live and has the right to defend his life and life."

The provisions of Article 28A of the 1945 Constitution above emphasize that everyone has the right to defend his life. The reason is because it is the most basic human right that exists in every human being. The definition of human rights itself, as stated in the paper by the Chief Justice of the Supreme Court is: "...an inherent right that belongs to God's creatures and is a

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25 Muhadjir Darwin, *ABORTION CONTROLS AND POLICY OPTIONS*, Population, 8(2), 1997. Pg. 83.
26 EVA ACHJANI ZULFA, *REVISING THE MEANING OF THE RIGHT TO LIFE AS A HUMAN RIGHT*, Lex Journalica Vol. 3 / No. 1 / April 2005. Pg 12.
27 Lucia Ch. O. Tahamata, *CHILDREN'S RIGHTS TO LIFE IN CONTENT OUTSIDE OF LEGITIMATE MARRIAGE IN HUMAN RIGHTS VIEW*, Sasi Journal Vol. 21 No. 2 Monthsjuly - December 2015. Pg 59
28 Shafira Fatahaya, *LEGALITY OF ABORTION PERFORMED BY CHILDREN DUE TO INCRESSION RAPE*, Journal Of USM Law Review Vol 4 No 2 Of 2021. Pg. 507
29 Agustina, *ABORTION IN THE PERSPECTIVE OF HEALTH LAW AND THE CRIMINAL CODE*. Scientific Journal Of Faculty Of Law Students (JIM FH), Volume IV Number 2 (April 2021). Pg. 87
30 Nuralisyah, *Tinjauan Yuridis Tindak Pidana Aborsi Yang Dilakukan Anak Dibawah Umur*. Jurnal Ilmu Hukum Vol 7, No 2 (2021).
gift from God to all His servants without discrimination..." 31 From this we can say that human rights are rights that are so inherent in human nature that without these rights it is impossible for us to have dignity as human beings. Therefore, we must also state that human rights cannot be revoked (inalienable) and cannot be violated (inviolable) by the other precepts of Pancasila.32

The explanation regarding Human Rights (HAM) it self is in Article 1 paragraph (1) of Law no. 39 of 1999 concerning Human Rights. The article explains that: "Human rights are a set of rights that are inherent in the nature and existence of humans as creatures of God Almighty and are His gifts that must be respected, upheld and protected by the state, law, government, and everyone for the sake of honor and protection of dignity and worth." man."

The existence of human rights (HAM) will have no meaning if it is not followed up with the law that regulates the relationship of rights, meaning that the law is the one that formalizing human rights into a set of rules to safeguard and protect against conflicts in social and state life.33 The author tries to correlate the provisions of the article above with the legalization of abortion contained in Article 31 paragraph (1) letter b Government Regulation no. 61 of 2014 concerning Reproductive Health and Article 75 paragraph (1) of Law no. 36 of 2009 concerning Health, both of which provide space for abortions for women who are rape victims. From the definition of human rights contained in Article 1 paragraph (1) of Law no. 39 of 1999 concerning Human Rights, an argument can be drawn that the right to life is a right inherent in every human being as a gift given by God Almighty and its existence must be respected.

It was mentioned earlier that the fetus is a prospective human child who actually has rights that must be maintained and fulfilled. The definition of a child itself is in Article 1 paragraph (1) of Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. The article states that: "A child is someone who is not yet 18 (eighteen) years old, including a child who is still in the womb."

The provisions of the article above provide an explanation that what is meant by a child is someone who is not yet 18 years old and includes a child who is still in the womb. The fetus, which can be said to be a child who is still in the womb, must also get protection. Referring to Article 1 paragraph (2) of Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection which explains the protection of children. The article explains that: "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."

The above provisions also reiterate that the child must receive protection in the form of living, growing, developing and participating optimally in accordance with human dignity and protection from violence and discrimination. Again, the existence of the right to life of a child in the womb must have a place in the law. According to the Convention on the Rights of the Child adopted from the United Nations General Assembly in 1989, every child regardless of race, gender, origin, religion or language, has rights that cover four areas:

1. The right to survival, concerning the right to a decent standard of living and health services;

31 Purwoto S. Gandasubroto In Mardjono Reksodiputro, Views On Human Rights In Terms Of Civil And Political Rights With Special Attention To Civil Rights In The Criminal Procedure Code, Journal Of Law And Development Vol. 23 No. 1 (1993). Pg. 3.
32 Speech Of The President Of The Republic Of Indonesia Before The DPR/MPR Session On The 45th Anniversary Of The Republic Of Indonesia, August 16, 1990 In Mardjono Reksodiputro, Views On Human Rights In Terms Of Civil And Political Rights With Special Attention To Civil Rights In The Criminal Procedure Code, Journal Of Law And Development Vol. 23 No. 1 (1993). Pg. 3.
33 Lusiana Tijow, PROTECTION OF HUMAN RIGHTS IS THE RIGHT TO LIFE OF A CHILD IN THE WOMB OUTSIDE OF A LEGAL MARRIAGE, Jurnal Legalitas Vol 3, No 2, 2010. Pg. 80.
2. The right to develop, including the right to education, information, leisure, artistic and cultural activities, freedom of thought, belief and religion, as well as the right of children with disabilities (with special needs) to special services, treatment and protection;

3. Protection rights, including protection against all forms of exploitation, cruel treatment and arbitrary treatment in the criminal justice process;

4. The right of participation includes the freedom to express opinions, assemble and associate as well as the right to take part in making decisions concerning himself.

The Convention on the Rights of the Child specifically regulates all matters concerning children's rights. The Convention on the Rights of the Child entered into force on September 2, 1990 through the United Nations revolution dated November 20, 1989 and in accordance with the provisions of the Convention Article 49 paragraph (1). In this convention the child is the holder of basic rights and freedoms as well as the party who receives special protection.34

The definition of children's rights is contained in Article 1 number 12 of Law no. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection. The article reads that: "Children's rights are part of human rights that must be guaranteed, protected, and fulfilled by parents, families, communities, state, government, and local governments."

This provision provides an explanation that children's rights are part of human rights which should be guaranteed by the relevant parties, including the state. The meaning contained in abortion provocatus from the point of view of Human Rights (HAM) clearly leads to the fulfillment of the right to life of the fetus mentioned in the previous description, which is called a child who is still in the womb.

C. Conclusion

The meaning contained in abortion provocatus from the point of view of a rape victim is actually a protection for the victim. This protection is certainly protection from the effects or impacts of the actions of the perpetrators of rape. Meanwhile, the meaning contained in abortion provocatus from the point of view of Human Rights (HAM) clearly leads to the fulfillment of the right to life of the fetus mentioned in the previous description, which is called a child who is still in the womb.

The author tries to provide a balanced view by basing it on adherence to the theory and principles that become the blade of his analysis. When faced with such a situation, the authors provide suggestions as solutions to problems that can arise, including: (1) the need for synchronization and harmonization of existing regulations, in this case between regulations on health and regulations on Human Rights (HAM); (2) legislators must prioritize higher interests in the event of a similar situation. The human rights interests of children who are in the womb according to the author must be prioritized.

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34Rini Fitriani, ROLE OF CHILD PROTECTION ORGANIZERS IN PROTECTING AND FULFILLMENT OF CHILDREN'S RIGHTS, Journal Of Samudra Justice Volume 11, Number 2, July-December 2016. Hlm. 251
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