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Doctor's Authority to Perform Abortion According to Positive Law in Indonesia

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Abstract. This study analyzes the authority of doctors to perform abortions in Indonesia. The results of the study found that positive authority is given on the condition that the doctor has undergone training so that he has a competency certificate as stated in Government Regulation Number 61 of 2014 concerning Reproductive Health and Ministerial Regulation Number 3 of 2016 concerning Training and Provision of Abortion Services for Medical Emergency Indications and Rape. Pregnancy that is legitimate for abortion is: pregnancy that endangers the mother concerned (to save her life), pregnancy containing a baby with severe disabilities and pregnancy that is a victim of rape or other sexual violence that causes pregnancy (up to 14 weeks of pregnancy). New negative authority in the form of refusing to perform abortions that do not comply with statutory regulations. In order to respect women's autonomy and justice, a doctor's positive authority in performing abortions needs to be slightly expanded.

Keywords. Doctor's authority; Abortion; Indonesia

Introduction

When a doctor treats his patient, the doctor thinks and acts based on the knowledge gained during his academic and professional education. The basics of ethics are also given in his lectures, and what is always emphasized by his teachers and seniors is that doctors must always have empathy for their patients and their altruistic nature must always be honed. Thus, doctors must always have the desire to help their patients who are suffering, both physically and mentally. However, not all of this desire to help can be carried out, considering that there are legal guidelines that are currently increasingly targeting errors in this medical profession. This target is even more so when it is related to abortion, because it cannot be denied that abortion is a violation of human rights because it involves the deliberate taking of another person's life. [1] Like all of God's creations, an unborn child or fetus has inherent value and dignity. Even though still in the womb, humans have inherent and real rights. [2]

Currently, the authority of doctors to perform abortions is still regulated in laws and regulations, namely in the Regulation of the Minister of Health Number 3 of 2016 concerning Training and Provision of Abortion Services for Emergency Medical Indications and Due to Rape, and Government Regulation Number 61 of 2014 concerning Reproductive Health (State Gazette of the Republic of Indonesia Year 2014 Number 169, Supplement to the State Gazette of the Republic of Indonesia Number 5559) except for Article 31; paragraph 1 (supposedly),

not including paragraph (2). Law Number 17 of 2023 concerning Health and Government Regulation Number 28 of 2024 concerning the implementation of Law Number 17 of 2024 concerning Health also regulates the issue of abortion. Although currently in Indonesia the Republic of Indonesia Law Number 17 of 2023 concerning Health is in force, which regulates abortion and its criminal provisions, it will be taken over by the new Criminal Code, namely the Republic of Indonesia Law Number 1 of 2023, which has been enacted as a replacement for the old Criminal Code and will come into effect starting in 2026.[3]

In general, abortion is a criminal act and is often prosecuted, except under certain conditions. Abortion has always been a hot topic throughout time and has been a controversial topic of discussion in various societies.[4] Abortion, even if performed by a doctor, still raises pros and cons. On the one hand, some argue that no one should perform an abortion on a woman since her egg is fertilized. However, on the other hand, some argue that certain medical personnel may perform an abortion for the health of the woman concerned.

Data from 2018 released by the World Health Organization (WHO) shows that 21.6 million women in the world have illegal abortions every year, and 18.5 million of them occur in developing countries.[5] The death rate in Southeast Asia due to unsafe abortion is 14-16% of maternal deaths.[6]

The high abortion rate in Indonesia, which is around 2.3 million per year [7], proves that abortion is not a problem that can be taken lightly. Abortion is one of the causes of the high maternal mortality rate in addition to other factors.[8] Abortions can be fatal, especially if accompanied by complications, such as bleeding or infection. Maternal deaths due to illegal abortions account for 5.6% of all maternal deaths. [9] This is a very large percentage. According to the National Population and Family Planning Board (BKKBN), around 17.5% of pregnancies in Indonesia are unplanned. Unintended pregnancies (KTD) affect 19.6% of Indonesia's adolescent population (those aged between 14 and 19), and adolescents are responsible for around 20% of abortions in the country. [10]

Research Method

The type of research used in this study is normative legal research.

Discussion

Theory of authority

Authority is formal power, power granted by law or from the executive administrative power. In legal terms, the definition of authority is the ability granted by statutory regulations to cause legal consequences. Authority can be explained as the entirety of the rules concerning the acquisition and use of government authority by public law subjects in public law. [11] The theory of legal authority is widely applied to the authority of state or government institutions, but the concepts related to the theory of legal authority can be applied more broadly, including to the authority of professions or individuals. There is positive authority and also negative authority. Positive authority means the authority to carry out certain actions, while negative authority is the authority to reject certain actions.

John Austin's theory of authority: authority as power or authority as a right, while Hans Kelsen's theory of authority considers authority as a norm that regulates human behavior and authority as a hierarchy of norms (basic norms followed by specific norms). In addition, there is Jean-Jacques Rousseau's theory of authority (as the power of the people to make decisions), Max Weber's theory of authority, authority as the power possessed by a person or institution to

make legitimate decisions. While Michel Foucault's theory of authority authority is the power possessed by a person or institution to control and regulate human behavior.

According to Hadjon, the word authority which is aligned with the word *bevoegdheid* in Dutch legal terms, is always used in public law, which is described as legal power (*rechtsmacht*), so that in the concept of public law authority is related to power. Authority means being given the right and power to do something. [12] Authority has at least three components, namely there is influence, there is a legal basis and there is legal conformity. The influence component is the use of authority intended to control the behavior of legal subjects. The basic legal component is that the authority must have a legal basis. Meanwhile, the legal conformity component means there is a benchmark for authority, namely a general benchmark (all types of authority) and a special benchmark (for certain types of authority). According to Hadjon's statement, authority/authority is the power of an official to do something based on statutory orders that are standardized based on the type of authority in order to carry out the tasks assigned to him.

The theory of authority according to Philipus M. Hadjon states that authority must be clearly regulated in laws and regulations. Authority can also be obtained through attribution or delegation. Doctors who do not have the authority to perform abortions and do so must face the applicable legal responsibility, including criminal responsibility. According to Roeslan Saleh, criminal responsibility is defined as the continuation of objective blame that exists in a criminal act and subjectively meets the requirements to be punished for the act.[13] In essence, criminal responsibility is a form of mechanism created to react to violations of a certain act that has been agreed upon.[14]

Health Law in Indonesia relating to abortion

a. Law Number 9 of 1960 concerning Health Principles.

As the name implies, this law only contains the main points, consisting of 6 chapters containing 17 articles. This law does not discuss abortion at all, let alone the authority of doctors to perform abortions. At that time, this law was certainly considered sufficient to resolve health problems, but with the development of the health situation and problems in Indonesia, broader, more complex, and more in-depth health regulations were needed. Or maybe at that time it was not yet thought about how important health problems were compared to problems in other fields, even though health problems could cause problems in other fields.

b. Law Number 23 of 1992 concerning Health

Law Number 23 of 1992 concerning Health has stated a prohibition on abortion, although not explicitly. However, the prohibition is in accordance with Article 15 which states about family health, stating that the wife's health includes health before pregnancy, pregnancy, postpartum and the period outside pregnancy, as well as postpartum. Paragraph (1) states that in an emergency as an effort to save the life of a pregnant woman and/or her fetus, certain medical actions can be carried out. This article does not mention abortion, certain actions as referred to in paragraph (2), regarding certain medical actions as referred to in paragraph (1) can only be carried out: a. based on medical indications that require such actions; b. by health workers who have the expertise and authority to do so and are carried out in accordance with professional responsibility and based on the considerations of a team of experts; c. with the consent of the pregnant woman concerned or her husband or family; d. in certain health facilities.

The explanation of the article states that abortion in any form for any reason is prohibited because it is not in accordance with legal norms, religious norms, morality, and norms of decency. However, in an emergency, in an effort to save the life of the mother and the life of the fetus she is carrying, certain medical actions can be carried out. [15] It is clear that the law does not yet regulate what actions and who has the right to carry out these actions. The health workers in question are very different from health workers in the current situation, where doctors are no longer included as health workers, but are included in the group of medical workers.

c. Law Number 36 of 2009 concerning Health

Article 75 paragraph of Law Number 36 of 2009 concerning Health states that; everyone is prohibited from having an abortion, except a. there are indications of a medical emergency detected at an early age in pregnancy, either threatening the life of the mother and/or fetus, suffering from a serious genetic disease and/or birth defect, or which cannot be repaired so that it is difficult for the baby to live outside the womb; or b. pregnancy resulting from rape which can cause psychological trauma for the rape victim. While paragraph (3) states that the action as referred to in paragraph (2) can only be carried out after going through pre-action counseling and/or recommendations and ending with post-action counseling carried out by a competent and authorized counselor.

Meanwhile, Article 76 states that abortion as referred to in Article 75 can only be carried out under the following conditions: before 6 (six) weeks of pregnancy, except in medical emergencies and by health workers who have the expertise and authority and have a certificate determined by the Minister; with the consent of the pregnant woman concerned; with the permission of the husband, except for rape victims; and no less importantly: carried out by a health service provider who meets the requirements determined by the Minister.

Likewise, Article 77 states: The government is obliged to protect and prevent women from abortions as referred to in Article 75 paragraph (2) and paragraph (3) which are of poor quality, unsafe, irresponsible and contrary to religious norms and the provisions of applicable laws and regulations.

The implementation of the 2009 Health Law requires several supporting regulations. Supporting regulations related to abortion are: Government Regulation Number 61 of 2014 concerning Reproductive Health and Regulation of the Minister of Health Number 3 of 2016 concerning Training and Provision of Abortion Services for Medical Emergency Indications and Due to Rape. Based on this Regulation of the Minister of Health, it is determined to regulate who is authorized to provide abortion services.

The Ministerial Decree stipulates that doctors have the right to perform abortions as stated in this regulation. This can be seen in Article 8 which states that training participants are only attended by doctors appointed by the Head of the District/City Health Office. The appointment of doctors who take part in this training must be submitted to the local professional organization for information. Meanwhile, Article 9 states that participants who have taken part in the training in full are entitled to receive a training certificate issued by the Central Government. The training certificate obtained by the doctor is a form of recognition for the provision of safe, quality, and responsible abortion services. This training certificate is valid for 5 (five) years, for those whose validity period has expired, it can be extended by taking re-training, in accordance with Article 10 of the regulation.

d. Law no. 17 of 2023 concerning Health

Article 60 of this Law states that Abortion is prohibited for everyone, except in certain cases permitted by applicable criminal law. In addition, this Article states that the implementation of abortion that is permitted can only be carried out by competent medical personnel in qualified health facilities, with the consent of the pregnant woman and her husband, except in cases of rape where the husband's consent is not required.

Illegal abortion is considered a general crime, not a medical crime, this can be seen in the statement in Article 60, therefore Article 455 states that articles 427, 428, and 429 containing abortion are declared invalid after the new Criminal Code is enacted, where there are already articles related to abortion, or in other words the provisions in Article 427, Article 428, Article 429, apply until the enactment of Law Number 1 of 2023 concerning the Criminal Code (State Gazette of the Republic of Indonesia 2023 Number 1, Supplement to the State Gazette of the Republic of Indonesia Number 6842).

In addition to the positive authority of a doctor to perform an abortion with certain conditions, there is negative authority given to doctors, in the supporting regulations of Law Number 17 of 2023 (Government Regulation Number 28 of 2024 concerning the Implementation of Law Number 17 of 2023 concerning Health, namely in Article 734 paragraph (1) letter a. where medical personnel and health workers are given the right to refuse the wishes of patients or other parties who request an abortion which is prohibited according to the provisions of statutory regulations.

Expert Statements

a. Legal expert opinion

In accordance with Article 75 paragraph (2) of the 2009 Health Law, there are written reasons, which are legal requirements that must be met, so that doctors who perform abortions are legal and cannot be sued for anything. In addition to the reasons mentioned above, other technical requirements must also be met, such as written consent. from the husband (except rape victims), carried out by an authorized doctor, carried out in a licensed service location, in accordance with procedures that do not cause harm and with counseling before and after.

While Article 76 is an administrative requirement. In civil cases, the issue of informed consent *is a questionable issue*. What form does the consent signed by the husband take? Doesn't this contradict the basic principle of informed consent, namely the patient herself? To what extent is the doctor's authority allowed to perform an abortion without the need for informed consent?

In fact, the legalization of *abortion induced* by rape is an implementation of the fulfillment of women's human rights, especially in the field of reproductive health. In cases of pregnancy due to rape, it is the victim's basic right to determine whether to continue or terminate her pregnancy. This action must be fully supported by state law so that there are no loopholes.

So, the legalization of induced abortion in rape cases is essentially an effort to protect and fulfill women's human rights, especially the right to life and reproductive rights and to maintain life and is protected by various laws and regulations in positive law, namely the 1945 Constitution of the Republic of Indonesia, Law Number 7 of 1984 concerning Ratification of the Declaration of the Elimination of All Forms of Discrimination against Women, Law Number 39 of 1999 concerning Human Rights, Law Number 11 of 2005, the Health Law and various international human rights documents.

b. Ethics and Health Expert Opinion

Regarding abortion, the law cannot be generalized. This must always be remembered, because it is often assumed that the fetus is alive from the start. The right to life, in a positive sense, is the right to live a long and healthy life. Because it has lived and will continue to live, living creatures have an inherent right to continue to live.[16]

Whether abortion is permissible or not depends on the case by case. Sometimes faced with serious illnesses for pregnant women. The relationship between maternal illness (which threatens the mother's life) and the fetus in the womb is possible in two ways, namely: 1. There is no correlation between maternal and fetal illnesses, for example malignant disease (cancer) of the cervix and the fetus in the womb. 2. The fetus in the womb worsens the mother's illness. The older the gestational age, the more life-threatening it is for the mother. For example, in heart failure accompanied by *preeclampsia* (pregnancy poisoning).

In cases where the mother's illness has nothing to do with her fetus, the principle of treatment is that both must be saved, but if it is impossible to save both, then one must be saved. If you have to choose which one to save, then the choice must be the pregnant mother.

Example in the first case: a young pregnant woman, suffering from early stage cancer. If the treatment is postponed, waiting for the fetus to be one month old, then the cancer stage will be advanced, so the mother will be difficult to treat. If treated now at the beginning of pregnancy, it will damage the fetus. Here a decision will be taken to save the pregnant woman and immediately remove the fetus (abortion). If the fetus is almost full term and the cancer is already in an advanced stage, for the pregnant woman, treated now or later, the results will not be optimal or even bad. So it can be concluded that saving the fetus by waiting one month for it to be born. If the fetus is almost full term and the mother is still in the early stage, save both by delaying the birth of the fetus so that it can live outside. However, if the fetus is full term, what else is still waiting for? Save both. Remove the baby and treat the mother (the fetus is still born because cancer treatment endangers the fetus).

Example in the second case: a pregnant woman with *preeclampsia* (pregnancy poisoning). If the disease is still mild *preeclampsia*, it means that the pregnancy can be maintained, but it should not endanger the mother, after waiting until the fetus can live outside the womb, the baby can be born. The criteria for a fetus to be able to live outside depends on the hospital's ability to care for the baby. If the hospital is able to care for a baby weighing 2000 grams, delivery when the estimated weight of the fetus is 2000 grams. Because if it is postponed, the older the gestational age, the more dangerous it will be for the mother. If the disease of the pregnant woman with *preeclampsia* is severe, delaying pregnancy is very dangerous for the mother, save the mother by giving birth to the baby, regardless of the gestational age, here the baby is forced to be born.[17]

By being born, the baby may be able to live/be saved, or it may be difficult to save and die, depending on the hospital facilities. If the fetus is full-term, immediately save both of them by giving birth to the baby. If the pregnant mother is clearly dead, the fetus is full-term and still alive, immediately perform a cesarean section (CS, surgery) to remove the fetus. The CS must be performed immediately on the spot. So the conclusion is: Handling medical cases cannot be generalized, and if you only rely on one or two data or information, you cannot be sure what the best medical decision is, for that detailed data is needed.

Abortion in Different Countries

According to WHO, the abortion rate in countries that legalize abortion and those that do not legalize abortion is the same, because modern contraceptives are not available in countries that prohibit abortion. The abortion rate in the world is decreasing because access to contraceptives is getting easier. Two countries are given as examples, namely the Netherlands and Japan, with the following considerations: the Netherlands is the origin of the Criminal Code in Indonesia in 1946 and Japan as a fellow Asian country with all its cultural diversity.

a.Abortion in the Netherlands

In 1918, the Dutch government passed a law prohibiting abortion in the Netherlands and its colonies. Abortion is included in the criminal law that imposes sanctions on health practitioners and patients who perform abortions. Abortion was legalized in the Netherlands with the enactment of the Abortion Law of May 1, 1981 Stb.1981, 257 which was later amended by the Law of November 6, 1997, Stb. 1997, 510. Changes in the law relating to abortion in the Netherlands occurred due to changes or developments in society that occurred in the country.

It is clear that developments in Dutch social life have led to changes in the law on abortion from the most conservative because it prohibits abortion without exception to the most liberal because it allows abortion on request. [18]

b.Abortion in Japan

Abortion is permitted with permission up to 22 weeks of pregnancy if there are reasons such as threat to the mother's health, economic hardship, or pregnancy resulting from rape. The exceptions to the criminal law that make abortion illegal are very broad, so the act is generally accepted and practiced. A doctor may, with the consent of the pregnant woman and her partner, intentionally perform an abortion on a patient through a public medical organization connected to a specific administrative area association, provided that the following two conditions apply if the continuation of the pregnancy or childbirth would be detrimental to the health of the

prospective mothers either physically or economically and in women who are pregnant as a result of rape or are in a state where she cannot refuse.[19]

Ethical Side

The most basic medical ethics to date are: non-maleficence, beneficence, autonomy and justice. Beneficence: in pregnant women, of course a doctor will try to keep the woman and her pregnancy healthy. But what if the woman herself does not want her pregnancy? Of course, if there is a clash between the 4 principles, we will return to Prima facie, which one stands out first and causes problems. Patient autonomy, in this case a pregnant woman, needs attention and appreciation if it can indeed defeat other principles.

Another consideration is the ethics of virtue that a good doctor must have. According to E. Pellegrino and D. Thomasma in his book *Berten*, the ethics of virtue are: Fidelity to trust, Compassion, Phronesis, Justice, fortitude, Temperance, integrity and self-effacement. Let's take just one, because these two ethics of virtue are also mentioned by two other books, namely: compassion.

Compassion means feeling the suffering of the patient (empathy). How poor people suffer who find it difficult to feed their families every day, and have too many children who are pregnant again. Especially if they have actually followed a family planning program but failed. Also for girls who, for whatever reason, have become pregnant, even though their future aspirations are very high. There was news that a girl who did not reject her pregnancy would

commit suicide. It is easy for us to blame them for this, they did it themselves. But is it enough for us to just blame them?

From the Justice side, a doctor must act fairly towards all his patients. If we compare the consequences of not aborting a pregnancy due to rape with a pregnancy due to the failure of the Family Planning program in a very poor family, also in a pregnancy in a mentally retarded patient, it will feel unfair, because the victim is the same, namely the fetus which is clearly innocent. But the legal treatment is different.

From a Human Rights perspective

As a pregnant woman, she has the right to self-determination and make decisions about her body. Based on human rights, she has the freedom to choose whether or not to continue her pregnancy. If she decides to abort, she should believe that it is her right as a woman to make decisions about her own health and well-being.

She should not be pressured or judged by others about her decisions regarding her pregnancy. Her right to make decisions about her own body is fundamental and should be respected. She should believe that her decisions about her pregnancy should be based on her own needs and desires, not on the pressure or expectations of others.

Furthermore, as a woman, she has the right to access safe and legal health information and services, including abortion services if she needs them. The woman must believe that having access to comprehensive and unlimited health services is her right as a human being.

Meanwhile, from the Doctor's side, they have the right and obligation to help their patients and respect their patient's autonomy according to their beliefs. Of course, we should not pressure a doctor to perform an abortion that is not in accordance with the law and their beliefs.

Analysis of Doctor's Authority in Abortion

a. According to Law Number 36 of 2009 concerning Health

The authority of doctors who perform abortions is regulated by law. This authority is divided into two parts, namely from the perspective of the pregnancy condition itself as seen from the 2009 Health Law and from the perspective of doctors who should be in accordance with the Regulation of the Minister of Health No. 3 of 2016 concerning Training and Provision of Abortion Services for Medical Emergency Indications and Due to Rape.

1) Analysis of the pregnancy condition

According to the 2009 Health Law, the legal authority for doctors who perform abortions is: regulated in Article 75, which in paragraph (1) states that; everyone is prohibited from performing abortions. This is a general norm. In general, no one is allowed to perform abortions. This is in line with the norms in the 1946 Criminal Code, the articles in it do not allow abortions to be performed. Anyone who performs an abortion, either of their own pregnancy (Article 346) or of another person (Articles 347, 348 and 349) is subject to criminal sanctions. This general prohibition on abortion is in accordance with the opinions of most people in society.

2) Analysis from the doctor's side

Article 75 paragraph (2) of this Law states that the prohibition as referred to in paragraph (1) may be excluded based on: a. indications of a medical emergency detected at an early age in pregnancy, whether it is life-threatening for the mother and/or fetus, suffering from a serious genetic disease and/or birth defect, or one that cannot be repaired, making it difficult for the baby to survive outside the womb. According to this sentence, doctors are not authorized

to perform abortions in pregnancies that are already advanced in gestation (not early), even if there is an emergency that threatens the life of the mother/fetus and the fetus also suffers from a serious genetic disease and/or birth defect, or one that cannot be repaired, making it difficult for the baby to survive outside the womb. It should not only be detected at an early stage of pregnancy, but for all gestational ages. Actually, this has been discussed in the following article, but if the wording in this article is stated from the beginning, it will reduce misunderstandings for those who study the authority of doctors regarding abortion.

Pregnancy due to rape can cause psychological trauma for rape victims. Pregnancy due to rape is of course legitimate, doctors are authorized to perform abortions in this case. While paragraph (3) states that the actions referred to in paragraph (2) can only be carried out after pre-action counseling and/or advice and ending with post-action counseling carried out by a competent and authorized counselor. Counseling is very important, considering that the consequences of an abortion can vary, both physically, psychologically, and even socially.

Thus, the doctor's authority to perform abortions in this type of pregnancy is limited by the mandatory consultation process. If there is no consultation, then the doctor is not authorized to perform an abortion of this pregnancy.

Article 76 states that abortion as referred to in Article 75 may only be carried out under the following conditions: a. before the age of 6 (six) weeks of pregnancy calculated from the first day of the last menstruation, except in cases of medical emergency; b. by health workers who have expertise and authority who have a certificate determined by the Minister; c. with the consent of the pregnant woman concerned; d. with the permission of the husband, except for rape victims; and e. by health service providers who meet the requirements determined by the Minister.

In this article, there are restrictions on the authority of doctors who will perform abortions, from the patient's perspective. In letter a, regarding medical emergencies, it should be included in article 75, so that it can be interpreted correctly. The problem of abortion in pregnancies due to rape, there is a limit to the gestational age that is permitted to perform an abortion, which is 6 weeks. This will often cause difficulties because the time given to rape victims is very limited. This happens because at 6 weeks of pregnancy, many do not realize that they are pregnant, because their pregnancy is only about 2 weeks old. This time is too short to decide whether to continue the pregnancy or end it by abortion. It would be more appropriate if the time could be extended.

Even though doctors have been given the authority to perform abortions on patients in accordance with Article 75 paragraph (2) and paragraph (3), the government also protects mothers who wish to have an abortion with Article 77, namely against abortion services that are of poor quality, unsafe and irresponsible and which are contrary to religious norms and the provisions of applicable laws and regulations.

The authority of doctors to perform abortions has been granted by the State through this law, and outside of this provision, no one is allowed to perform an abortion. Anyone can perform an abortion intentionally, in addition to medical personnel, it can also be performed by midwives, nurses, shamans, and others. This type of abortion is a criminal act against the law, even people who help can be prosecuted in court. [20]

The threat of administrative action is also imposed in accordance with Article 188 of this Law through the Minister to health workers (in this case still including doctors) and health facilities. Article 188 paragraph (1) states that the Minister may take administrative action against health workers and health service facilities that violate the provisions stipulated in this Law. Likewise, paragraph (2) states that; (2) The Minister may delegate the authority as referred

to in paragraph (1) to non-ministerial government institutions, heads of provincial services, or heads of district/city services whose main duties and functions are in the health sector.

For pregnancies that occur in failed family planning programs and pregnancies in women with mental retardation, doctors are not authorized to perform abortions on them. This will have quite a wide impact, considering the consequences that can occur for families who suffer from failed family planning programs, as well as for women who are raped and their environment.

From the perspective of Doctors and Health Service Facilities, although the pregnancy meets the requirements for performing an abortion, there are requirements for doctors who are authorized to perform it, as stated in the Regulation of the Minister of Health Number 3 of 2016 concerning Training and Implementation of Abortion Services for Indications of Medical Emergency and Due to Rape. This Regulation of the Minister of Health regulates who is authorized to perform abortion services, namely doctors who have undergone training.

Article 8 states that training participants are only attended by doctors appointed by the Head of the District/City Health Office and must be submitted to the local professional organization for information. Participants who have completed the training are entitled to receive a training certificate issued by the Central Government (Article 9). The training certificate obtained by the doctor is a form of recognition for the provision of safe, quality and responsible abortion services. This training certificate is valid for 5 (five) years, for those whose validity period has expired, it can be extended by taking re-training, in accordance with Article 10 of this regulation.

b. According to Law Number 17 of 2023 concerning Health

Basically, the authority of doctors to perform abortions in Indonesia is still the same as when Law Number 36 of 2009 concerning Health was in effect, the difference is...

1). There is negative authority to refuse to perform abortions that do not comply with applicable laws and regulations.

2). The term pregnancy due to rape can cause psychological trauma for rape victims as a result. against victims of rape or other sexual violence resulting in pregnancy

3) There is a difference in the gestational age at which abortion can still be performed in cases of pregnancy resulting from rape, which was previously 6 weeks but has now become 14 weeks.

c. Authority according to Medical Ethics and Human Rights

Since the beginning, a relationship of trust has been formed between the healer and the healed (patient). At this time, this relationship is referred to as a therapeutic transaction between doctor and patient. The relationship between the two parties is carried out confidentially, with mutual trust, and mutual respect. The wider community knows and acknowledges the existence of basic qualities that are absolutely inherent in a good and wise doctor, namely pure intentions, sincerity in work, humility, and scientific and moral integrity that must be unquestionable.

There are many events in society that require attention, because health problems affect all aspects of life and their scope is broad and complex. [21]

Regarding abortion itself, Don Marquest in Bonnie Steinbock said that abortion is considered immoral, because the fetus in the womb is the same as a living human being. However, there are some views that say that abortion is permissible because the fetus is not yet considered a human being.[22]

It can be said that the duty of a doctor is to maintain and protect human life by preventing and/or curing disease. Maintaining life is one of the guarantees of safety for patients, including keeping the fetus in the womb alive, healthy, and developing well. For a doctor, the obligation to maintain life is an obligation that must be carried out, because every doctor must have sworn an oath based on the Hippocratic oath, which he said after graduating from medical education and starting his profession as a doctor.

The Indonesian doctor's oath as stated in the Explanation of the Indonesian Medical Code of Ethics in 2012, there is a clause that doctors will not use their knowledge for anything that is contrary to humanity, even if threatened, while another clause states that they will respect every human life from the moment of conception. Doctors also swear to always remember their obligation to protect human life. Thus, since in the womb, it is unethical for a doctor to have to perform an abortion, but because of the greater interest, namely saving the mother's life, it can be done and is reinforced by statutory provisions. In a situation where the fetus has severe genetic defects, the doctor must have an ethical dilemma. Seeing that the future after birth will be more miserable, the dilemma is won by aborting it, this has also been accommodated in this health law. For pregnancies with rape, the consideration that must be included in the consideration that an abortion is permissible is the rape that results in pregnancy, which can cause psychological trauma and great guilt for the victim. Therefore, doctors are also given the authority to perform abortions in this case.

The Universal Declaration of Human Rights, which is the first element of the International Bill of Rights, In its Preamble, it is stated, among other things, that there is recognition of fundamental human rights, of the dignity and worth of every human being, and of equal rights between men and women, and has advanced social progress and a better standard of living in wider freedom. Thus, this Declaration is the main and first foundation in the recognition and protection of human rights, including women's rights. Although there is not a single article that explicitly talks about women's reproductive rights, it can be reviewed from several articles related to women's freedom in fulfilling their human rights. These articles include: Article 1: All human beings are born free and have the same dignity and rights. Article 3: Everyone has the right to life, liberty and security of person. Article 25 paragraph (1): Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including the right to food, clothing, housing, and health services, necessary social services, and the right to feel secure when unemployed, sick, disabled, abandoned by his partner, reaching old age, or other circumstances that result in a decline in the standard of living that occurs beyond his control.

When related to the topic of abortion due to rape, the three articles above have stated that abortion is a woman's right to live and maintain life and achieve a standard of living that is decent for health and a dignified human life. Therefore, if the pregnancy that occurs is the result of rape and causes mental/psychological trauma that disrupts her health and well-being, then the woman has the right to determine whether to terminate or continue her pregnancy. The right to determine the pregnancy must of course be supported by state policy through laws that expressly protect the implementation of these human rights without any criminal threats. This means that basically abortion due to rape is considered to have received an instrument of protection and recognition in the Universal Declaration of Human Rights. The root of women's health problems is related to reproductive health issues. [23]

d. Comparison between countries

Abortion in some countries shows various provisions, some are legal and some prohibit it. For countries that legalize it for various reasons, especially for protection when threatening women and saving their lives. However, besides these reasons, there are also reasons behind pregnancy due to rape, financial and social reasons. While the time limit for the age of pregnancy when abortion is allowed, there are also various differences, some are less than 22 weeks or 24 weeks. Some countries that prohibit abortion also see it from various perspectives of religion, culture, national culture and so on.

Conclusion

a. In Indonesia, no person may have an abortion, except for those with permitted criteria in accordance with the provisions of the criminal code, while abortions with permitted criteria may only be carried out by medical personnel and assisted by health workers who have the competence and authority.

b. Positive authority: can perform abortions in medical cases where a pregnant mother's life is threatened because of the baby in her womb, and pregnancy due to rape, but there is no authority to abort the failure of the Family Planning Program who are poor, and / or at high risk if pregnant again and in pregnancies experienced by people with mental disabilities. In terms of negative legal authority, it already exists, namely refusing to perform abortions that are not in accordance with the laws and regulations, but there is no authority to refuse to perform abortions according to one's beliefs / religion.

c. Pregnancy due to rape has been legalized, it is necessary to start considering legalizing cases of pregnancy with social and financial indications, such as in idiot children, and considering the failure of the family planning program in poor families. This is in accordance with the principles of Compassion and Justice and is necessary for the interests of the general legal objectives, namely: legal certainty, benefit and justice.

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